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BEFORE THE DEPARTMENT OF INSURANCE
FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION
STATE OF MISSOURI
IN RE: PROPOSED ACQUISITION OF COVENTRY HEALTH CARE OF
MISSOURI, INC.; HEALTHCARE USA OF MISSOURI, L.L.C.;
CAMBRIDGE LIFE INSURANCE COMPANY AND
COVENTRY HEALTH AND LIFE INSURANCE COMPANY
BY
AETNA, INC.

Case No. 120920539C

VOLUME II
FORM A HEARING
TRANSCRIPT OF PROCEEDINGS
FEBRUARY 19, 2013

1	I N D E X	
2		PAGE
3	Opening Statement by Mr. Kaplan	65:14
4		
5	DEPARTMENT OF INSURANCE, DIVISION OF	
6	MARKET REGULATION EVIDENCE:	
	Statement by Mr. Kaplan	66:17
7		
8	AETNA'S EVIDENCE:	
	Statement by Mr. Whitmer	72:7
9		
10	DIVISION OF INSURANCE	
	COMPANY REGULATION EVIDENCE:	
11		
	FREDERICK G. HEESE, CFE, CPA, MBA	
12	Questions by Ms. Kopp	74:3
13		
	DEPARTMENT OF SOCIAL SERVICES	
14	EVIDENCE:	
15	IAN MCCASLIN, M.D., M.P.H.	
	Questions by Hearing Officer Erickson	78:15
16	Statement by Dr. McCaslin	79:3
	Questions by Mr. Hatfield	90:16
17	Questions by Mr. Kaplan	96:12
18		
	HOME STATE HEALTH PLAN EVIDENCE:	
19		
	CORY CAPPS, PH.D.	
20	Questions by Mr. Hatfield	98:15
21	SHANNON BAGLEY	
	Questions by Mr. Hatfield	118:17
22	Questions by Hearing Officer Erickson	121:17
	Further Questions by Mr. Hatfield	124:15
23	Further Questions by Hearing Officer	126:10
	Erickson	
24	Questions by Mr. Whitmer	127:5
	Further Questions by Mr. Hatfield	130:25
25		

1	INDEX (CONT'D)		
2	EXHIBITS INDEX		
3		MARKED REC'D	
4	Exhibit D (Closed)		
5	Economic Report of Cory Capps, Ph.D. and		
6	Antara Dutta, Ph.D.	67:8	133:3
7			
8	Exhibit E		
9	Public Report of Cory Capps, Ph.D. and		
	Antara Dutta, Ph.D.	67:8	133:3
10			
	Exhibit No. 15		
11	Chain of e-mail proving notice of hearing	58:2	73:15
12	Exhibit No. 16		
	E-mail confirmation of receipt of notice	58:2	73:15
13			
	Homestead Exhibit No. 1		
14	Affidavit of Shannon Bagley	118:14	121:8
15			
	EXHIBIT INSTRUCTIONS:		
16			
	Exhibits retained by Hearing Officer Erickson.		
17			
18			
19			
20			
21			
22			
23			
24			
25			

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BEFORE THE DEPARTMENT OF INSURANCE
FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

STATE OF MISSOURI

IN RE: Proposed Acquisition of:)
)
Coventry Health Care of) Case No.
Missouri, Inc., Healthcare USA) 120920539C
of Missouri, L.L.C., and)
Cambridge Life Insurance Company)
and Coventry Health and Life)
Insurance Company)
by)
Aetna, Inc.)

VOLUME II
FORM A HEARING
FEBRUARY 19, 2013
9:00 a.m.

HARRY S. TRUMAN STATE OFFICE BUILDING
301 WEST HIGH STREET, ROOM 940
JEFFERSON CITY, MISSOURI 65101

BEFORE: Mary S. Erickson, Hearing Officer

REPORTED BY:
Patricia A. Stewart, CCR 401, RMR, RPR
Midwest Litigation Services
3432 Truman Boulevard, Suite 207
Jefferson City, Missouri 65109
(573) 636-7551

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A P P E A R A N C E S

FOR THE DEPARTMENT OF INSURANCE, DIVISION OF INSURANCE
COMPANY REGULATION:

By: TAMARA W. KOPP
P. O. Box 690
Jefferson City, Missouri 65101
(573) 522-6115

FOR THE DEPARTMENT OF INSURANCE, DIVISION OF MARKET
REGULATION:

By: ROSS KAPLAN
P. O. Box 690
Jefferson City, Missouri 65101
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FOR AETNA, INC.:

LOCKE LORD, L.L.P.
By: STEVEN T. WHITMER
111 South Wacker Drive
Chicago, Illinois 60606
(312) 443-1869

AND

SPENCER, FANE, BRITT & BROWNE, L.L.P.
By: KEITH A. WENZEL
308 East High Street, Suite 222
Jefferson City, Missouri 65101
(573) 634-8112

FOR HOME STATE HEALTH PLAN:

STINSON MORRISON HECKER, L.L.P.
BY: CHUCK HATFIELD
BY: KHRISTINE A. HEISINGER
230 West McCarty Street
Jefferson City, Missouri 65101
(573) 636-6263

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APPEARANCES (CONT'D)

FOR THE MISSOURI DEPARTMENT OF SOCIAL SERVICES:

By: JOEL ANDERSON
221 West High Street, Room 230
Jefferson City, Missouri 65101
(573) 751-1334

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

2 (EXHIBIT NOS. 15 AND 16 WERE MARKED FOR
3 IDENTIFICATION BY THE COURT REPORTER.)

4 HEARING OFFICER ERICKSON: I call this
5 hearing to order at approximately 9:05 a.m. on
6 February 19th, 2013.

7 This hearing is in the matter of In Re:
8 Proposed Acquisition of Coventry Health Care of
9 Missouri, Inc.; Healthcare USA of Missouri, LLC;
10 Cambridge Life Insurance Company; and Coventry Health
11 and Life Insurance Company by Aetna, Inc., Case
12 No. 120920539C.

13 This hearing is being held in Room 490 of the
14 Harry S. Truman State Office Building in Jefferson City,
15 Missouri. My name is Mary Erickson. I am Chief
16 Counsel, Insurance Divisions with the Department. I am
17 the hearing officer in this matter.

18 Before we begin I would like to review the
19 procedural background of this proposed acquisition.

20 On September 17th, 2012 Aetna, Inc. filed a
21 Form A Statement proposing to acquire control of
22 Coventry Health Care of Missouri, Inc.; Healthcare USA
23 of Missouri, LLC; and Cambridge Life Insurance Company.

24 On October 3rd, 2012 the Division of Market
25 Regulation and the Department filed a motion for a

1 continuance and to hold open record, requesting that the
2 hearing set in this matter be continued and the record
3 remain open to allow for the Division to receive
4 information from Aetna pursuant to Section 382.095.3, or
5 until the Division is prepared to present evidence and
6 analysis as required by Section 382.095.4.

7 In my October 10, 2012 Order I granted the
8 motion for a continuance and hold the record open.

9 On October 25th, 2012, after notice, the
10 first hearing in this matter was held pursuant to
11 Section 382.060.

12 On January 29th, 2013 the Division of Market
13 Regulation acknowledged receipt of information required
14 pursuant to Section 382.095.3 and moved for the hearing
15 pursuant to Section 382.060 to be reset in this matter.

16 On February 4th, 2013 the Amended Form A
17 Statement of Aetna was filed and admitted into evidence.
18 Aetna added Coventry Health and Life Insurance Company
19 with that Amended Form A filing.

20 For orderly administration of this
21 proceeding, the hearing will be conducted as follows:
22 As this hearing was continued at the request of the
23 Division of Market Regulation, such Division shall
24 proceed first.

25 The Division may make an opening statement if

1 it desires or immediately proceed to evidence.

2 The Applicant, Aetna, shall then proceed with
3 its evidence. Thereafter the Division of Insurance
4 Company Regulation may then present evidence.

5 After the completion of all of the parties'
6 evidence and in accordance with Section 382.060.3, any
7 person whose interest may be affected by the proposed
8 acquisition shall have the right to present evidence,
9 examine and cross-examine witnesses and offer oral and
10 written arguments.

11 In accordance with the notice of hearing
12 continuation, one interested person, Home State Health
13 Plan, Inc., has entered its appearance through counsel.

14 At this time I ask the attorneys representing
15 Home State Health Plan to please approach the podium.

16 MR. HATFIELD: Chuck Hatfield and Khris
17 Heisinger for Home State Health Plan.

18 HEARING OFFICER ERICKSON: Thank you.

19 And, Mr. Hatfield, Ms. Heisinger, do you
20 intend to present evidence today on behalf of Home State
21 Health Plan?

22 MR. HATFIELD: We do. We have one witness
23 who addresses the issues of the anticompetitive effects.

24 HEARING OFFICER ERICKSON: Thank you.

25 And will you be also wishing to offer an

1 argument as part of your opportunity in this hearing?

2 MR. HATFIELD: Yes, please.

3 HEARING OFFICER ERICKSON: Thank you,
4 Mr. Hatfield, Ms. Heisinger.

5 Are there any other interested persons
6 present who may wish to participate in this hearing by
7 making an argument or presenting evidence?

8 DR. MCCASLIN: Good morning. Ian McCaslin.
9 I'm the Director of the MO HealthNet Division with the
10 Missouri Department of Social Services.

11 We are the Division that oversees in general
12 Missouri Medicaid managed care operations, so we have a
13 substantial interest in this transaction, and we will
14 wish to give oral testimony.

15 HEARING OFFICER ERICKSON: Thank you.

16 Dr. McCaslin, are you represented by counsel
17 today?

18 MR. ANDERSON: Joel Anderson, General Counsel
19 of Social Services.

20 HEARING OFFICER ERICKSON: Thank you,
21 Mr. Anderson, Dr. McCaslin.

22 Are there any other interested persons
23 present who wish to participate by presenting evidence
24 or offering oral or written argument?

25 At this time I will ask counsel for the

1 parties in this proceeding to identify themselves for
2 the record.

3 I would like, please, to begin with Aetna.

4 MR. WENZEL: Keith Wenzel from here in
5 Jefferson City on behalf of Aetna, Inc.

6 MR. WHITMER: Good morning, Ms. Erickson.
7 Steven Whitmer on behalf of Aetna, Inc. from Locke Lord
8 in Chicago.

9 HEARING OFFICER ERICKSON: Thank you,
10 Counsel.

11 MR. KAPLAN: Ross Kaplan, Division of Market
12 Regulation with the Department of Insurance.

13 MS. KOPP: Tamara Kopp, Division of Insurance
14 Company Regulation, Department of Insurance.

15 HEARING OFFICER ERICKSON: Thank you.

16 Mr. Kaplan, as the Division of Market
17 Regulation was not present at our last hearing, do you
18 wish to make an opening statement on behalf of the
19 Division?

20 MR. KAPLAN: I do both, would like to make a
21 short opening statement and then also I have a
22 preliminary matter I was hoping to be able to handle at
23 this time as well.

24 I would like to make a motion to enter on the
25 record a joint stipulation between the Division of

1 Market Regulation and Aetna, Inc.

2 HEARING OFFICER ERICKSON: Thank you.

3 Mr. Kaplan, do the parties have copies of
4 your proposed stipulation?

5 MR. KAPLAN: I'm about to provide them, yes.

6 HEARING OFFICER ERICKSON: The hearing
7 officer has received a Joint Stipulation of Uncontested
8 Facts between the Division of Market Regulation and
9 Aetna.

10 Because these are a joint stipulation of
11 facts it does not necessarily need to be admitted into
12 evidence, but do you move to admit it if it is required?

13 MR. KAPLAN: Yes, we would.

14 MR. WHITMER: No objection from Aetna.

15 MS. KOPP: No objection from the Division.

16 HEARING OFFICER ERICKSON: Mr. Hatfield.

17 MR. HATFIELD: Madam Hearing Officer, I'm
18 just seeing the joint stipulation for the first time.

19 To the extent it's being admitted into
20 evidence, pursuant to the statute interested parties
21 have the right to cross-examine witnesses, and that
22 right appears to be absolute the way I read the statute.

23 To the extent that the Department is putting
24 in the economic analysis of the merger, I'm not
25 objecting that that analysis can't go in, but interested

1 parties do have the right to cross-examination on that
2 evidence.

3 HEARING OFFICER ERICKSON: And, Mr. Hatfield,
4 related to the joint stipulation of facts, are you
5 taking the position that the joint stipulation cannot be
6 entered into evidence unless you have the opportunity to
7 cross-examine someone?

8 MR. HATFIELD: Correct.

9 HEARING OFFICER ERICKSON: And can I ask you,
10 please, which paragraph numbers are the ones that lead
11 to your assertion?

12 MR. HATFIELD: Paragraph 6 -- or I'm sorry.
13 I'm seeing it for the first time, Madam Hearing Officer,
14 so I apologize.

15 Paragraph 4 discuss that the economist named
16 Dr. Cory Capps is retained, asserts that he's an expert,
17 asserts that he has special knowledge, provides
18 information about what he was provided for his analysis
19 and then discusses the report and then apparently
20 stipulates to its admissibility.

21 So maybe I need some clarification as to what
22 we're admitting in the report here. Although I'm not
23 sure I want to, I think we're entitled to cross-examine
24 the witness on his qualifications rather than just
25 having those stipulated to. And to the extent we're

1 admitting the report, we're certainly allowed to
2 cross-examine the witness on the facts that are being
3 admitted into evidence.

4 HEARING OFFICER ERICKSON: Mr. Hatfield, your
5 motion is sustained in part, denied in part. The joint
6 stipulation of facts will be admitted.

7 However, to the extent that under the
8 Statute 382.060, that you and your party have a right to
9 cross-examine witnesses or present evidence that
10 contradicts the stipulated facts, you may do so.

11 MR. HATFIELD: Thank you.

12 HEARING OFFICER ERICKSON: Mr. Kaplan, you
13 may proceed.

14 MR. KAPLAN: The Division of Market
15 Regulation received the Form E to review for purposes of
16 determining whether the acquisition by Aetna of Coventry
17 and its subsidiaries would have anticompetitive effects
18 in Missouri.

19 Upon initial analysis we believed that there
20 were potentially some prima facia violations which have
21 been stipulated to within the stipulated facts by Aetna.

22 To ascertain both whether the prima facia
23 violations actually existed and also whether they were
24 legitimate concerns or were acceptable for purposes of
25 the merger, the Division retained Dr. Cory Capps with

1 Bate Whites in Washington D.C. to do a comprehensive
2 analysis.

3 We intend to introduce on the record two
4 versions of the report: one, a public summary and, one,
5 the full report which contains information received
6 pursuant to 382.095.3, which contains confidential
7 information that is proprietary and trade secret to both
8 Aetna and Coventry.

9 At the conclusion of the introduction of the
10 evidence we'll show that the merger between Coventry and
11 Aetna -- or excuse me -- acquisition thereof is not
12 volatile anticompetitive effects and acceptable in
13 Missouri.

14 HEARING OFFICER ERICKSON: Mr. Kaplan, now
15 that you've completed your opening statement, do you
16 wish to present your evidence?

17 MR. KAPLAN: Yes, ma'am.

18 For the record I hand you two reports. The
19 first one is titled Statement of competitive impact on
20 Missouri and its citizens of the proposed acquisition of
21 Coventry Health Care by Aetna, dated February 15th,
22 2013, authored by Dr. Cory Capps and Dr. Antara Dutta.

23 And I don't know where the exhibit numbers
24 left off, so I left that blank for you, but I would ask
25 to enter this upon the record and to enter it under seal

1 due to its confidential nature.

2 HEARING OFFICER ERICKSON: Mr. Kaplan, we are
3 currently on Exhibit D for the Department.

4 MR. KAPLAN: Thank you, ma'am.

5 HEARING OFFICER ERICKSON: Would you please
6 share the exhibit with the parties and the hearing
7 officer.

8 (EXHIBITS D AND E WERE MARKED FOR
9 IDENTIFICATION.)

10 HEARING OFFICER ERICKSON: Mr. Kaplan,
11 Exhibit D is the public report. As mentioned in the
12 stipulation of facts, paragraphs 23 and 24 --

13 MR. KAPLAN: No, ma'am. It is the economic
14 report mentioned in paragraphs 17, 18, 19, 20, 21 and
15 22.

16 HEARING OFFICER ERICKSON: Thank you,
17 Mr. Kaplan.

18 Exhibit D, therefore, is the economic report
19 that you have requested be held closed and confidential.
20 Is that correct?

21 MR. KAPLAN: Yes, ma'am.

22 HEARING OFFICER ERICKSON: Are you offering
23 Exhibit D into evidence at this time?

24 MR. KAPLAN: Yes, ma'am.

25 MR. WHITMER: No objection from Aetna.

1 MR. HATFIELD: Chuck Hatfield, Madam Hearing
2 Officer.

3 We assert the right to cross-examine the
4 witness who is offering testimony into the record, and
5 we'd like to cross-examine him now.

6 HEARING OFFICER ERICKSON: Mr. Hatfield, as
7 we discussed at the beginning of this proceeding, in
8 order for us to maintain an orderly administration,
9 we're going to proceed with the parties' evidence first,
10 but you absolutely do have the right under
11 administrative law to call any witnesses and
12 cross-examine any witnesses, and so, therefore, you will
13 be given that right.

14 MR. HATFIELD: May you withhold ruling on our
15 objection until we have the right to cross-examine the
16 witness? Because I'd like to voir dire the witness on
17 the admissibility of the document.

18 MR. KAPLAN: Ma'am, the parties in the joint
19 stipulation have already stipulated both to the
20 foundation and the authenticity of the document and
21 credentials of Dr. Capps.

22 Now, while Mr. Hatfield has a right to
23 cross-examine witnesses, he did not have the right to
24 stipulation as to the facts, and both parties are in
25 agreement as to his qualifications.

1 HEARING OFFICER ERICKSON: Mr. Hatfield and
2 parties, regarding Exhibit D, at this time the hearing
3 officer will withhold ruling on the admissibility of
4 Exhibit D until such time as we have further evidence
5 presented.

6 MR. HATFIELD: Thank you.

7 HEARING OFFICER ERICKSON: Thank you,
8 Mr. Hatfield.

9 Mr. Kaplan, you may proceed.

10 MR. KAPLAN: At this time due to the
11 confidential nature of the Exhibit D previously
12 attempted to be entered, we asked the economist to
13 provide a summary of his analysis and conclusions that
14 did not contain the confidential and proprietary
15 information, thus we believe to be available to the
16 public for their review and offered to provide
17 transparency.

18 That public summary is titled Public summary
19 of analysis and conclusions, statement of competitive
20 impact on Missouri and its citizens of the proposed
21 acquisition of Coventry Health Care by Aetna, also dated
22 February 15, 2013 and authored by Dr. Cory Capps and
23 Dr. Antara Dutta.

24 At this time I would ask that the public
25 summary be entered only.

1 HEARING OFFICER ERICKSON: Aetna, any
2 objections?

3 MR. WHITMER: No objection from Aetna.

4 MR. HATFIELD: We have the same issue
5 regarding this exhibit.

6 HEARING OFFICER ERICKSON: Thank you,
7 Mr. Hatfield.

8 You are renewing your previous objection and
9 I'm presuming you're asserting your right to voir dire
10 the witness. Correct?

11 MR. HATFIELD: Correct.

12 HEARING OFFICER ERICKSON: Thank you.

13 MR. KAPLAN: Can I get some clarification?

14 HEARING OFFICER ERICKSON: Please.

15 MR. KAPLAN: While Mr. Hatfield is objecting
16 because he would like the opportunity to cross-examine
17 Dr. Capps, does he have any objections to the Exhibit D
18 being placed under seal?

19 MR. HATFIELD: I haven't seen Exhibit D, so
20 I'm not sure I can waive my objection. I haven't seen
21 it and I don't know that I'm entitled to under the law.

22 HEARING OFFICER ERICKSON: I believe
23 Mr. Hatfield is accurate, that Mr. Hatfield does not
24 have the burden of determining what is a closed or open
25 record under Missouri law. That will be under the law

1 and through the hearing officer into the record.

2 So at this time Exhibit D has not been
3 admitted. We are holding on to that pending further
4 evidence and similarly a ruling regarding whether it
5 will be a closed record will be also withheld for the
6 time being.

7 Mr. Hatfield, anything further?

8 MR. HATFIELD: No, ma'am.

9 HEARING OFFICER ERICKSON: Mr. Kaplan, may I
10 have a copy, please, of the other document?

11 This is Exhibit E. Correct?

12 MR. KAPLAN: Yes.

13 HEARING OFFICER ERICKSON: And can you please
14 identify from the joint stipulation which paragraphs
15 involve Exhibit E?

16 MR. KAPLAN: Exhibit E is included within the
17 joint stipulation under paragraphs 23, 24, 25, 26 and
18 27.

19 Excuse me. Also 28 and 29.

20 And I would like to amend my previous answer
21 with respect to Exhibit D. Paragraphs 27, 28 and 29
22 also relate to that exhibit.

23 HEARING OFFICER ERICKSON: Thank you,
24 Mr. Kaplan.

25 Do you have any further evidence to present

1 at this time?

2 MR. KAPLAN: Contingent upon the reports
3 being entered at some point.

4 HEARING OFFICER ERICKSON: Thank you.

5 Mr. Whitmer or Mr. Wenzel, would you like to
6 proceed with Aetna's evidence?

7 MR. WHITMER: We would. Thank you.

8 Ms. Erickson, in your prior Order you
9 requested and required that Aetna provide advance notice
10 of this hearing to the domestic insurers within seven
11 days of today.

12 We would like to provide evidence to you that
13 that qualification has been met. I believe we left off
14 on Exhibit 15 for the Aetna exhibits.

15 So what we would like to propose is to submit
16 Exhibits 15 and 16 which demonstrate that proper notice
17 was provided to the four domestic insurers for today's
18 proceeding.

19 May we approach?

20 HEARING OFFICER ERICKSON: Please.

21 Mr. Whitmer, do you have the original
22 exhibits?

23 MR. WHITMER: The original exhibits are with
24 the court reporter. I'm glad to provide them to you.

25 Ms. Erickson, we provided with you, first of

1 all, Exhibit 15. Exhibit 15 is the communication to
2 Coventry with respect to all four domestic insurers,
3 forwarding your Order which requires that the
4 communication be made. Exhibit 16 is the response from
5 Mr. Weinberg on behalf of all four domestic insurers
6 that communication was received.

7 At this time we request that Exhibits 15 and
8 16 be admitted into the record as evidence.

9 HEARING OFFICER ERICKSON: Any objection from
10 the Division?

11 MS. KOPP: No.

12 MR. KAPLAN: No objections.

13 HEARING OFFICER ERICKSON: Exhibits 15 and 16
14 are admitted.

15 (EXHIBIT NOS. 15 AND 16 WERE RECEIVED INTO
16 EVIDENCE.)

17 MR. WHITMER: Thank you, Ms. Erickson.

18 At this time Aetna has no additional evidence
19 to present to you. Thank you.

20 HEARING OFFICER ERICKSON: Thank you, sir.

21 Ms. Kopp, for the Division of Insurance
22 Company Regulation, do you wish to present any evidence
23 today?

24 MS. KOPP: I do.

25 I'd like to call Frederick G. Heese as a

1 witness.

2 (Witness sworn.)

3 QUESTIONS

4 BY MS. KOPP:

5 Q. Good morning. Would you state your name for
6 the record?

7 A. Frederick G. Heese.

8 Q. Mr. Heese, where are you employed?

9 A. I'm employed with the Missouri Department of
10 Insurance.

11 Q. In what capacity are you employed by the
12 Department of Insurance?

13 A. I am the Chief Financial Examiner and the
14 Director of the Division of Insurance Company
15 Regulation.

16 Q. In that capacity did you have the opportunity
17 to review the Amended Form A filed by Aetna?

18 A. Yes, I did.

19 Q. Did your review reveal that following the
20 proposed transaction, that after the change of control
21 the domestic insurers would not be able to satisfy the
22 requirements for the issuance of a license to write a
23 line or lines of insurance for which they are presently
24 licensed?

25 A. No, I did not.

1 Q. Did your review reveal that the financial
2 condition of any acquiring parties as such, that it
3 might jeopardize the financial stability of the insurer
4 or prejudice the interests of its policyholders?

5 A. No.

6 Q. Did your review reveal that the plans or
7 proposals which the acquiring party has to liquidate the
8 insurer, to sell its assets or to consolidate or merge
9 it with any person or to make any other material change
10 in its business or corporate structure or management are
11 unfair and unreasonable to policyholders of the insurer
12 and contrary to public interest?

13 A. No.

14 Q. Did your review reveal that the competence,
15 experience or integrity of those persons who would
16 control the operation of the insurer are such that it
17 would be contrary to the interest of policyholders of
18 the insurer and of the public to permit the merger or
19 other acquisition of control?

20 A. No.

21 Q. Did your review reveal that the acquisition
22 is likely to be hazardous or prejudicial to the
23 insurance buying public?

24 A. No.

25 MS. KOPP: No further questions.

1 HEARING OFFICER ERICKSON: Aetna,
2 cross-examination?

3 MR. WHITMER: Aetna has no questions for this
4 witness, but thank you.

5 HEARING OFFICER ERICKSON: Mr. Kaplan.

6 MR. KAPLAN: The Division of Market
7 Regulation has no questions of this witness.

8 HEARING OFFICER ERICKSON: Mr. Hatfield?

9 MR. HATFIELD: No, thank you.

10 HEARING OFFICER ERICKSON: You are excused.

11 MS. KOPP: Madam Hearing Officer, may this
12 witness be dismissed?

13 HEARING OFFICER ERICKSON: Is anyone present
14 claiming a right to examine Mr. Heese further?

15 Hearing no objection or desire to have
16 Mr. Heese testify further, the witness is excused.

17 (Witness excused.)

18 HEARING OFFICER ERICKSON: Ms. Kopp, any
19 further evidence?

20 MS. KOPP: None, Your Honor.

21 HEARING OFFICER ERICKSON: Do the parties,
22 the Division or Aetna, have any further evidence to
23 present at this time?

24 MS. KOPP: None from the Division of
25 Insurance Division Regulation.

1 MR. KAPLAN: Pending the entering of the
2 evidence that we have previously submitted, no
3 additional evidence.

4 MR. WHITMER: No additional evidence from
5 Aetna at this time. Thank you.

6 HEARING OFFICER ERICKSON: Thank you.

7 At this time I would like to go briefly off
8 the record, and I ask Mr. Hatfield and counsels for the
9 parties to approach.

10 (OFF THE RECORD.)

11 HEARING OFFICER ERICKSON: While we were off
12 the record counsel for the parties, as well as
13 Mr. Hatfield representing Home State Health, conferred
14 regarding the practicality of arranging testimony for
15 Dr. Capps.

16 Dr. Capps is not physically present at this
17 hearing, but we are making efforts to reach him and
18 potentially have him appear by telephone and be
19 available for cross-examination.

20 Mr. Hatfield, if you would approach the
21 podium, please.

22 MR. HATFIELD: Yes, ma'am.

23 HEARING OFFICER ERICKSON: Have I accurately
24 described the process that we're going to engage in in
25 order to make Dr. Capps available?

1 MR. HATFIELD: Yes, ma'am. And that's wholly
2 acceptable to us. We appreciate the accommodation.

3 HEARING OFFICER ERICKSON: You're very
4 welcome. Thank you.

5 We will now proceed to the interested persons
6 who may wish to offer evidence or make argument as a
7 part of this hearing.

8 Because we are attempting to make Dr. Capps
9 available by telephone, we're going to hold off on the
10 presentation by Home State Health and we will proceed
11 with Dr. McCaslin.

12 Doctor, if you would please be sworn.

13 (Witness sworn.)

14 QUESTIONS

15 BY HEARING OFFICER ERICKSON:

16 Q. Please state your name for the record, sir.

17 A. Ian McCaslin.

18 Q. And what is your position?

19 A. I'm the Director of MO HealthNet Division
20 within the Missouri Department of Social Services.

21 Q. How long have you been in that Division?

22 A. About five and a half years.

23 Q. And how long have you held the position of
24 Director?

25 A. The whole time.

1 HEARING OFFICER ERICKSON: You may proceed.

2 DR. MCCASLIN: Thank you, Madam Hearing
3 Officer.

4 My background. I have the privilege of
5 serving as Missouri's Medicaid Director. MO HealthNet
6 is Missouri's Medicaid Program, and we think of those as
7 interchangeable.

8 Medicaid is one of the books of business of
9 these two entities, so obviously there are many other
10 considerations in the transaction, but for the State of
11 Missouri and the people that we serve in the Missouri
12 Medicaid program, the Medicaid managed care element of
13 this is of critical importance.

14 I'm a pediatrician by background and
15 training. I have a substantial interest in access and
16 quality-of-care delivery for low-income children and
17 children with special health needs, and that is why I
18 hold the position that I am in.

19 So we very much see managed care as a
20 partnership, as a long-term, productive, collaborative
21 relationship with the State of Missouri, of over 900,000
22 individuals in the State covered by Medicaid roughly.

23 About 425,000 of those are in our managed
24 care program that are overwhelmingly children. Many of
25 those are of special needs with very high medical,

1 behavioral and social support needs. They in our view
2 are very well served by relationships with managed care
3 plans, and our primary goals are to ensure access to
4 needed services, therapies, treatments, medications in a
5 quality fashion.

6 We very strongly follow quality metrics, and
7 we hold our plans accountable to quality measures that
8 we would be pleased for any member of our -- of our own
9 family or friends, loved ones, to be held accountable
10 to. Additionally, we very strongly value the cost
11 effectiveness of managed care for the State of Missouri.

12 Overall the Missouri Medicaid program is
13 about an eight and a half billion dollar program of
14 State, Federal and other funds. Of that close to a
15 billion and a half is in our managed care program.

16 So from the taxpayer perspective our
17 accountability for operation of managed care is a very
18 important consideration.

19 To the issue at hand, again, we very much
20 value managed care. We value our partners. Both of
21 these entities have been long-term contract partners
22 with the State of Missouri over many, many years.

23 We have a new partner as of July of 2012, the
24 Home State Health Plan, a subsidiary of Centene, and
25 those three were awarded a new round of contract

1 procurement effective July 1. They scored
2 overwhelmingly at the top of the range, and we're very
3 excited about entering into that relationship and
4 looking forward to working together.

5 A critical aspect of working through managed
6 care plans and why it should matter to those of you here
7 in the room is their requirement to develop network
8 relationships.

9 Managed care plans do not themselves provide
10 medical services or otherwise. They go out into the
11 communities and they develop contracts with doctors,
12 clinics, hospitals, dentists, therapists, et cetera,
13 et cetera.

14 The Department of Insurance has a very strong
15 role in ensuring the adequacy of those network
16 relationships, that there are enough ologists of every
17 type within the geographic radius for children and
18 others who need those services.

19 So we very much value our colleagues in the
20 Department of Insurance in terms of their assuring the
21 advocacy of that relationship.

22 That said, there are practical on-the-ground
23 challenges in our network adequacy in St. Louis in the
24 East Region that have developed over the last three or
25 four months which have caused substantial turbulence,

1 turmoil and in my view a great threat to access for care
2 for, in particular, special-needs children.

3 We do not think we have a substantial concern
4 related to access to primary care, related to access to
5 care for pregnant women and for low-income parents and
6 caretakers who are also covered in managed care. We
7 think that we are in good shape there.

8 But we have some concerns ongoing, which
9 remain open at this time, and I'll go into more detail,
10 but we will formally request that the record be left
11 open until these concerns are resolved to our
12 satisfaction.

13 The practical development, the on-the-ground
14 development in the East Region, such that Coventry
15 terminated their relationship with Washington University
16 Physicians, which includes the physicians who serve
17 St. Louis Children's Hospital, effective September 1.

18 They notified us in advance as they're
19 required. They notified the patients in advance as is
20 required. So certainly in terms of affecting a
21 termination all of the -- in our view all of the
22 contract requirements were held to.

23 The practical consideration, though, is that
24 many, many thousands of special-needs children were
25 suddenly -- who had previous relationships with

1 Washington University Physicians and were covered
2 through the Coventry Health Plan were placed into a
3 position of uncertainty, will I be able to see my
4 doctor, will I be able to keep my doctor. I'm been
5 seeing the same neurologist for 10 or 15 years. And so
6 you can imagine for patients and families that this was
7 a substantial degree of upheaval.

8 Many families were able to maintain the
9 relationships by switching their health plan, as they
10 are allowed to do, to the Home State/Centene plan, which
11 is maintained, which had developed a network
12 relationship with Washington University Physicians.

13 And so many -- many were able to maintain a
14 continuity, but there was a lot of threat, a lot of
15 movement.

16 To their credit the SSM system, Cardinal
17 Glennon Children's Hospital in St. Louis and Mercy
18 Health System based in St. Louis County, stepped to the
19 plate magnificently, opened up access, opened their
20 clinics, opened up new hospital beds, expanded their
21 case management for high-risk pregnant women, and really
22 very much to their credit in a very short period of
23 time, which is difficult for a hospital system to do,
24 was able to expand access and create opportunities for
25 care, and particularly for the special-needs children

1 who were suddenly not able to access the Washington
2 University system.

3 We became increasingly concerned over the
4 fourth quarter of 2012, to the point where we felt that
5 there was substantial threat of instability in the
6 region and going forward, that -- and not to exaggerate,
7 but really threatened in our view the existence and the
8 continuation of managed care altogether in the region
9 and in the state of Missouri.

10 In our view that is a tremendous mistake.
11 That is not an area that we want to go into. And we, in
12 effect, took a very activist role in ensuring contract
13 network relationships, particularly those, as I've said
14 several times, relating to special-needs children.

15 So we convened a meeting of all of the
16 managed care plans with high-level State leadership in a
17 very recent time period to lay out the State's
18 expectations and, in effect, demands of our managed care
19 partners both in the short term, the intermediate term
20 and the long term, in terms of assuring, again, not from
21 the Department of Insurance network adequacy standards,
22 which they clearly meet, but from the practical on-the-
23 ground, if I have a special-needs child and I need a
24 neurologist, can I get an appointment in a reasonable
25 period of time aspect?

1 So the demand, really very simple. We wanted
2 Coventry back in network with Washington University, and
3 in a short timeframe that was a fairly short and
4 directed conversation, and to their credit Coventry
5 responded to our satisfaction and as of February 15th
6 they are now back in a network relationship with
7 Washington University, giving children a good choice
8 of -- they obviously had a choice of three children's
9 hospitals and related physician groups.

10 So depending on where you are geographically
11 or what sort of specialist you need to see, we have good
12 choices for our patients in that region, which is
13 incredibly important for us.

14 The specific issue at hand that I wish to
15 speak to is that the Aetna, Aetna, Incorporated, has to
16 our knowledge never had a contract with Washington
17 University Physicians or with their related hospital
18 systems.

19 I don't think that that is at the core a --
20 to say a decision to say we won't contract with Wash U
21 because we don't to want to and never will.

22 My understanding is that there were and have
23 been on a number of occasions conversations with the
24 Washington University Physicians and there simply has
25 been an inability to reach an agreement on contract

1 provisions.

2 So this is not an attack, if you will, on
3 Aetna for not having this relationship. They meet
4 network adequacy requirements. They have at present a
5 relatively few number of lives, 48,000 or so lives, in
6 the East Region. So through their contracts with the
7 Mercy System and the SSM Glennon System they're able to
8 provide access for that limited population.

9 As one might imagine through this acquisition
10 there will be many more lives under the Aetna banner,
11 and while again we give great credit to the other two
12 systems in the region, we believe that access would be
13 threatened in very short order without Aetna committing
14 in advance very formally to enter into a contract
15 relationship with Washington University Physicians and
16 related hospital systems.

17 So that is our expectation, if you will. We
18 otherwise have no substantial concerns related to this
19 acquisition.

20 There will need to be movement of a certain
21 number of lives to meet our contract requirements to a
22 third health plan. Our understanding is that that
23 agreement has already been reached and will need to move
24 forward to its fruition in advance of closure of this
25 acquisition, that we would certainly be following

1 closely but already have substantial assurances to.

2 But our expectation, just to be very clear,
3 is that Aetna will honor the contract relationships that
4 Coventry has entered into, specific to Washington
5 University System, that they will do so over the long
6 run, as communicated by the State, for as long as the
7 State expects that relationship to continue, that they
8 will agree to honor that commitment.

9 I should add that we are not picking on Aetna
10 here so to speak. We have laid that expectation out and
11 we'll continue to do so for all our managed care
12 partners, our very strong expectation that substantial
13 network relationships that serve special-needs children
14 will be honored and maintained.

15 So with that, Madam Hearing Officer, I will
16 close, and just again our request is that the record be
17 left open until the Division and the Department of
18 Social Services have adequate assurance that these
19 contract provisions are in place and will be maintained
20 going forward.

21 Thank you.

22 HEARING OFFICER ERICKSON: Thank you, Doctor.
23 If you'll remain there for just a moment.

24 QUESTIONS

25 BY HEARING OFFICER ERICKSON:

1 Q. You made a reference during your testimony,
2 sir, to the necessary movement of a number of lives to a
3 third health plan. Could you be a little more specific
4 and elaborate on that?

5 A. Sure.

6 We have by contracts a requirement that when
7 a single health plan in one of the three regions reaches
8 65 percent of the total eligible covered lives for that
9 region, that they are capped and would get no new
10 enrollment other than a few exceptions.

11 So, for example, two children in a family are
12 covered through a health plan and then there is a
13 newborn. We would want that newborn to be covered
14 through the same health plan. A parent who is covered
15 through one health plan. Ideally a new child would be
16 covered through that. So that sort of practical aspect.

17 In order to maintain a prior relationship
18 with the doctor, someone new to managed care, for
19 example, who has a different doctor, whose only in that
20 capped plan's network, we would allow that as well. But
21 for the most part when a plan caps, they don't get any
22 new -- they don't get any new enrollment.

23 The Coventry proportion of covered lives is
24 such that they are very, very close to that 65 percent
25 cap in both the East Region and the West Region. And as

1 such an acquisition by Aetna of an additive number of
2 lives to the current Coventry level would take them well
3 over the 65 percent limit and put them out of compliance
4 with our contract provisions.

5 So as a result and knowing that full well in
6 advance, it's communicated to us very clearly right from
7 the start when this was first publicly announced that
8 their intention was and is to sell off their current
9 managed care lives through the subsidiary, Missouri Care
10 based here in Columbia, to a third party, which would
11 maintain our desired number of three managed care plans.
12 They would retain the current Coventry lives under the
13 Aetna banner and we would be at a steady steady so to
14 speak.

15 Q. Doctor, if you and the Division and the
16 Department of Social Services receive the assurances
17 that assuage your concerns regarding Coventry honoring
18 the managed care contract it has for Washington
19 University, do you or does the Division have any
20 objection to the proposed acquisition of Coventry by
21 Aetna?

22 A. No.

23 HEARING OFFICER ERICKSON: I would like to
24 offer the parties an opportunity to cross-examine
25 Dr. McCaslin.

1 Mr. Whitmer.

2 MR. WHITMER: We have no questions for
3 Dr. McCaslin, but thank you.

4 HEARING OFFICER ERICKSON: The Division.

5 MS. KOPP: I have no questions.

6 MR. KAPLAN: No questions.

7 HEARING OFFICER ERICKSON: Is there an
8 interested person who wishes to ask questions of the
9 doctor?

10 MR. HATFIELD: I have just a couple if that's
11 all right.

12 HEARING OFFICER ERICKSON: Doctor, please.
13 You may proceed.

14 MR. HATFIELD: Thank you.

15 QUESTIONS

16 BY MR. HATFIELD:

17 Q. Good morning, Dr. McCaslin. Thank you for
18 your testimony.

19 I had the privilege of looking over your
20 shoulder and noticing that you have a pie chart in front
21 of you.

22 Are you, sir, familiar with the -- in the
23 Medicaid managed care market the percentage of the
24 market that the Applicant, Aetna, has?

25 A. Yes.

1 Q. Are you familiar with that by region?

2 A. Yes.

3 Q. Are you also familiar with the percentage of
4 the market that the Coventry entity Healthcare USA has?

5 A. Yes.

6 Q. Are you familiar with that by region?

7 A. Yes.

8 Q. In the Eastern Region -- and how do you --
9 let me just do this: How do you divide up the regions
10 just generally?

11 A. The regions are geographic, generally along
12 the I-70 corridor by county. The outstate to the north
13 and to the south is excluded from managed care and all
14 those patients are in fee for service.

15 Q. In the Eastern Region of Missouri what
16 percentage of the market does the Aetna entity have?

17 A. I just happen to have that.

18 Q. You're welcome to cheat until someone
19 objects.

20 A. I will -- I will just speak to the Medicaid
21 covered lives here just for simplicity and will not
22 include the CHIP, C-H-I-P, Children's Health Insurance
23 Program, is a program -- is a program for higher-income
24 children which stands on the shoulders of Medicaid.

25 So for the core of Medicaid lives in the East

1 region, as of February 15th there were 186,564 lives.
2 Of those 115,459, or 61.89 percent, were Coventry;
3 37,225, or 19.95 percent, are AETNA; and 33,880, or
4 18.16 percent, are Centene.

5 Q. And that was the Eastern Region?

6 A. That's the total of the region.

7 Q. And could you just -- I think you talked
8 about the West. Could you tell us about the Central
9 Region? What percentage of the Central Region does the
10 Coventry Health Care USA entity have?

11 A. In the Central Region, again only Medicaid
12 lives, not the CHIP lives, there are 70,278 total
13 covered lives.

14 All right. Coventry has 34,804 of those
15 lives; Aetna, 30,470; and Centene, 5,004.

16 Q. And what other percentages of the market
17 associated with that?

18 A. Coventry's percentage, 49.52 percent; AETNA,
19 43.36 percent; and Centene, 7.12 percent.

20 Q. And statewide then, when you combine all of
21 the regions together, what percentage of the Medicaid
22 lives does Healthcare USA have?

23 A. Statewide Coventry has 224,388 covered lives,
24 of the total of 375,577. That represents 59.74 percent.

25 Q. And what percentage does Missouri Care and

1 **Aetna have?**

2 A. Missouri Care statewide, 95,225 covered
3 lives, or 25.35 percent; Centene, 55,964, or
4 14.90 percent.

5 Q. **I think it's appropriate to exclude the CHIP
6 lives for simplicity, but just would including the CHIP
7 lives significantly change the percentages?**

8 A. No, it doesn't really dramatically change the
9 percentages.

10 And these -- these numbers, obviously these
11 are not fixed. The covered lives is very fluid. It
12 changes from day to day. So don't get too hung up on
13 eight versus ten versus twelve. People fall in and fall
14 out, so there is quite a bit of ebb and flow depending
15 on where you are over the course of the month as
16 individuals get redetermined.

17 Q. **So we've talked about -- just to make sure
18 I'm clear, there are three entities contracted with the
19 State to provide managed-care Medicaid. Is that
20 correct?**

21 A. Correct.

22 Q. **Does the State procure those services through
23 open procurement?**

24 A. Yes.

25 Q. **And when the State last procured those**

1 services, how many bidders were there, approximately?

2 A. Six, seven. It varied by region. It was six
3 or seven.

4 Q. And then specifically we talked about the
5 cancellation of the Wash U contract by Coventry. Just
6 to be clear, Wash U, you were talking about by specialty
7 service?

8 A. Yes.

9 Q. So are those -- the insureds that go to
10 Wash U, are those higher-cost lives?

11 A. Both overwhelmingly, it's common sense,
12 children that are seeking services from Children's
13 Hospital who have chronic conditions need more services,
14 need them more frequently with a higher intensity.

15 There are all sorts of children with very low
16 acuity, short-term at Children's Hospital, but those
17 that are scheduling through the specialty clinics
18 frequently have very, very high needs, yes.

19 Q. And also very high utilization rates?

20 A. Yes.

21 Q. And when -- you understand -- well, when
22 Coventry canceled its contracts, where did those people
23 go?

24 A. Well, they -- many moved to Cardinal Glennon
25 and to the Mercy System. And, again, we want to very

1 much --

2 Q. I'm sorry. To what insured did they go?

3 A. Well, many stayed -- many stayed with
4 Coventry and they moved over to the Cardinal Glennon or
5 Mercy System for their care and then many switched their
6 health plan to Home State/Centene, which did have a
7 network relationship with Wash U, and they were able to
8 maintain, as I say, the doctor that they had for many
9 years in many cases.

10 Q. So from the period of time when Coventry
11 canceled, could you tell us when that was?

12 A. September -- I think it was the first of
13 September. It was definitely September.

14 Q. From September until February 15th when
15 Coventry renewed the contract?

16 A. Yes.

17 Q. If a patient wanted to receive care at
18 Wash U, how many options did they have for managed care
19 organization coverage?

20 A. One.

21 Q. And who was that option?

22 A. Home State/Centene.

23 MR. HATFIELD: Thank you.

24 I don't have any other questions.

25 HEARING OFFICER ERICKSON: Do the parties

1 have any questions for Dr. McCaslin?

2 MR. WHITMER: No questions from Aetna. Thank
3 you.

4 MS. KOPP: No questions.

5 MR. KAPLAN: I just have a couple questions.

6 HEARING OFFICER ERICKSON: Thank you.

7 Mr. Kaplan, please let us know if you cannot
8 hear him, because he will not be facing the court
9 reporter when he responds to you.

10 MR. KAPLAN: Thank you.

11 QUESTIONS

12 BY MR. KAPLAN:

13 Q. Dr. McCaslin, you have not had a chance to
14 see the joint stipulations entered into between Aetna
15 and the Division of Market Regulation. At this time I'd
16 like to provide you with a copy of that.

17 HEARING OFFICER ERICKSON: Sure.

18 BY MR. KAPLAN:

19 Q. Specifically perhaps 15 and 16 is what I'd
20 like to address. I understand the majority of the
21 situation you have going on. I would like to get
22 affirmation from you.

23 If Aetna has agreed -- if AETNA has agreed as
24 is laid out in the stipulation to divest its Medicaid
25 business to Missouri Care and if this acquisition goes

1 through, could you tell me what would be the amount of
2 Medicaid business statewide percentagewise that Aetna
3 would then control?

4 A. They would control the current Coventry book
5 of business.

6 Q. But there will be no more than that, is that
7 correct, except for what comes in and goes out?

8 A. Exactly.

9 MR. KAPLAN: That's all I have. Thank you.

10 HEARING OFFICER ERICKSON: Any questions from
11 any interested person?

12 Thank you, Doctor. You're excused.

13 HEARING OFFICER ERICKSON: Are there any
14 other interested parties who are present who wish to
15 present evidence or make an argument regarding the
16 proposed acquisition of Coventry by Aetna?

17 Okay. Hearing none, at this time we are
18 going to go off the record and take a break and
19 Mr. Kaplan will attempt to engage Dr. Capps by
20 telephone.

21 We're off the record.

22 (A RECESS WAS TAKEN.)

23 HEARING OFFICER ERICKSON: We are now back on
24 the record.

25 Mr. Hatfield, you now have the opportunity to

1 present evidence on behalf of Home State Health Plan.

2 You may proceed.

3 MR. HATFIELD: Thank you, Madam Hearing
4 Officer.

5 And first we would like to cross-examine
6 Dr. Capps who has joined us by phone, if that's all
7 right.

8 HEARING OFFICER ERICKSON: Dr. Capps, you
9 will need to be sworn in.

10 MR. HATFIELD: Dr. Capps, the hearing officer
11 is going to swear you in now.

12 (Witness sworn.)

13 MR. HATFIELD: May I proceed?

14 QUESTIONS

15 BY MR. HATFIELD:

16 Q. Dr. Capps, as I mentioned a moment ago, my
17 name is Chuck Hatfield. I represent an interested party
18 here called Home State Health Care.

19 I'm going ask you a few questions here on the
20 speaker phone in a relatively large room. Do you
21 understand that you're giving testimony on the record
22 here in a Department of Insurance proceeding?

23 A. I do, yes.

24 Q. We're getting a little bit of an echo. Are
25 you hearing an echo as well?

1 A. A little bit, yes. I can hear you pretty
2 well though.

3 Q. All right. Well, I think the way we're
4 talking now is about how we're going to need to talk.
5 Please make sure that you wait until I finish my
6 question because there is a court reporter here taking
7 down your answers.

8 Is that all right?

9 A. It sounds good.

10 HEARING OFFICER ERICKSON: Mr. Hatfield,
11 would you and Dr. Capps speak slowly. That will
12 eliminate some of the feedback, and if you would ask him
13 to do that for me, I appreciate it.

14 MR. HATFIELD: Absolutely.

15 Dr. Capps, we'll continue to speak maybe a
16 little more slowly than normal and that will help with
17 the feedback. All right?

18 THE WITNESS: All right. Yes.

19 MR. HATFIELD: Thank you.

20 BY MR. HATFIELD:

21 Q. Dr. Capps, the Department has offered into
22 evidence a document called Public summary of analysis
23 and conclusions, statement of impact on Missouri and its
24 citizens of the proposed acquisition of Coventry Health
25 Care by Aetna.

1 Are you familiar with that document?

2 A. Yes, I am.

3 Q. And are you the principal author of that
4 document?

5 A. Yes.

6 Q. And as I understand it -- tell me if I'm
7 right about this -- you reached the conclusion that
8 based on the shares that Aetna, the acquiring party, and
9 Coventry, the acquired party, have, there is prima facia
10 evidence of violations of the competitive standards. Is
11 that correct?

12 A. That is correct with respect to the statewide
13 analysis. As I explained in the summary, I think you
14 need to delve into it more deeply to look at direct
15 competition between the (inaudible).

16 THE COURT REPORTER: I'm sorry. He needs to
17 slow down.

18 MR. HATFIELD: The court reporter is needing
19 you to slow down.

20 Madam Court Reporter, where did you end?

21 THE COURT REPORTER: I think you need to
22 delve into it more deeply to look at direct competition
23 between the . . .

24 MR. HATFIELD: She picked up on I think you
25 need to delve more deeply into direct competition.

1 If you could just slow down a little bit.

2 (OFF THE RECORD.)

3 BY MR. HATFIELD:

4 Q. Dr. Capps, I think I had asked you about the
5 analysis, and you were talking about, as discussed in
6 the summary that's pending admission, delving into -- I
7 don't know how you put it -- product segments. If you
8 could speak slowly. We're hearing you.

9 Go right ahead.

10 A. Sure.

11 So on a statewide level you look at all
12 commercial insurance, meaning -- excluding Medicare and
13 Medicaid. It is true that the shares exceed the
14 threshold in the Missouri statutes.

15 When, as I believe is appropriate to do, you
16 look at specific product lines as a large group
17 separately from individual or a smaller group, as well
18 as geographic areas, then the thresholds are exceeded in
19 some segments and not in others.

20 Q. I understand.

21 Were you provided with any of the affidavits
22 that Aetna submitted in support of the acquisition?

23 A. I was not.

24 Q. Okay. In a previous -- at a previous time in
25 this hearing there was an affidavit introduced by

1 Mr. Greg Martino. I believe it's Exhibit 7.

2 Mr. Martino refers to Title XIX medicaid as a
3 separate line of business. Do you agree with that, that
4 Title XIX Medicaid is a separate line of business?

5 A. Separate from the commercial insurance that I
6 just discussed?

7 Q. Yes.

8 A. Yes, I agree that those are separate lines of
9 business.

10 Q. And is it, therefore, a separate product that
11 is appropriate to be analyzed when looking at
12 anticompetitive effects?

13 A. If you were going to analyze it, Medicaid,
14 you would analyze it separately from commercial, and
15 vice versa, as the latter is what I did, meaning that I
16 looked at commercial separately from Medicaid or I did
17 not incorporate Medicaid into the commercial analysis.

18 Q. What conclusions did you reach about the
19 competitive effects of the merger on the Medicaid
20 product?

21 A. My conclusion there is really based on the
22 fact that I didn't need to look at it, because under the
23 agreement, the divestiture agreement, there is no
24 competitive overlap (inaudible).

25 THE COURT REPORTER: I'm sorry. Stop.

1 MR. HATFIELD: Hold on one second. The court
2 reporter has lost you. She picked up after the
3 divestiture agreement.

4 THE WITNESS: I'll start over because I lost
5 my place in that sentence.

6 But my analysis of Medicaid was that I
7 reached an understanding that there would be a
8 divestiture of Aetna's Medicaid line of business and,
9 therefore, there is going to be no overlap between Aetna
10 and Coventry and, therefore, the merger will
11 mechanically not reduce competition with respect to
12 Medicaid, nor will it violate any of the statutory
13 presumptions under Missouri law as was explained to me.

14 BY MR. HATFIELD:

15 Q. And is it your understanding that the
16 divestiture that you referred to has already been
17 approved by the Department of Insurance?

18 A. My understanding is that there is an
19 agreement in place between the Department and Aetna/
20 Coventry, but that is sort of a lay understanding,
21 meaning I'm not privy to the mechanics of that
22 discussion.

23 Q. So you haven't seen any agreement. Is that
24 correct?

25 A. I have seen press releases, I guess I would

1 call them, but no actual agreement as between the State
2 and Aetna or Coventry.

3 Q. All right. So I think I understand. Just to
4 be clear, if the divestiture does not occur, do you have
5 an opinion on whether there would be an anticompetitive
6 effect in the Medicaid product line?

7 A. I did not look at Medicaid, so I don't have
8 an opinion.

9 Q. Would you agree that allowing one provider to
10 control 90 percent of the market would be an
11 anticompetitive effect?

12 MR. KAPLAN: Objection.

13 Any party with --

14 THE WITNESS: I'm not --

15 MR. HATFIELD: Hold on one second. Hold on
16 one second, Dr. Capps. There is an objection. I'm sure
17 it will be overruled in a minute but just sit tight.

18 MR. KAPLAN: Any party can hold -- have
19 90 percent of the market. It's what happens with
20 respect to an acquisition or merger that creates that
21 that might cause a problem.

22 HEARING OFFICER ERICKSON: Mr. Kaplan, what
23 is the nature of your objection?

24 MR. KAPLAN: It's an incorrect question.

25 HEARING OFFICER ERICKSON: Mr. Hatfield, I

1 believe Mr. Kaplan is objecting on facts not in
2 evidence.

3 Have you established through this witness or
4 through any other evidence regarding the 90 percent
5 share?

6 MR. HATFIELD: Yes, Madam Hearing Officer.

7 Dr. McCaslin testified that in the Central
8 Region of Missouri's Medicaid market, he testified to
9 the share of Aetna and Coventry, you had to add those
10 two together to get to the 90 percent number.

11 The evidence does reflect that in the Central
12 Region of Missouri this particular acquisition results
13 in 90 percent market share.

14 HEARING OFFICER ERICKSON: If you would bring
15 the phone over.

16 MR. HATFIELD: I'm sorry. Hold on one
17 second.

18 HEARING OFFICER ERICKSON: Dr. Capps, can you
19 hear me?

20 THE WITNESS: Yes, I can.

21 HEARING OFFICER ERICKSON: I am the hearing
22 officer in this matter, and Mr. Hatfield is the
23 gentleman questioning you.

24 An objection was raised regarding his
25 question. I'm going to overrule the objection, but I

1 will direct you that if -- because of the unusual nature
2 of this communication forum, if you are unsure of an
3 answer or you don't understand the question, please take
4 the time to ask the questioner to be clear in the
5 question.

6 Is that helpful?

7 THE WITNESS: It is helpful. Because of the
8 delay, maybe I could ask Mr. Hatfield to reread it or
9 the reporter to reread it or Mr. Hatfield to reask the
10 question.

11 HEARING OFFICER ERICKSON: Thank you,
12 Dr. Capps. We will have Mr. Hatfield repeat the
13 question.

14 BY MR. HATFIELD:

15 Q. Dr. Capps, what I was just asking is for your
16 conclusions if -- if a merger resulted in one party
17 controlling 90 percent of the market, would that be an
18 anticompetitive event?

19 A. Now we had a particularly strong echo there
20 at the end, so I lost the last eight or ten words you
21 said.

22 MR. HATFIELD: That's what I get for turning
23 the phone upside down.

24 MR. WHITMER: I don't know if Dr. Capps will
25 be able to hear me but that question does assumes facts

1 not in evidence. It's an improper hypothetical, not
2 supported by this record, that under this merger, given
3 the divestiture that has already been made through
4 formal proof to the hearing officer, that a divestiture
5 will take place. The question assumes that it would
6 not. So we think that's an improper hypothetical and
7 does assume facts not in evidence.

8 HEARING OFFICER ERICKSON: Mr. Hatfield, a
9 response?

10 MR. HATFIELD: Well, Commissioner, this is an
11 interesting question. Sorry. Hearing Officer.

12 The parties are asking you to approve a
13 merger and asking you to assume that a divestiture will
14 occur.

15 There is a divestiture proposed that is the
16 subject of a separate Form A hearing that some hearing
17 officer, perhaps yourself, will have to hear evidence on
18 it and decide upon.

19 As the Form A is presented today, there is a
20 proposal that deals with divestiture. I have no idea
21 whether the Department will agree to approve that
22 divestiture or not.

23 As we sit here today, you're asked to rule on
24 a merger of two companies that would result in a
25 90 percent market share in the Central Region.

1 Perhaps a divestiture will cure that, but
2 that's the remedy. That doesn't go to the evidence of
3 what this merger would result in.

4 MR. WHITMER: May we respond?

5 HEARING OFFICER ERICKSON: Please.

6 MR. WHITMER: Ms. Erickson, we can make clear
7 on behalf of Aetna that our request to you and to the
8 Department is contingent to the divestiture of the
9 Missouri Care piece of business.

10 That's been made clear from the get-go. It
11 was put in Mr. Martino's affidavit the first time around
12 and the second time around. That's been no secret in
13 this proceeding.

14 So we are not asking for approval on the
15 basis that the Missouri Care piece would not be
16 divested.

17 HEARING OFFICER ERICKSON: The objection is
18 sustained.

19 The witness has testified that the analysis
20 that he performed was solely based on the assumption of
21 the divestiture; therefore, the question is an improper
22 hypothetical and does assume facts that are not in
23 evidence, specifically that there would not be a
24 divestiture.

25 You may proceed.

1 BY MR. HATFIELD:

2 Q. So, Dr. Capps, your analysis -- sorry. The
3 hearing officer has sustained the objection and I'm not
4 going to make an offer of proof on it, so we're going to
5 move on.

6 The -- well, let me make sure I'm clear what
7 your understanding is.

8 Aetna would need to acquire Coventry before
9 they divest the Aetna line of business. Correct?

10 MR. WHITMER: Same objection.

11 MR. HATFIELD: Well, I want to know what his
12 understanding is and how he analyzed this.

13 MR. WHITMER: Ms. Erickson, may we state for
14 the record that that again assumes facts not in
15 evidence, misstates the record and I don't know that
16 this witness has any foundation to respond to a question
17 along that line, and again we request that that question
18 be stricken.

19 HEARING OFFICER ERICKSON: Mr. Hatfield, will
20 you please establish how this witness would be qualified
21 to answer that question? Otherwise, the objection will
22 be sustained.

23 MR. HATFIELD: I have no idea what this
24 witness was provided. I haven't seen his full report.
25 I don't know whether he's assuming that the divestiture

1 will occur before or after the acquisition.

2 And that's all I'm trying to ask him. If he
3 doesn't know, he doesn't know.

4 HEARING OFFICER ERICKSON: Then I suppose the
5 simplest thing is to ask those single, direct questions
6 so that Dr. Capps can respond to them.

7 MR. HATFIELD: Right. That's what I thought
8 I did. I'm sorry.

9 HEARING OFFICER ERICKSON: The objection is
10 sustained.

11 You may move on.

12 BY MR. HATFIELD:

13 Q. So the single, direct question is,
14 Dr. Capps, did you assume that the divestiture of the
15 Aetna business would occur before Aetna acquires
16 Coventry?

17 A. I didn't make an assumption with respect to
18 timing, whether it would be divestiture before, after or
19 simultaneous.

20 Q. All right. And do you know how many
21 competitors there are in the Medicaid market in
22 Missouri?

23 A. I did not study Medicaid in Missouri for the
24 reasons that we discussed earlier, so the answer is no.

25

1 Q. Did you do any analysis of the effect of the
2 merger if one of the competitors to Aetna and Coventry
3 were to be forced out of the market as a result of the
4 merger?

5 A. Because the merger is not reducing the number
6 of competitors in Medicaid, once the divestiture is
7 complete, the exit of another competitor is not going to
8 affect or be affected by the merger.

9 In other words, let's say that there are five
10 competitors now, or pick your favorite number. When the
11 divestiture happens, that number will remain the same,
12 whether it's five or three now. And then if one
13 competitor were to exit, it would be reduced by one.
14 With that reduction one will be a result of the exit.

15 It has nothing to do with the merger, because
16 all the divestiture is doing is keeping the number of
17 firm independent firms of Medicaid's the same and it's
18 changing the ownership of one of them.

19 Q. Well, and that's what I --

20 A. Aetna is selling his Missouri Care business
21 to another entity, so that will preserve the number of
22 competitors where it is, and if some other firm exits,
23 than the number of competitors will be one lower. Two
24 very separate questions.

25 Q. I understand. And the question I had was

1 whether you did any analysis of what would happen if a
2 competitor exited as a result of the merger.

3 Did you?

4 A. Right now I can't see why one would expect
5 that, but I didn't -- did not analyze it.

6 Q. So were you provided any information about
7 the conduct of Coventry and Aetna after the announcement
8 of the merger but before the consummation of the merger?

9 MR. WHITMER: I'm sorry.

10 Ms. Erickson, I'm going to object to form on
11 that.

12 MR. HATFIELD: Hold on one second, Dr. Capps.
13 Hold on one second, Dr. Capps.

14 MR. WHITMER: We're going to object to form
15 and foundation based on that question. I don't think
16 the question was comprehensible.

17 HEARING OFFICER ERICKSON: I'm going to
18 sustain that because the hearing officer did not
19 understand the question either.

20 If you would reask it in a different way.

21 MR. HATFIELD: Sure.

22 BY MR. HATFIELD:

23 Q. Dr. Capps, I'm trying to understand what you
24 were provided in reaching these conclusions.

25 So were you given any information about any

1 market changes or shifts between the announcement of the
2 merger and -- well, today?

3 A. The data that I have from Aetna and Coventry
4 is enrollment data that is at a monthly level, and I
5 believe that includes data from both before -- well,
6 certainly it includes data from before today, but it
7 includes data from both before and after the
8 announcement.

9 So with respect to the commercial sector that
10 I analyzed, to the extent that there were any changes
11 after the announcement of the merger, those would be
12 reflected in the data that I analyzed.

13 Q. And were you provided similar data with
14 respect to the Medicaid product?

15 A. I was not.

16 Q. And did you find any significant market
17 shifts in the data you were provided?

18 A. Um, no, not that I recall right now.

19 Q. And lastly, Dr. Capps, is a market that only
20 has three participants a highly concentrated market?

21 MR. KAPLAN: Objection, relevance.

22 Medicaid is not part of this analysis. He
23 was not asked to analyze the Medicaid market because
24 Aetna had stated previously that they were going to
25 divest. All we asked our expert to do was analyze the

1 commercial market.

2 HEARING OFFICER ERICKSON: Mr. Whitmer, any
3 response?

4 MR. WHITMER: I agree with counsel.

5 MR. HATFIELD: Herein lies the entire
6 problem, but the question is simply whether there is a
7 highly concentrated market.

8 This witness is being presented as an expert
9 to testify and has testified that there is prima facia
10 evidence of anticompetitive effect. Prima facia
11 evidence of anticompetitive effect requires someone to
12 analyze whether the market is highly concentrated,
13 somewhat concentrated.

14 It's a language in the statute. So I think
15 I'm entitled to explore the witness's understanding of
16 what a highly concentrated market is.

17 MR. KAPLAN: With respect to the commercial
18 market, it's already been stated that the commercial
19 market would be analyzed separate from the Medicaid
20 market.

21 MR. WHITMER: Ms. Erickson, to the extent the
22 question targets the Medicaid arena, it's already been
23 established by the witness that he did not do any
24 analysis in that arena and, therefore, the question
25 would be irrelevant by definition.

1 To the extent that it concerns some other
2 area, then I think that other area should be defined by
3 the question. That's our objection.

4 HEARING OFFICER ERICKSON: Mr. Hatfield, I'm
5 going to sustain the objections.

6 This witness has clearly testified regarding
7 the premises under which he conducted his analysis
8 regarding the separation of the commercial products
9 versus the Medicaid products.

10 I at this time do not see the relevance of a
11 broad-based question to this witness whether three
12 participating is a highly concentrated market.

13 If you need to rephrase your question, please
14 do so.

15 MR. HATFIELD: I will.

16 BY MR. HATFIELD:

17 **Q. Dr. Capps, what is your definition of a**
18 **highly concentrated market?**

19 A. Well, the Horizontal Merger Guidelines, which
20 are a guide to how the Department of Justice and Federal
21 Trade Commission review and analyze mergers, use the --
22 my apologies for the court reporter -- Herfindahl-
23 Hirschman --

24 **Q. The Herfindahl-Hirschman Index, also known as**
25 **the HHI.**

1 **Go ahead, Doctor.**

2 A. -- to measure concentration. It is
3 calculated as the sum of the Square market shares of all
4 participants in a market. The threshold specified in
5 those guidelines is that a market is highly concentrated
6 if the HHI is above 2,500. And this is in the appendix
7 to my public summary as well.

8 **Q. Thank you, Doctor. And this may be in your**
9 **public summary. If it is, please just tell us, but is**
10 **what I call the Herfindahl-Hirschman Index, the HHI, is**
11 **that a commonly accepted way that experts analyze the**
12 **competitive effects of horizontal mergers?**

13 A. It is a commonly used input into that
14 analysis, but in no respect is it dispositive or even
15 necessarily primary among the things you would look at
16 in a merger analysis. And that is also clearly stated
17 and explained in paragraph 7 in the appendix of my -- of
18 the public statement.

19 MR. HATFIELD: Thank you, Doctor. I don't
20 have any further questions.

21 HEARING OFFICER ERICKSON: Thank you,
22 Mr. Hatfield.

23 Mr. Kaplan, do you have any redirect for
24 Dr. Capps?

25 MR. KAPLAN: No, Your Honor.

1 HEARING OFFICER ERICKSON: Ms. Kopp.

2 MS. KOPP: No questions.

3 HEARING OFFICER ERICKSON: Mr. Whitmer.

4 MR. WHITMER: No questions from Aetna. Thank
5 you.

6 HEARING OFFICER ERICKSON: Is there any other
7 interested person present who wishes to cross-examine
8 Dr. Capps?

9 Do I have any objections to releasing
10 Dr. Capps as a witness?

11 Hearing none, Mr. Kaplan, please thank
12 Dr. Capps for his time.

13 MR. KAPLAN: Dr. Capps, I think we're at the
14 end of your testimony.

15 THE WITNESS: Thank you for letting me call
16 in for this. I appreciate your patience with the
17 technology.

18 MR. KAPLAN: No problem. Thank you.

19 THE WITNESS: You're welcome.

20 HEARING OFFICER ERICKSON: Mr. Hatfield, do
21 you wish to present other evidence at this time?

22 MR. HATFIELD: I do.

23 We have one witness who I intend to just
24 offer an affidavit.

25 HEARING OFFICER ERICKSON: You may proceed.

1 MR. HATFIELD: We would like to present
2 Shannon Bagley.

3 Ms. Erickson, could you help me with what my
4 exhibit number would be?

5 HEARING OFFICER ERICKSON: For purposes of
6 your exhibits, Mr. Hatfield, let's use Home State
7 Exhibit 1, and you may be numerical so long as each
8 exhibit sticker says the word "Home State."

9 Is that acceptable?

10 MR. HATFIELD: It is. And I'll only have the
11 one, just for your information.

12 HEARING OFFICER ERICKSON: Thank you.

13 (HOME STATE EXHIBIT NO. 1 WAS MARKED FOR
14 IDENTIFICATION.)

15 (Witness sworn.)

16 QUESTIONS

17 BY MR. HATFIELD:

18 Q. Good morning. Could you state your name
19 again for the record, please?

20 A. Sure. My name is Shannon Bagley, and I am
21 the Chief Executive Officer for Home State Health Plan.

22 Q. And just very briefly what is Home State
23 Health Plan?

24 A. Home State Health Plan is the newest entrant
25 into the Missouri managed care market that began

1 operations on July 1st, 2012.

2 Q. And have you been in the room today for the
3 testimony from Dr. Ian McCaslin?

4 A. Yes, I have.

5 Q. Are you the same Home State Plan that he
6 referred to in his testimony?

7 A. Yes, we are.

8 Q. I'm going to hand you what we've marked as
9 Home State Exhibit 1.

10 Do you recognize this document?

11 A. I do.

12 Q. And what is this generally?

13 A. Sure. I would say that this document
14 outlines specific events that we believe -- do you want
15 me to go through kind of a quick summary of it?

16 Q. Well, first of all --

17 A. An affidavit of my analysis of activities
18 that occurred prior to the announcement of the
19 acquisition.

20 Q. That probably does it.

21 So is this affidavit that you executed?

22 A. It is, yes.

23 Q. Is that your signature on the third-to-the-
24 last page?

25 A. It is, yes.

1 Q. All right. And have you reviewed this
2 testimony as presented in your affidavit?

3 A. I have.

4 Q. When did you execute this affidavit?

5 A. We executed the affidavit this morning.

6 MR. HATFIELD: All right.

7 Madam Hearing Officer, I just move this into
8 evidence. If there are any objections, I might, you
9 know, ask to further explore.

10 But I believe the affidavit was provided in a
11 draft form to AETNA last night and to Mr. Kaplan this
12 morning, so in fairness to them they haven't had a
13 chance to review it at length.

14 But I move its admission into evidence.

15 HEARING OFFICER ERICKSON: Do the parties
16 need additional time to review the affidavit of Shannon
17 Bagley, Exhibit Home State Exhibit 1?

18 MR. WHITMER: For Aetna we do not need any
19 additional time. We have no objection to its admission
20 into evidence, but obviously it doesn't mean that we
21 agree to the substance of it. We have no problem with
22 it being admitted at this time.

23 HEARING OFFICER ERICKSON: Mr. Kaplan.

24 MR. KAPLAN: We have no objection.

25 HEARING OFFICER ERICKSON: Ms. Kopp.

1 MS. KOPP: I have not seen the affidavit.

2 MR. HATFIELD: I apologize. I did not
3 provide it to Ms. Kopp.

4 MS. KOPP: No objections.

5 HEARING OFFICER ERICKSON: Home State
6 Exhibit 1 is admitted into evidence.

7 (HOME STATE EXHIBIT NO. 1 WAS RECEIVED INTO
8 EVIDENCE.)

9 EXHIBIT OFFICER ERICKSON: Do you have any
10 other questions to this witness, Mr. Hatfield?

11 MR. HATFIELD: I do not. Thank you.

12 HEARING OFFICER ERICKSON: Before you leave I
13 need to offer again the parties an opportunity to ask
14 questions, but we're going to have to share a microphone
15 because I do have some questions.

16 QUESTIONS

17 BY HEARING OFFICER ERICKSON:

18 Q. In preparing your affidavit today,
19 Ms. Bagley, were you aware of the filing of a Form A
20 statement proposing for WellCare to acquire Missouri
21 Care, Inc.?

22 A. Yes.

23 Q. And does that proposed acquisition in any way
24 impact the statements that you make in your affidavit?

25 Let me rephrase that.

1 **Does that proposed acquisition change**
2 **anything in your affidavit?**

3 A. It does not.

4 **Q. Explain again, what is your position with**
5 **Home State Health Plan and your duties?**

6 A. My position with Home State Health Plan is
7 I'm the Chief Executive Officer of Home State. I
8 oversee the operations and the strategic planning of our
9 entity.

10 **Q. Does your affidavit reflect or comment on the**
11 **recent new agreement between Coventry and Washington**
12 **University regarding the managed care health plan?**

13 A. It does. The purpose of the document is
14 certainly not to object to the merger but rather to
15 highlight specific activities that were taking place
16 shortly before the announcement on August 20th and were
17 executed shortly thereafter August 20th which caused
18 significant market harm and competitive disadvantage to
19 Home State Health Plan, as well as jeopardizing access
20 to care in the Eastern Region to Medicaid enrollees.

21 **Q. And how has the new contract between Coventry**
22 **and Washington University and its affiliates affected**
23 **Home State?**

24 A. I'd say on June 13 there was an announcement
25 in which Coventry and Healthcare US-- or excuse me -- in

1 which Healthcare USA and Washington University -- Health
2 USA was to term Washington University.

3 MR. HATFIELD: You might want to use the
4 full. By "term" you meant?

5 THE WITNESS: Terminate its agreement with
6 Washington University.

7 Now, this is a little bit unusual in this
8 market since Healthcare USA had been contracted with
9 Washington University for more than 15 years prior to
10 that termination.

11 So you can understand the timing of the
12 announcement of the merger -- or acquisition and the
13 announcement of significantly changing the Eastern
14 Region network appeared to be.

15 As a result of that termination and because
16 that termination was executed or announced just two
17 weeks after Home State Health Plan contracted with
18 Washington University, it allowed any member that wished
19 to stay with their specialist -- and these are very
20 high-risk members, as Dr. McCaslin testified earlier --
21 any member who wished to stay with their specialist
22 would be required to change health plans to Home State
23 Health Plan who at that point had just recently
24 contracted with Washington University.

25 The alternative is that a highly specialized

1 member would need to find a new physician and transfer
2 to that new physician group outside of their existing
3 relationship with Washington University.

4 MR. HATFIELD: Madam Hearing Officer, if I
5 may, because I think you asked a great question.

6 HEARING OFFICER ERICKSON: I want the witness
7 actually to answer the question that I asked.

8 MR. HATFIELD: Referring to -- Dr. McCaslin
9 referred to what I'm going to call a recontract
10 effective February 15th.

11 I'm trying to be helpful here. You shut me
12 down if I'm not.

13 HEARING OFFICER ERICKSON: Please proceed.

14 FURTHER QUESTIONS

15 BY MR. HATFIELD:

16 Q. But I think, Ms. Bagley what the hearing
17 officer wants to know, I think, is Dr. McCaslin
18 testified that effective February 15 Healthcare USA, if
19 you will, is back in a contract relationship with
20 Washington University.

21 Does that affect anything you testified to in
22 your affidavit and how?

23 A. It directly affects Home State Health Plan.
24 What ultimately has occurred is that upon the
25 termination on September 11th of Washington University,

1 these members that chose to seek their care with
2 Washington University have now been transferred to
3 Home State Health Plan.

4 These members will retain or remain as our
5 Home State Health Plan members going forward, as well as
6 the significant losses that Home State Health Plan has
7 incurred because of this transfer of these over 6,000
8 lives.

9 Now --

10 **Q. So did the recontracting move those lives**
11 **back to Healthcare USA?**

12 A. No. Recontracting allows new members into
13 the MO HealthNet Program to seek care with Washington
14 University either with Home State Health Plan or now
15 Healthcare USA.

16 **Q. So --**

17 MR. HATFIELD: Am I all right, Madam Hearing
18 Officer?

19 HEARING OFFICER ERICKSON: Please.

20 BY MR. HATFIELD:

21 **Q. Is it correct to say that the recontracting**
22 **only affects people who come into managed care Medicaid**
23 **after February 15th?**

24 A. That's correct.

25 **Q. But it doesn't impact all of the lives, for**

1 want of a better term, that moved from Coventry to
2 Home State during the period between September and
3 February 15th?

4 A. That's correct.

5 Members can still see their Washington
6 University specialists whether they're enrolled with
7 Home State or now, effective 2-15 moving forward,
8 members could select Healthcare USA as well.

9 FURTHER QUESTIONS

10 BY HEARING OFFICER ERICKSON:

11 Q. Ms. Bagley, how do the events of the
12 termination of the contract by Healthcare USA with
13 Washington University and then the recontracting between
14 Healthcare USA and the University impact whether the
15 Director should approve the proposed acquisition of
16 Aetna -- of Coventry by Aetna?

17 A. We believe that the actions that were taken
18 by Healthcare USA have destabilized the managed care
19 market in Missouri.

20 And as a part of approving the acquisition,
21 that the Division would take actions to restabilize the
22 market, as certainly it appears that the actions that
23 were taken place by the acquiree took place around the
24 proximity and close proximity to the announcement of
25 this acquisition.

1 HEARING OFFICER ERICKSON: I tender the
2 witness to the parties.

3 Mr. Whitmer.

4 QUESTIONS

5 BY MR. WHITMER:

6 Q. Ms. Bagley, I just have a question or two.
7 You provided an answer and I tried to write
8 it down verbatim, but you can help me if I got it wrong.

9 You said the purpose of the document was
10 certainly not to object to the merger. Was that what
11 you had said earlier?

12 A. I said the merger itself but was to object to
13 certain actions that took place around the announcement
14 of that merger.

15 Q. Right.
16 So when you said that and provided that
17 testimony when you said the purpose of the document, are
18 you referring to your affidavit?

19 A. Yes. Yes.

20 Q. So would I be -- and when you said the
21 merger, you're talking about the transaction that we're
22 here to talk about today. Right?

23 A. Correct, the acquisition.

24 Q. So you'd agree that you're not here today to
25 object to the transaction that is before Ms. Erickson

1 **today for consideration?**

2 A. I am here to object to the certain activities
3 that took place around close proximity to that
4 announcement that could ultimately drive a competitor
5 out of the market in the state.

6 **Q. But you're certainly not here to object to**
7 **the merger itself. Right?**

8 A. No, that is not the intent of the document
9 but rather to highlight activities that destabilized the
10 market and could drive a competitor out of the market
11 based on those activities.

12 MR. WHITMER: Thank you.

13 HEARING OFFICER ERICKSON: Counsel for the
14 Division, do you have any questions for this witness?

15 MS. KOPP: No questions.

16 MR. KAPLAN: No questions.

17 HEARING OFFICER ERICKSON: Mr. McCaslin,
18 Dr. McCaslin, please approach the podium.

19 DR. MCCASLIN: Thank you.

20 I have a point of clarification about some of
21 the earlier questioning in response.

22 One would have the impression perhaps that as
23 of February 15 with Healthcare USA/Coventry back in
24 network with Washington University, that the flavor that
25 I got of the response is that those people are locked in

1 to Centene and Centene will be continued with that book
2 of business that moved over as of September.

3 The reality is that every month approximately
4 one-twelfth of all of the participants in the program
5 have the opportunity to go through open enrollment and
6 they have a choice of health plan.

7 They can change their health plans for just
8 cause and we roll that based on their eligibility
9 determination for the program overall.

10 So the reality is that people can and do make
11 that choice based on many factors, choice of physicians,
12 reputation, marketing, et cetera, et cetera.

13 And so I don't want anyone to have the
14 opinion that people who are in a current health plan are
15 locked into that health plan for now and ever more so to
16 speak.

17 HEARING OFFICER ERICKSON: Do you have any
18 questions for Ms. Bagley?

19 DR. MCCASLIN: No, I don't.

20 HEARING OFFICER ERICKSON: Ms. Bagley, did
21 you understand Dr. McCaslin's testimony and do you
22 agree?

23 THE WITNESS: Yes, I think that that is
24 accurate. Members can change any time on their
25 anniversary date.

1 For instance, in our Central Region
2 Home State Health Plan has received 11 percent of all
3 transfers from other health plans since the beginning of
4 the contract, July 1st, 2012, through December 31st,
5 2012.

6 In the Eastern Region Home State has received
7 85 percent of all transfers in that region, and we
8 believe that led to changes in the network.

9 So certainly members can shift, and we see
10 that in the Central Region at 11 percent, a reasonable
11 number, but members are typically driven to change or a
12 common practice of changing is when a health plan no
13 longer sees their specialist.

14 So it is in my general opinion that these
15 members will not transfer out of Home State Health Plan
16 since they have been able to access their specialist
17 throughout the time that our contract went live,
18 July 1st, 2012, but that by no indication are they
19 locked in to Home State Health Plan.

20 HEARING OFFICER ERICKSON: Mr. Hatfield, do
21 you have any further questions for the witness?

22 MR. HATFIELD: Well, I didn't think so, but
23 Dr. McCaslin confused me, so I do have a couple.

24 FURTHER QUESTIONS

25 BY MR. HATFIELD:

1 Q. Dr. McCaslin talked about one-twelfth being
2 able to transfer every month. Is that the same as the
3 anniversary date to which you referred?

4 A. I believe so.

5 Q. Okay. So we're talking about the same thing.

6 And Dr. McCaslin talked about being able to
7 transfer for good cause. Do they have to establish good
8 cause in order to switch plans?

9 A. That's correct.

10 Q. And have you received any determination from
11 Dr. McCaslin's agency that the fact that Coventry now
12 contracts with Wash U is good cause for a change?

13 A. I would say just cause or good cause in the
14 contract is defined as a couple of different situations,
15 but one example that is provided is when your provider
16 is no longer contracted with your health plan.

17 So a member of Home State, because we are
18 still contracted with Washington University, would not
19 have just cause to move to a new health plan because we
20 still have a contract with Washington University and,
21 thus, that member can seek care with that specialist.

22 It is only in the event that Home State
23 Health Plan were to terminate its arrangement that a
24 member could move to another health plan for just cause,
25 which is similar to the movement from Healthcare USA to

1 Home State for just cause.

2 MR. HATFIELD: I think I understand.

3 Thank you. Nothing further.

4 HEARING OFFICER ERICKSON: Anything further
5 for this witness from the parties?

6 MR. WHITMER: Nothing further from AETNA.

7 Thank you.

8 MS. KOPP: Nothing further.

9 HEARING OFFICER ERICKSON: Thank you. You're
10 excused.

11 MR. HATFIELD: Thank you.

12 Home State has no further evidence to offer.

13 HEARING OFFICER ERICKSON: Mr. Hatfield,
14 since you're at the podium --

15 MR. HATFIELD: Yes, ma'am.

16 HEARING OFFICER ERICKSON: -- in light of
17 your opportunity to cross-examine Dr. Capps and present
18 your own evidence, do you continue to object to the
19 Division of Market Regulation's Exhibit D, the economic
20 report, or object to Exhibit E, the public summary of
21 the report?

22 MR. HATFIELD: No, ma'am. Thank you. Home
23 State withdraws its objections to those two documents.

24 HEARING OFFICER ERICKSON: Exhibit D and E
25 are admitted into the record and Exhibit D is declared a

1 closed record for the reasons previously stated.

2 (EXHIBIT D AND E WERE RECEIVED INTO
3 EVIDENCE.)

4 HEARING OFFICER ERICKSON: Is there any other
5 interested person who wishes to present evidence or make
6 an argument at this time?

7 Let's take a very brief recess where I wish
8 to see counsel. We're off the record.

9 (A RECESS WAS TAKEN.)

10 HEARING OFFICER ERICKSON: We are back on the
11 record.

12 The parties and the interested persons have
13 had an opportunity today to present evidence and
14 argument. Dr. McCaslin has specifically requested that
15 the record remain open in this matter.

16 In light of the issues raised today, the
17 parties or the interested persons should have an
18 opportunity to fully respond to all issues.

19 This is in addition to the issue of the
20 pending proposed acquisition of Missouri Care, Inc. by
21 WellCare Health Plans, Inc. which is related to this
22 matter. Therefore, the record will remain open and the
23 hearing subject to continuation.

24 I will be issuing an Order allowing any party
25 or interested person to file a written response to any

1 issue raised today or related to the proposed
2 acquisition of Coventry by Aetna.

3 The Order will also include a requirement
4 that any party or interested person who believes that
5 this hearing should be reset to receive additional
6 evidence must notify me by the date that will be set
7 forth in the Order.

8 Are there any remaining matters that the
9 parties wish to address at this time?

10 The Division says no.

11 Aetna.

12 MR. WHITMER: Nothing further from Aetna.

13 HEARING OFFICER ERICKSON: Anything from any
14 interested person?

15 Hearing none, the record in this proceeding
16 shall remain open. This hearing is continued until
17 future adjournment.

18 We are off the record.

19 WHEREIN, the Form A Hearing adjourned.

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CERTIFICATE OF REPORTER

I, Patricia A. Stewart, RMR, RPR, CCR, a
Certified Court Reporter in the State of Missouri, do
hereby certify that the testimony that appears in the
foregoing transcript was taken by me to the best of my
ability and thereafter reduced to typewriting by me;
that I am neither counsel for, related to, nor employed
by any of the parties to the action in which this
hearing was taken, and further that I am not a relative
or employee of any attorney or counsel employed by the
parties thereto, nor financially or otherwise interested
in the outcome of the action.

Patricia A. Stewart
CCR No. 401

A				
ability 135:7	126:25 127:23	advocacy 81:21	85:25 86:23	109:21 110:24
able 62:22 74:21	133:20 134:2	aetna 52:6 55:7	102:23,23 103:3	124:7 127:7
83:3,4,8,13,24	action 135:9,13	56:9 58:11,20	103:19,23 104:1	answers 99:7
84:1 86:7 95:7	actions 126:17,21	59:4,17,18 60:2	122:11 123:5	antara 54:6,9 66:22
106:25 130:16	126:22 127:13	62:3,5,7 63:1,9,14	ahead 101:9 116:1	69:23
131:2,6	activist 84:12	65:16,21 66:8,11	allow 59:3 88:20	anticompetitive
absolute 63:22	activities 119:17	66:21 67:25 69:21	allowed 65:1 83:10	60:23 65:17 66:12
absolutely 68:10	122:15 128:2,9,11	70:1,3 72:9,14	123:18	102:12 104:5,11
99:14	actual 104:1	73:18 74:17 76:1	allowing 104:9	106:18 114:10,11
acceptable 65:24	acuity 94:16	76:3,22 77:5	133:24	apologies 115:22
66:12 78:2 118:9	add 87:9 105:9	85:15,15 86:3,10	allows 125:12	apologize 64:14
accepted 116:11	added 59:18	86:13 87:3,9 89:1	alternative 123:25	121:2
access 79:15 80:3	addition 133:19	89:13,21 90:24	altogether 84:8	apparently 64:19
82:1,4,4 83:19,24	additional 73:18	91:16 92:3,15,18	amend 71:20	appear 77:18
84:1 86:8,12	77:3,4 120:16,19	93:1 96:2,14,23	amended 59:16,19	appearance 60:13
122:19 130:16	134:5	96:23 97:2,16	74:17	appearances 57:1
accommodation	additionally 80:10	99:25 100:8	amount 97:1	appeared 123:14
78:2	additive 89:1	101:22 103:9,19	analysis 59:6 63:24	appears 63:22
accountability	address 96:20	104:2 105:9 108:7	63:25 64:18 65:19	126:22 135:5
80:17	134:9	109:8,9 110:15,15	66:2 69:13,19	appendix 116:6,17
accountable 80:7,9	addresses 60:23	111:2,20 112:7	99:22 100:13	applicant 60:2
accurate 70:23	adequacy 81:15,23	113:3,24 117:4	101:5 102:17	90:24
129:24	84:21 86:4	120:11,18 126:16	103:6 108:19	appointment 84:24
accurately 77:23	adequate 87:18	126:16 132:6	109:2 111:1 112:1	appreciate 78:2
acknowledged	adjourned 134:19	134:2,11,12	113:22 114:24	99:13 117:16
59:13	adjournment	aetnas 53:8 72:6	115:7 116:14,16	approach 60:15
acquire 58:21	134:17	103:8	119:17	72:19 77:9,20
109:8 121:20	administration	affect 111:8 124:21	analyze 102:13,14	128:18
acquired 100:9	59:20 68:8	affidavit 54:14	112:5 113:23,25	appropriate 93:5
acquiree 126:23	administrative	101:25 108:11	114:12 115:21	101:15 102:11
acquires 110:15	68:11	117:24 119:17,21	116:11	approval 108:14
acquiring 75:2,7	admissibility 64:20	120:2,4,5,10,16	analyzed 102:11	approve 107:12,21
100:8	68:17 69:3	121:1,18,24 122:2	109:12 113:10,12	126:15
acquisition 52:4	admission 101:6	122:10 124:22	114:19	approved 103:17
55:2 58:8,19 60:8	120:14,19	127:18	anderson 57:5	approving 126:20
65:16 66:11,20	admit 63:12	affidavits 101:21	61:18,18,21	approximately
69:21 75:19,21	admitted 59:17	affiliates 122:22	anniversary 129:25	58:5 94:1 129:3
86:9,19,25 89:1	63:11,19 65:3,6	affirmation 96:22	131:3	area 84:11 115:2,2
89:20 96:25 97:16	71:3 73:8,14	agency 131:11	announced 89:7	areas 101:18
99:24 101:22	120:22 121:6	ago 98:16	123:16	arena 114:22,24
104:20 105:12	132:25	agree 87:8 102:3,8	announcement	argument 61:1,7
110:1 119:19	admitting 64:22	104:9 107:21	112:7 113:1,8,11	61:24 78:6 97:15
121:23 122:1	65:1	114:4 120:21	119:18 122:16,24	133:6,14
123:12 126:15,20	advance 72:9 82:18	127:24 129:22	123:12,13 126:24	arguments 60:10
	82:19 86:14,24	agreed 96:23,23	127:13 128:4	arrangement
	89:6	agreement 68:25	answer 71:20 106:3	131:23

<p>arranging 77:14 ascertain 65:22 asked 69:12 101:4 107:23 113:23,25 124:5,7 asking 106:15 107:12,13 108:14 aspect 81:5 84:25 88:16 assert 68:3 asserting 70:9 assertion 64:11 asserts 64:16,17 assets 75:8 associated 92:17 assuade 89:17 assume 107:7,13 108:22 110:14 assumes 106:25 107:5 109:14 assuming 109:25 assumption 108:20 110:17 assurance 87:18 assurances 87:1 89:16 assuring 81:20 84:20 attack 86:2 attempt 97:19 attempted 69:12 attempting 78:8 attorney 135:11 attorneys 60:14 august 122:16,17 authenticity 68:20 author 100:3 authored 66:22 69:22 available 69:15 77:19,25 78:9 awarded 80:25 aware 121:19</p> <hr/> <p style="text-align: center;">B</p> <p>back 85:2,6 97:23</p>	<p>124:19 125:11 128:23 133:10 background 58:19 79:4,14 bagley 53:21 54:14 118:2,20 120:17 121:19 124:16 126:11 127:6 129:18,20 banner 86:10 89:13 based 83:18 89:10 100:8 102:21 108:20 112:15 128:11 129:8,11 basis 108:15 bate 66:1 beds 83:20 began 118:25 beginning 68:7 130:3 behalf 60:20 62:5,7 62:18 73:5 98:1 108:7 behavioral 80:1 believe 69:15 70:22 72:13 86:12 101:15 102:1 105:1 113:5 119:14 120:10 126:17 130:8 131:4 believed 65:19 believes 134:4 best 135:6 better 126:1 bidders 94:1 billion 80:13,15 bit 93:14 98:24 99:1 101:1 123:7 blank 66:24 book 97:4 129:1 books 79:8 boulevard 55:23 box 56:4,7 break 97:18 brief 133:7</p>	<p>briefly 77:7 118:22 bring 105:14 britt 56:13 broadbased 115:11 browne 56:13 building 55:10 58:14 burden 70:24 business 75:10 79:8 96:25 97:2,5 102:3,4,9 103:8 108:9 109:9 110:15 111:20 129:2 buying 75:23</p> <hr/> <p style="text-align: center;">C</p> <p>calculated 116:3 call 58:4 68:11 73:25 104:1 116:10 117:15 124:9 called 98:18 99:22 cambridge 52:5 55:5 58:10,23 canceled 94:22 95:11 cancellation 94:5 cant 63:25 112:4 cap 88:25 capacity 74:11,16 capped 88:9,20 capps 53:19 54:5,9 64:16 65:25 66:22 68:21 69:22 70:17 77:15,16,25 78:8 97:19 98:6,8,10 98:16 99:11,15,21 101:4 104:16 105:18 106:12,15 106:24 109:2 110:6,14 112:12 112:13,23 113:19 115:17 116:24 117:8,10,12,13 132:17</p>	<p>caps 88:21 cardinal 83:16 94:24 95:4 care 52:4 55:3 58:8 58:22 61:12 66:21 69:21 79:12,19,24 80:2,11,15,17,20 81:6,9 82:1,4,5,6 83:25 84:8,16,18 87:11 88:18 89:9 89:9,11,18 90:23 91:13 92:10,25 93:2 95:5,17,18 96:25 98:18 99:25 108:9,15 111:20 118:25 121:21 122:12,20 125:1 125:13,22 126:18 131:21 133:20 caretakers 82:6 case 52:7 55:3 58:11 83:21 cases 95:9 cause 104:21 129:8 131:7,8,12,13,13 131:19,24 132:1 caused 81:25 122:17 ccr 55:21 135:3,18 centene 80:24 83:10 92:4,15,19 93:3 95:6,22 129:1,1 central 92:8,9,11 105:7,11 107:25 130:1,10 certain 86:20 127:13 128:2 certainly 65:1 82:20 86:25 113:6 122:14 126:22 127:10 128:6 130:9 certificate 135:1 certified 135:4 certify 135:5</p>	<p>cetera 81:12,13 129:12,12 cfe 53:11 chain 54:11 challenges 81:23 chance 96:13 120:13 change 74:20 75:9 93:7,8 122:1 123:22 129:7,24 130:11 131:12 changes 93:12 113:1,10 130:8 changing 111:18 123:13 130:12 chart 90:20 cheat 91:18 chicago 56:11 62:8 chief 58:15 74:13 118:21 122:7 child 84:23 88:15 children 79:16,17 79:24 81:17 82:2 82:24 83:25 84:14 85:7 87:13 88:11 91:24 94:12,15 childrens 82:17 83:17 85:8 91:22 94:12,16 chip 91:22,22 92:12 93:5,6 choice 85:7,8 129:6 129:11,11 choices 85:12 chose 125:1 chronic 94:13 chuck 56:21 60:16 68:1 98:17 citizens 66:20 69:20 99:24 city 55:11,24 56:4,8 56:15,24 57:7 58:14 62:5 claiming 76:14 clarification 64:21 70:13 128:20</p>
--	---	---	---	---

clear 87:2 93:18 94:6 104:4 106:4 108:6,10 109:6	competition 100:15 100:22,25 103:11	consideration 80:18 82:23 128:1	core 85:19 91:25	131:11 134:2
clearly 84:22 89:6 115:6 116:16	competitive 66:19 69:19 100:10	considerations 79:10	corporate 75:10	coventrys 92:18
clinics 81:12 83:20 94:17	102:19,24 116:12 122:18	consolidate 75:8	correct 64:8 67:20 70:10,11 71:11	coverage 95:19
close 80:14 87:16 88:24 126:24 128:3	competitor 111:7 111:13 112:2 128:4,10	consummation 112:8	93:20,21 97:7 100:11,12 103:24	covered 79:22 82:6 83:1 88:8,12,13 88:14,16,23 91:21 92:13,23 93:2,11
closed 54:4 67:19 70:24 71:5 133:1	competitors 110:21 111:2,6,10,22,23	contain 69:14	109:9 125:21,24 126:4 127:23 131:9	cpa 53:11
closely 87:1	complete 111:7	contains 66:5,6	corridor 91:12	create 83:24
closure 86:24	completed 66:15	contd 54:1 57:1	cory 53:19 54:5,9 64:16 65:25 66:22 69:22	creates 104:20
collaborative 79:20	completion 60:5	contingent 72:2 108:8	cost 80:10	credentials 68:21
colleagues 81:19	compliance 89:3	continuance 59:1,8	counsel 58:16 60:13 61:16,18,25 62:10 77:12 114:4 128:13 133:8 135:8,11	credit 83:16,22 85:4 86:11
columbia 89:10	comprehensible 112:16	continuation 60:12 84:8 133:23	county 83:18 91:12	critical 79:13 81:5
combine 92:20	comprehensive 66:1	continue 87:7,11 99:15 132:18	couple 90:10 96:5 130:23 131:14	crossexamination 64:1 76:2 77:19
come 125:22	concentration 116:2	continued 59:2,22 129:1 134:16	course 93:15	crossexamine 60:9 63:21 64:7,23 65:2,9 68:3,5,12 68:15,23 70:16 89:24 98:5 117:7 132:17
comes 97:7	concentrated 113:20 114:7,12 114:13,16 115:12 115:18 116:5	continuity 83:14	counsels 77:8	cure 108:1
comment 122:10	concern 82:3	contract 80:21,25 82:22 84:12 85:16 85:20,25 86:14,21 87:3,19 89:4,18 94:5 95:15 122:21 124:19 126:12 130:4,17 131:14 131:20	county 83:18 91:12	current 89:2,8,12 97:4 129:14
commercial 101:12 102:5,14,16,17 113:9 114:1,17,18 115:8	concerned 84:3	contracted 93:18 123:8,17,24 131:16,18	couple 90:10 96:5	currently 67:3
commission 115:21	concerns 65:24 82:8,11 86:18 89:17 115:1	contracts 81:11 86:6 88:6 94:22 131:12	course 93:15	<hr/>
commissioner 107:10	conclusion 66:9 100:7 102:21	contradicts 65:10	court 58:3 72:24 96:8 99:6 100:16 100:18,20,21 102:25 103:1 115:22 135:4	D
commitment 87:8	conclusions 69:13 69:19 99:23 102:18 106:16 112:24	contrary 75:12,17	coventry 52:4,5 55:3,5 58:8,10,22 59:18 65:16 66:8 66:10,21 69:21 73:2 82:14 83:2 85:2,4 87:4 88:23 89:2,12,17,20 91:4 92:2,10,14 92:23 94:5,22 95:4,10,15 97:4 97:16 99:24 100:9 103:10,20 104:2 105:9 109:8 110:16 111:2 112:7 113:3 122:11,21,25 126:1,16 128:23	data 113:3,4,5,6,7 113:12,13,17
committing 86:13	condition 75:2	control 58:21 74:20 75:16,19 97:3,4 104:10	course 93:15	date 129:25 131:3 134:6
common 94:11 130:12	conditions 94:13	controlling 106:17	court 58:3 72:24 96:8 99:6 100:16 100:18,20,21 102:25 103:1 115:22 135:4	dated 66:21 69:21
commonly 116:11 116:13	conduct 112:7	convened 84:15	couple 90:10 96:5	day 93:12,12
communicated 87:6 89:6	conducted 59:21 115:7	conversation 85:4	county 83:18 91:12	days 72:11
communication 73:1,4,6 106:2	conferred 77:13	conversations 85:23	couple 90:10 96:5	deals 107:20
communities 81:11	confidential 66:6 67:1,19 69:11,14	copies 63:3	course 93:15	december 130:4
companies 107:24	confirmation 54:12	copy 71:10 96:16	court 58:3 72:24 96:8 99:6 100:16 100:18,20,21 102:25 103:1 115:22 135:4	decide 107:18
company 52:5,5 53:10 55:5,6 56:2 58:10,11,23 59:18 60:4 62:14 73:22 74:14	confused 130:23		county 83:18 91:12	decision 85:20
competence 75:14			couple 90:10 96:5	declared 132:25

115:17 degree 83:7 delay 106:8 delivery 79:16 delve 100:14,22,25 delving 101:6 demand 85:1 demands 84:18 demonstrate 72:16 denied 65:5 dentists 81:12 department 52:1 53:5,13 55:1 56:2 56:6 57:3 58:16 58:25 61:10 62:12 62:14 63:23 67:3 74:9,12 78:20 81:14,20 84:21 87:17 89:16 98:22 99:21 103:17,19 107:21 108:8 115:20 depending 85:10 93:14 described 77:24 desire 76:15 desired 89:11 desires 60:1 destabilized 126:18 128:9 detail 82:9 determination 129:9 131:10 determining 65:16 70:24 develop 81:7,11 developed 81:24 83:11 development 82:13 82:14 didnt 102:22 110:17 112:5 130:22 different 88:19 112:20 131:14 difficult 83:23	dire 68:16 70:9 direct 100:14,22,25 106:1 110:5,13 directed 85:4 directly 124:23 director 61:9 74:14 78:19,24 79:5 126:15 disadvantage 122:18 discuss 64:15 discussed 68:7 101:5 102:6 110:24 discusses 64:19 discussion 103:22 dismissed 76:12 dispositive 116:14 divest 96:24 109:9 113:25 divested 108:16 divestiture 102:23 103:3,8,16 104:4 107:3,4,13,15,20 107:22 108:1,8,21 108:24 109:25 110:14,18 111:6 111:11,16 divide 91:9 division 53:5,10 56:2,6 58:24 59:3 59:5,12,23,23,25 60:3 61:9,11 62:11,13,16,19,25 63:8,15 65:14,25 73:10,21 74:14 76:6,22,24,25 78:19,21 87:17 89:15,19 90:4 96:15 126:21 128:14 132:19 134:10 divisions 58:16 doctor 78:12 83:4,4 87:22 88:18,19 89:15 90:9,12	95:8 97:12 116:1 116:8,19 doctors 81:11 document 68:17,20 71:10 99:22 100:1 100:4 119:10,13 122:13 127:9,17 128:8 documents 132:23 doesnt 93:8 108:2 110:3,3 120:20 125:25 doing 111:16 dollar 80:13 domestic 72:10,17 73:2,5 74:21 dont 66:23 70:21 85:19,21 88:21,22 93:12 95:24 101:7 104:7 106:3,24 109:15,25 112:15 116:19 129:13,19 dr 53:16 61:8,16,21 64:16 65:25 66:22 66:22 68:21 69:22 69:23 70:17 77:15 77:16,25 78:8,11 79:2 89:25 90:3 90:17 96:1,13 97:19 98:6,8,10 98:16 99:11,15,21 101:4 104:16 105:7,18 106:12 106:15,24 109:2 110:6,14 112:12 112:13,23 113:19 115:17 116:24 117:8,10,12,13 119:3 123:20 124:8,17 128:18 128:19 129:19,21 130:23 131:1,6,11 132:17 133:14 draft 120:11 dramatically 93:8 drive 56:11 128:4	128:10 driven 130:11 due 67:1 69:10 duties 122:5 dutta 54:6,9 66:22 69:23 <hr/> E <hr/> earlier 110:24 123:20 127:11 128:21 east 56:14 81:24 82:14 86:6 88:25 91:25 eastern 91:8,15 92:5 122:20 123:13 130:6 ebb 93:14 echo 98:24,25 106:19 economic 54:5 63:24 67:13,18 132:19 economist 64:15 69:12 effect 84:12,18 104:6,11 111:1 114:10,11 effective 81:1 82:17 124:10,18 126:7 effectiveness 80:11 effects 60:23 65:17 66:12 102:12,19 116:12 efforts 77:17 eight 80:13 93:13 106:20 either 112:19 125:14 elaborate 88:4 element 79:12 eligibility 129:8 eligible 88:8 eliminate 99:12 email 54:11,12 employed 74:8,9,11	135:8,11 employee 135:11 engage 77:24 97:19 enrolled 126:6 enrollees 122:20 enrollment 88:10 88:22 113:4 129:5 ensure 80:3 ensuring 81:15 84:12 enter 62:24 66:25 66:25 86:14 entered 60:13 64:6 69:12,25 72:3 87:4 96:14 entering 77:1 81:3 entire 114:5 entities 79:9 80:21 93:18 entitled 64:23 70:21 114:15 entity 91:4,16 92:10 111:21 122:9 entrant 118:24 erickson 53:15,22 53:23 54:16 55:13 58:4,15 60:18,24 61:3,15,20 62:6,9 62:15 63:2,6,16 64:3,9 65:4,12 66:14 67:2,5,10 67:16,22 68:6 69:1,7 70:1,6,12 70:14,22 71:9,13 71:23 72:4,8,20 72:25 73:9,13,17 73:20 76:1,5,8,10 76:13,18,21 77:6 77:11,23 78:3,15 79:1 87:22,25 89:23 90:4,7,12 95:25 96:6,17 97:10,13,23 98:8 99:10 104:22,25 105:14,18,21
--	--	---	--	--

106:11 107:8 108:5,6,17 109:13 109:19 110:4,9 112:10,17 114:2 114:21 115:4 116:21 117:1,3,6 117:20,25 118:3,5 118:12 120:15,23 120:25 121:5,9,12 121:17 124:6,13 125:19 126:10 127:1,25 128:13 128:17 129:17,20 130:20 132:4,9,13 132:16,24 133:4 133:10 134:13 establish 109:20 131:7 established 105:3 114:23 et 81:12,13 129:12 129:12 event 106:18 131:22 events 119:14 126:11 evidence 53:6,8,10 53:14,18 59:5,17 60:1,3,4,6,8,20 61:7,23 63:12,20 64:2,6 65:3,9 66:10,16 67:23 68:9 69:4 71:4,25 72:6,12 73:8,16 73:18,22 76:19,22 77:2,3,4 78:6 97:15 98:1 99:22 100:10 105:2,4,11 107:1,7,17 108:2 108:23 109:15 114:10,11 117:21 120:8,14,20 121:6 121:8 132:12,18 133:3,5,13 134:6 exactly 97:8 exaggerate 84:6	examine 60:9 76:14 examiner 74:13 example 88:11,19 131:15 exceed 101:13 exceeded 101:18 exceptions 88:10 excited 81:3 exclude 93:5 excluded 91:13 excluding 101:12 excuse 66:11 71:19 122:25 excused 76:10,16 76:17 97:12 132:10 execute 120:4 executed 119:21 120:5 122:17 123:16 executive 118:21 122:7 exhibit 54:4,8,10 54:12,13,15 58:2 66:23 67:3,6,11 67:18,23 69:2,4 69:11 70:5,17,19 71:2,11,15,16,21 71:22 72:14 73:1 73:1,4,15 102:1 118:4,7,8,13 119:9 120:17,17 121:6,7,9 132:19 132:20,24,25 133:2 exhibits 54:2,16 67:8 72:14,16,22 72:23 73:7,13 118:6 existed 65:23 existence 84:7 existing 124:2 exit 111:7,13,14 exited 112:2 exits 111:22 expand 83:24	expanded 83:20 expect 112:4 expectation 86:17 87:2,10,12 expectations 84:18 expects 87:7 experience 75:15 expert 64:16 113:25 114:8 experts 116:11 explain 122:4 explained 100:13 103:13 116:17 explore 114:15 120:9 extent 63:19,23 64:25 65:7 113:10 114:21 115:1 <hr/> F <hr/> facia 65:20,22 100:9 114:9,10 facing 96:8 fact 102:22 131:11 factors 129:11 facts 63:8,11 64:4 65:2,6,10,21 67:12 68:24 105:1 106:25 107:7 108:22 109:14 fairly 85:3 fairness 120:12 fall 93:13,13 familiar 90:22 91:1 91:3,6 100:1 families 83:6,8 family 80:9 88:11 fane 56:13 fashion 80:5 favorite 111:10 february 52:11 55:9 58:6 59:16 66:21 69:22 85:5 92:1 95:14 124:10 124:18 125:23 126:3 128:23	federal 80:14 115:20 fee 91:14 feedback 99:12,17 felt 84:4 file 133:25 filed 58:20,25 59:17 74:17 filing 59:19 121:19 financial 52:1 55:1 74:13 75:1,3 financially 135:12 find 113:16 124:1 finish 99:5 firm 111:17,22 firms 111:17 first 59:10,24 63:18 64:13 66:19 68:9 72:25 89:7 95:12 98:5 108:11 119:16 five 78:22 111:9,12 fixed 93:11 flavor 128:24 flow 93:14 fluid 93:11 follow 80:6 following 74:19 86:25 follows 59:21 forced 111:3 foregoing 135:6 form 52:9 55:8 58:21 59:16,19 65:15 74:17 107:16,19 112:10 112:14 120:11 121:19 134:19 formal 107:4 formally 82:10 86:14 forth 134:7 forum 106:2 forward 81:4 84:6 86:24 87:20 125:5 126:7	forwarding 73:3 foundation 68:20 109:16 112:15 four 72:17 73:2,5 81:25 fourth 84:4 frederick 53:11 73:25 74:7 frequently 94:14 94:18 friends 80:9 front 90:20 fruition 86:24 full 66:5 89:5 109:24 123:4 fully 133:18 funds 80:14 further 53:22,23,24 69:4 71:3,7,25 75:25 76:14,16,19 76:22 116:20 120:9 124:14 126:9 130:21,24 132:3,4,6,8,12 134:12 135:10 future 134:17 <hr/> G <hr/> general 61:11,18 130:14 generally 91:10,11 119:12 gentleman 105:23 geographic 81:17 91:11 101:18 geographically 85:10 getgo 108:10 getting 98:24 give 61:14 86:11 given 68:13 107:2 112:25 giving 85:7 98:21 glad 72:24 glennon 83:17 86:7 94:24 95:4
--	---	---	---	---

<p>go 63:25 77:7 81:10 82:9 84:11 94:9 94:23 95:2 97:18 101:9 108:2 116:1 119:15 129:5 goals 80:3 goes 96:25 97:7 going 68:9 77:24 78:9 84:6 87:20 96:21 97:18 98:11 98:19 99:4 102:13 103:9 105:25 109:4,4 111:7 112:10,14,17 113:24 115:5 119:8 121:14 124:9 125:5 good 61:8 62:6 74:5 82:7 85:7,11 90:17 99:9 118:18 131:7,7,12,13 granted 59:7 great 82:1 86:11 124:5 greg 102:1 ground 84:23 group 101:16,17 124:2 groups 85:9 guess 103:25 guide 115:20 guidelines 115:19 116:5</p> <hr/> <p style="text-align: center;">H</p> <p>half 78:22 80:13,15 hand 66:18 80:19 85:14 119:8 handle 62:22 happen 91:17 112:1 happens 104:19 111:11 harm 122:18 harry 55:10 58:14 hatfield 53:16,20</p>	<p>53:21,22,24 56:21 60:16,16,19,22 61:2,4 63:16,17 64:3,8,12 65:4,11 68:1,1,6,14,22 69:1,6,8 70:4,7,11 70:15,19,23,23 71:7,8 76:8,9 77:8 77:13,20,22 78:1 90:10,14,16 95:23 97:25 98:3,10,13 98:15,17 99:10,14 99:19,20 100:18 100:24 101:3 103:1,14 104:15 104:25 105:6,16 105:22 106:8,9,12 106:14,22 107:8 107:10 109:1,11 109:19,23 110:7 110:12 112:12,21 112:22 114:5 115:4,15,16 116:19,22 117:20 117:22 118:1,6,10 118:17 120:6 121:2,10,11 123:3 124:4,8,15 125:17 125:20 130:20,22 130:25 132:2,11 132:13,15,22 havent 70:19,20 103:23 109:24 120:12 hazardous 75:22 health 52:4,5 53:18 55:3,5 56:18 58:8 58:10,22 59:18 60:12,15,17,21 66:21 69:21 77:13 78:10 79:17 80:24 83:2,9,18 86:22 88:3,7,12,14,15 91:22 92:10 95:6 98:1,18 99:24 118:21,23,24</p>	<p>122:5,6,12,19 123:1,17,22,23 124:23 125:3,5,6 125:14 129:6,7,14 129:15 130:2,3,12 130:15,19 131:16 131:19,23,24 133:21 healthcare 52:4 55:4 58:9,22 91:4 92:22 122:25 123:1,8 124:18 125:11,15 126:8 126:12,14,18 128:23 131:25 healthnet 61:9 78:19 79:5 125:13 hear 96:8 99:1 105:19 106:25 107:17 hearing 52:9 53:15 53:22,23 54:11,16 55:8,13 58:4,5,7 58:13,17 59:2,10 59:14,21,22 60:11 60:18,24 61:1,3,6 61:15,20 62:9,15 62:17 63:2,6,6,16 63:17 64:3,9,13 65:4,12 66:14 67:2,5,6,10,16,22 68:1,6 69:1,2,7 70:1,6,12,14,22 71:1,9,13,23 72:4 72:10,20 73:9,13 73:20 76:1,5,8,10 76:11,13,15,18,21 77:6,11,17,23 78:3,7,15 79:1,2 87:15,22,25 89:23 90:4,7,12 95:25 96:6,17 97:10,13 97:17,23 98:3,8 98:10,25 99:10 101:8,25 104:22 104:25 105:6,14</p>	<p>105:18,21,21 106:11 107:4,8,11 107:16,16 108:5 108:17 109:3,19 110:4,9 112:17,18 114:2 115:4 116:21 117:1,3,6 117:11,20,25 118:5,12 120:7,15 120:23,25 121:5 121:12,17 124:4,6 124:13,16 125:17 125:19 126:10 127:1 128:13,17 129:17,20 130:20 132:4,9,13,16,24 133:4,10,23 134:5 134:13,15,16,19 135:10 hecker 56:20 heese 53:11 73:25 74:7,8 76:14,16 heisinger 56:22 60:17,19 61:4 held 58:13 59:10 67:19 78:23 80:9 82:22 help 99:16 118:3 127:8 helpful 106:6,7 124:11 herfindahl 115:22 herfindahlhirsch... 115:24 116:10 hes 64:16 109:25 hhi 115:25 116:6 116:10 high 55:10 56:14 57:6 79:25 94:18 94:19 higher 94:14 highercost 94:10 higherincome 91:23 highlevel 84:16 highlight 122:15</p>	<p>128:9 highly 113:20 114:7,12,16 115:12,18 116:5 123:25 highrisk 83:21 123:20 hirschman 115:23 hold 59:1,8 78:9 79:18 80:7 103:1 104:15,15,18 105:16 112:12,13 holding 71:3 home 53:18 56:18 60:12,15,17,20 77:13 78:10 80:24 83:10 95:6,22 98:1,18 118:6,8 118:13,21,22,24 119:5,9 120:17 121:5,7 122:5,6,7 122:19,23 123:17 123:22 124:23 125:3,5,6,14 126:2,7 130:2,6 130:15,19 131:17 131:22 132:1,12 132:22 homestead 54:13 honor 76:20 87:3,8 116:25 honored 87:14 honoring 89:17 hoping 62:22 horizontal 115:19 116:12 hospital 82:17 83:17,20,23 85:17 86:16 94:13,16 hospitals 81:12 85:9 hung 93:12 hypothetical 107:1 107:6 108:22</p> <hr/> <p style="text-align: center;">I</p>
---	--	---	---	---

i70 91:12	including 93:6	intensity 94:14	june 122:24	laid 87:10 96:24
ian 53:15 61:8	incorporate 102:17	intent 128:8	justice 115:20	language 114:14
78:17 119:3	incorporated 85:15	intention 89:8		large 98:20 101:16
id 68:16 73:25	incorrect 104:24	interchangeable	K	lastly 113:19
96:15,19 122:24	increasingly 84:3	79:7	kaplan 53:3,6,17	law 68:11 70:21,25
idea 107:20 109:23	incredibly 85:13	interest 60:7 61:13	56:7 62:11,11,16	70:25 103:13
ideally 88:15	incurred 125:7	75:12,17 79:15	62:20 63:3,5,13	lay 84:17 103:20
identification 58:3	independent	interested 60:12	65:12,14 66:14,17	lead 64:10
67:9 118:14	111:17	61:5,22 63:20,25	67:2,4,10,13,17	leadership 84:16
identify 62:1 71:14	index 54:1,2 115:24	78:5 90:8 97:11	67:21,24 68:18	leave 121:12
ii 52:9 55:8	116:10	97:14 98:17 117:7	69:9,10 70:13,15	led 130:8
ill 82:9 103:4	indication 130:18	133:5,12,17,25	71:9,12,16,24	left 66:24,24 72:13
118:10	individual 101:17	134:4,14 135:12	72:2 73:12 76:5,6	82:10 87:17
illinois 56:11	individuals 79:22	interesting 107:11	77:1 90:6 96:5,7	legitimate 65:24
im 61:9 63:5,17,24	93:16	interests 75:4	96:10,12,18 97:9	length 120:13
64:12,13,22 70:9	information 59:4	intermediate 84:19	97:19 104:12,18	letting 117:15
70:20,21 72:24	59:13 64:18 66:5	introduce 66:3	104:22,24 105:1	level 89:2 101:11
74:9 78:19 79:14	66:7 69:15 112:6	introduced 101:25	113:21 114:17	113:4
83:4 93:18 95:2	112:25 118:11	introduction 66:9	116:23,25 117:11	license 74:22
98:19 100:6,16	initial 65:19	involve 71:15	117:13,18 120:11	licensed 74:24
102:25 103:21	input 116:13	irrelevant 114:25	120:23,24 128:16	lies 114:5
104:14,16 105:16	instability 84:5	issuance 74:22	keep 83:4	life 52:5,5 55:5,5
105:25 109:3,6	instance 130:1	issue 70:4 80:19	keeping 111:16	58:10,11,23 59:18
110:2,8 112:9,10	institutions 52:1	85:14 133:19	keith 56:13 62:4	light 132:16 133:16
112:17,23 114:15	55:1	134:1	khris 60:16	limit 89:3
115:4 119:8 122:7	instructions 54:15	issues 60:23 133:16	khristine 56:22	limited 86:8
124:9,11,12	insurance 52:1,5,5	133:18	kind 119:15	line 74:23 102:3,4
imagine 83:6 86:9	53:5,10 55:1,5,6	issuing 133:24	know 66:23 70:21	103:8 104:6 109:9
immediately 60:1	56:2,2,6 58:10,11	ive 84:13	96:7 101:7 106:24	109:17
impact 66:19 69:20	58:16,23 59:18		109:11,15,25	lines 74:23 101:16
99:23 121:24	60:3 62:12,13,14	J	110:3,3,20 120:9	102:8
125:25 126:14	73:21 74:10,12,14	january 59:12	124:17	liquidate 75:7
importance 79:13	74:23 75:23 76:25	jefferson 55:11,24	knowing 89:5	litigation 55:22
important 80:18	81:14,20 84:21	56:4,8,15,24 57:7	knowledge 64:17	little 88:3 98:24
85:13	91:22 98:22	58:14 62:5	85:16	99:1,16 101:1
impression 128:22	101:12 102:5	jeopardize 75:3	known 115:24	123:7
improper 107:1,6	103:17	jeopardizing	kopp 53:12 56:3	live 130:17
108:21	insured 95:2	122:19	62:13,13 63:15	lives 86:5,5,10,21
inability 85:25	insureds 94:9	joel 57:5 61:18	73:11,21,24 74:4	88:2,8,23 89:2,9
inaudible 100:15	insurer 75:3,8,11	joined 98:6	75:25 76:11,18,20	89:12 91:21,25
102:24	75:16,18	joint 62:25 63:7,10	76:24 90:5 96:4	92:1,12,12,13,15
include 91:22	insurers 72:10,17	63:18 64:4,5 65:5	117:1,2 120:25	92:22,23 93:3,6,7
134:3	73:2,5 74:21	68:18 71:14,17	121:1,3,4 128:15	93:11 94:10 125:8
included 71:16	integrity 75:15	96:14	132:8	125:10,25
includes 82:16	intend 60:20 66:3	july 80:23 81:1		llc 58:9,23
113:5,6,7	117:23	119:1 130:4,18	L	locke 56:10 62:7

<p>locked 128:25 129:15 130:19 long 78:21,23 84:20 87:5,6 118:7 longer 130:13 131:16 longterm 79:20 80:21 look 100:14,22 101:11,16 102:22 104:7 116:15 looked 102:16 looking 81:4 90:19 102:11 lord 56:10 62:7 losses 125:6 lost 103:2,4 106:20 lot 83:14,14 louis 81:23 82:17 83:17,18 loved 80:9 low 94:15 lower 111:23 lowincome 79:16 82:5</p> <hr/> <p style="text-align: center;">M</p> <p>maam 66:17 67:4 67:13,21,24 68:18 71:8 77:22 78:1 132:15,22 madam 63:17 64:13 68:1 76:11 79:2 87:15 98:3 100:20 105:6 120:7 124:4 125:17 magnificently 83:19 maintain 68:8 83:8 83:13 88:17 89:11 95:8 maintained 83:11 87:14,19 majority 96:20 making 61:7 77:17</p>	<p>managed 61:12 79:12,19,23 80:2 80:11,15,17,20 81:5,9 82:6 84:8 84:16,18 87:11 88:18 89:9,11,18 90:23 91:13 95:18 118:25 122:12 125:22 126:18 managedcare 93:19 management 75:10 83:21 marked 54:3 58:2 67:8 118:13 119:8 market 53:6 56:6 58:24 59:12,23 62:11,16 63:1,8 65:14 76:6 90:23 90:24 91:4,16 92:16 96:15 104:10,19 105:8 105:13 106:17 107:25 110:21 111:3 113:1,16,19 113:20,23 114:1,7 114:12,16,18,19 114:20 115:12,18 116:3,4,5 118:25 122:18 123:8 126:19,22 128:5 128:10,10 132:19 marketing 129:12 martino 102:1,2 martinos 108:11 mary 55:13 58:15 material 75:9 matter 58:7,17 59:2,10,15 62:22 81:6 105:22 133:15,22 matters 134:8 mba 53:11 mccarty 56:23 mccaslin 53:15,16 61:8,8,16,21</p>	<p>78:11,17 79:2 89:25 90:3,17 96:1,13 105:7 119:3 123:20 124:8,17 128:17 128:18,19 129:19 130:23 131:1,6 133:14 mccaslins 129:21 131:11 mean 120:20 meaning 101:12 102:15 103:21 meant 123:4 measure 116:2 measures 80:7 mechanically 103:11 mechanics 103:21 medicaid 61:12 79:5,6,8,12,12,22 80:12 90:23 91:20 91:24,25 92:11,21 93:19 96:24 97:2 101:13 102:2,4,13 102:16,17,19 103:6,8,12 104:6 104:7 105:8 110:21,23 111:6 113:14,22,23 114:19,22 115:9 122:20 125:22 medicaids 111:17 medical 79:25 81:10 medicare 101:12 medications 80:4 meet 84:22 86:3,21 meeting 84:15 member 80:8 123:18,21 124:1 131:17,21,24 members 123:20 125:1,4,5,12 126:5,8 129:24 130:9,11,15</p>	<p>mentioned 67:11 67:14 98:16 mercy 83:17 86:7 94:25 95:5 merge 75:8 merger 63:24 65:25 66:10 75:18 102:19 103:10 104:20 106:16 107:2,13,24 108:3 111:2,4,5,8,15 112:2,8,8 113:2 113:11 115:19 116:16 122:14 123:12 127:10,12 127:14,21 128:7 mergers 115:21 116:12 met 72:13 metrics 80:6 microphone 121:14 midwest 55:22 minute 104:17 missouri 52:2,4,4 55:2,4,4,11,24 56:4,8,15,24 57:3 57:7 58:9,9,15,22 58:23 61:10,12 65:18 66:13,20 69:20 70:25 74:9 78:20 79:11,11,21 80:11,12,22 84:9 89:9 91:15 92:25 93:2 96:25 99:23 101:14 103:13 105:12 108:9,15 110:22,23 111:20 118:25 121:20 126:19 133:20 135:4 missouris 79:5,6 105:8 misstates 109:15 mistake 84:10 mo 61:9 78:19 79:5 125:13</p>	<p>moment 87:23 98:16 month 93:15 129:3 131:2 monthly 113:4 months 81:25 morning 61:8 62:6 74:5 90:17 118:18 120:5,12 morrison 56:20 motion 58:25 59:8 62:24 65:5 move 63:12 86:23 109:5 110:11 120:7,14 125:10 131:19,24 moved 59:14 94:24 95:4 126:1 129:2 movement 83:15 86:20 88:2 131:25 moving 126:7</p> <hr/> <p style="text-align: center;">N</p> <p>name 58:15 74:5 78:16 98:17 118:18,20 named 64:15 nature 67:1 69:11 104:23 106:1 necessarily 63:11 116:15 necessary 88:2 need 63:11 64:21 81:18 84:23 85:11 86:20,23 94:13,14 98:9 99:4 100:14 100:21,25 102:22 109:8 115:13 120:16,18 121:13 124:1 needed 80:4 needing 100:18 needs 79:17 80:1 94:18 100:16 neither 135:8 network 81:7,15,23</p>
--	--	---	--	---

<p>83:11 84:13,21 85:2,6 86:4 87:13 88:20 95:7 123:14 128:24 130:8 neurologist 83:5 84:24 never 85:16,21 new 80:23,25 83:20 88:9,15,18,22,22 122:11,21 124:1,2 125:12 131:19 newborn 88:13,13 newest 118:24 night 120:11 normal 99:16 north 91:12 nos 58:2 73:15 notice 54:11,12 59:9 60:11 72:9 72:16 noticing 90:20 notified 82:18,19 notify 134:6 number 85:23 86:5 86:21 88:2 89:1 89:11 105:10 111:5,10,11,16,21 111:23 118:4 130:11 numbers 64:10 66:23 93:10 numerical 118:7</p> <hr/> <p style="text-align: center;">O</p> <p>object 112:10,14 122:14 127:10,12 127:25 128:2,6 132:18,20 objecting 63:25 70:15 105:1 objection 63:14,15 67:25 68:15 70:3 70:8,20 73:9 76:15 89:20 104:12,16,23 105:24,25 108:17</p>	<p>109:3,10,21 110:9 113:21 115:3 120:19,24 objections 70:2,17 73:12 115:5 117:9 120:8 121:4 132:23 objects 91:19 obviously 79:9 85:8 93:10 120:20 occasions 85:23 occur 104:4 107:14 110:1,15 occurred 119:18 124:24 october 58:24 59:7 59:9 offer 60:9,25 78:6 89:24 109:4 117:24 121:13 132:12 offered 69:16 99:21 offering 61:24 67:22 68:4 office 55:10 58:14 officer 53:15,22,23 54:16 55:13 58:4 58:17 60:18,24 61:3,15,20 62:9 62:15 63:2,6,7,16 63:17 64:3,9,13 65:4,12 66:14 67:2,5,7,10,16,22 68:2,6 69:1,3,7 70:1,6,12,14,22 71:1,9,13,23 72:4 72:20 73:9,13,20 76:1,5,8,10,11,13 76:18,21 77:6,11 77:23 78:3,15 79:1,3 87:15,22 87:25 89:23 90:4 90:7,12 95:25 96:6,17 97:10,13 97:23 98:4,8,10 99:10 104:22,25</p>	<p>105:6,14,18,21,22 106:11 107:4,8,11 107:17 108:5,17 109:3,19 110:4,9 112:17,18 114:2 115:4 116:21 117:1,3,6,20,25 118:5,12,21 120:7 120:15,23,25 121:5,9,12,17 122:7 124:4,6,13 124:17 125:18,19 126:10 127:1 128:13,17 129:17 129:20 130:20 132:4,9,13,16,24 133:4,10 134:13 okay 97:17 101:24 131:5 ologists 81:16 once 111:6 ones 64:10 80:9 onetwelfth 129:4 131:1 ongoing 82:8 onthe 84:22 ontheground 81:22 82:13 open 59:1,3,8 70:24 82:9,11 87:17 93:23 129:5 133:15,22 134:16 opened 83:19,19,20 opening 53:3 59:25 62:18,21 66:15 operation 75:16 80:17 operations 61:12 119:1 122:8 opinion 104:5,8 129:14 130:14 opportunities 83:24 opportunity 61:1 64:6 70:16 74:16 89:24 97:25</p>	<p>121:13 129:5 132:17 133:13,18 option 95:21 options 95:18 oral 60:9 61:14,24 order 58:5 59:7 68:8 72:8 73:3 77:25 86:13 88:17 131:8 133:24 134:3,7 orderly 59:20 68:8 organization 95:19 original 72:21,23 outcome 135:13 outlines 119:14 outside 124:2 outstate 91:12 overall 80:12 129:9 overlap 102:24 103:9 overrule 105:25 overruled 104:17 oversee 122:8 oversees 61:11 overwhelmingly 79:24 81:2 94:11 ownership 111:18</p> <hr/> <p style="text-align: center;">P</p> <p>page 53:2 119:24 paragraph 64:10 64:12,15 116:17 paragraphs 67:12 67:14 71:14,17,21 parent 88:14 parents 82:5 part 61:1 65:5,5 78:7 88:21 113:22 126:20 participants 113:20 116:4 129:4 participate 61:6,23 participating 115:12 particular 82:2</p>	<p>105:12 particularly 83:25 84:13 106:19 parties 60:5 62:1 63:3,20 64:1 67:6 68:9,18,24 69:2 75:2 76:21 77:9 77:12 89:24 95:25 97:14 107:12 120:15 121:13 127:2 132:5 133:12,17 134:9 135:9,12 partner 80:23 partners 80:20,21 84:19 87:12 partnership 79:20 party 65:8 75:7 89:10 98:17 100:8 100:9 104:13,18 106:16 133:24 134:4 patience 117:16 patient 95:17 patients 82:19 83:6 85:12 91:14 patricia 55:21 135:3,17 pediatrician 79:14 pending 71:3 77:1 101:6 133:20 people 79:11 93:13 94:22 125:22 128:25 129:10,14 percent 88:8,24 89:3 92:2,3,4,18 92:19,19,24 93:3 93:4 104:10,19 105:4,10,13 106:17 107:25 130:2,7,10 percentage 90:23 91:3,16 92:9,18 92:21,25 percentages 92:16 93:7,9</p>
---	--	---	---	---

percentagewise 97:2	130:15,19 131:16 131:19,23,24	preparing 121:18	98:13 108:25 117:25 124:13	109:24 112:6,24 113:13,17 120:10 127:7,16 131:15
performed 108:20	planning 122:8	present 59:5 60:4,8 60:20 61:6,23	proceeding 59:21 62:1 68:7 72:18 98:22 108:13 134:15	provider 104:9 131:15
period 83:22 84:17 84:25 95:10 126:2	plans 75:6 80:3,7 81:6,9 84:16 88:20 89:11 123:22 129:7 130:3 131:8 133:21	71:25 73:19,22 76:13,23 77:16 86:4 97:14,15 98:1 117:7,21 118:1 132:17 133:5,13	proceedings 52:10	provides 64:17
permit 75:18	plate 83:19	presentation 78:10	process 77:24	proving 54:11
person 60:7,12 75:9 90:8 97:11 117:7 133:5,25 134:4,14	please 60:15 61:2 62:3 64:10 67:5 70:14 71:10,13 72:20 77:21 78:12 78:16 90:12 96:7 99:5 106:3 108:5 109:20 115:13 116:9 117:11 118:19 124:13 125:19 128:18	presented 69:5 107:19 114:8 120:2	procure 93:22	provisions 86:1 87:19 89:4
persons 61:5,22 75:15 78:5 133:12 133:17	podium 60:15 77:21 128:18 132:14	presenting 61:7,23	procured 93:25	proximity 126:24 126:24 128:3
perspective 80:16	point 72:3 84:4 123:23 128:20	presently 74:23	procurement 81:1 93:23	public 54:9 66:4 67:11 69:16,18,18 69:24 75:12,18,23 99:22 116:7,9,18 132:20
ph 53:19 54:5,6,9,9	policyholders 75:4 75:11,17	preserve 111:21	product 101:7,16 102:10,20 104:6 113:14	publicly 89:7
phone 98:6,20 105:15 106:23	population 86:8	press 103:25	productive 79:20	purpose 122:13 127:9,17
physically 77:16	position 64:5 78:18 78:23 79:18 83:3 122:4,6	presuming 70:9	products 115:8,9	purposes 65:15,24 118:5
physician 85:9 124:1,2	potentially 65:20 77:18	presumptions 103:13	professional 52:1 55:1	pursuant 59:4,10 59:14,15 63:20 66:6
physicians 82:16 82:16 83:1,12 85:17,24 86:15 129:11	practical 81:22 82:13,23 84:22 88:16	pretty 99:1	program 79:6,12 79:24 80:12,13,15 91:23,23,23 125:13 129:4,9	put 89:3 101:7 108:11
pick 111:10	practicality 77:14	previous 70:8 71:20 82:25 101:24,24	proof 107:4 109:4	putting 63:23
picked 100:24 103:2	practice 130:12	previously 69:11 77:2 113:24 133:1	proper 72:16	
picking 87:9	pregnant 82:5 83:21	prima 65:20,22 100:9 114:9,10	proportion 88:23	Q
pie 90:20	prejudice 75:4	primary 80:3 82:4 116:15	proposal 107:20	qualification 72:13
piece 108:9,15	prejudicial 75:22	principal 100:3	proposals 75:7	qualifications 64:24 68:25
place 87:19 103:5 103:19 107:5 122:15 126:23,23 127:13 128:3	preliminary 62:22	prior 72:8 88:17 119:18 123:9	propose 72:15	qualified 109:20
placed 70:18 83:2	premises 115:7	privilege 79:4 90:19	proposed 52:4 55:2 58:8,19 60:7 63:4 66:20 69:20 74:20 89:20 97:16 99:24 107:15 121:23 122:1 126:15 133:20 134:1	quality 80:5,6,7
plan 53:18 56:18 60:13,15,17,21 80:24 83:2,9,10 86:22 88:3,7,12 88:14,15,21 95:6 98:1 118:21,23,24 119:5 122:5,6,12 122:19 123:17,23 124:23 125:3,5,6 125:14 129:6,14 129:15 130:2,12	prepared 59:5	procedural 58:19	provided 64:18 72:17,25 101:21	qualityofcare 79:16
		proceed 59:24 60:1 60:2 65:13 68:9 69:9 72:6 78:5,10 79:1 90:13 98:2		quarter 84:4
				question 99:6 104:24 105:25 106:3,5,10,13,25 107:5,11 108:21 109:16,17,21 110:13 111:25 112:15,16,19 114:6,22,24 115:3 115:11,13 124:5,7

<p>127:6 questioner 106:4 questioning 105:23 128:21 questions 53:12,15 53:16,17,20,21,22 53:22,23,24,24 74:3 75:25 76:3,7 78:14 87:24 90:2 90:5,6,8,15 95:24 96:1,2,4,5,11 97:10 98:14,19 110:5 111:24 116:20 117:2,4 118:16 121:10,14 121:15,16 124:14 126:9 127:4 128:14,15,16 129:18 130:21,24 quick 119:15 quite 93:14</p> <hr/> <p style="text-align: center;">R</p> <p>radius 81:17 raised 105:24 133:16 134:1 range 81:2 rates 94:19 reach 77:17 85:25 102:18 reached 86:23 100:7 103:7 reaches 88:7 reaching 112:24 read 63:22 reality 129:3,10 really 83:21 84:7 85:1 93:8 102:21 reask 106:9 112:20 reasonable 84:24 130:10 reasons 110:24 133:1 recall 113:18 recd 54:3 receipt 54:12 59:13</p>	<p>receive 59:3 89:16 95:17 134:5 received 63:7 65:15 66:5 73:6,15 121:7 130:2,6 131:10 133:2 recess 97:22 133:7 133:9 recognize 119:10 recontract 124:9 recontracting 125:10,12,21 126:13 record 59:1,2,8 62:2,25 66:3,18 66:25 68:4 70:25 71:1,5 73:8 74:6 77:8,10,12 78:16 82:10 87:16 97:18 97:21,24 98:21 101:2 107:2 109:14,15 118:19 132:25 133:1,8,11 133:15,22 134:15 134:18 redetermined 93:16 redirect 116:23 reduce 103:11 reduced 111:13 135:7 reducing 111:5 reduction 111:14 reference 88:1 referred 103:16 119:6 124:9 131:3 referring 124:8 127:18 refers 102:2 reflect 105:11 122:10 reflected 113:12 regarding 69:2 70:5 71:4 77:14 89:17 97:15 105:4 105:24 115:6,8</p>	<p>122:12 region 81:24 82:14 84:6,8 85:12 86:6 86:12 88:9,25,25 91:1,6,8,15 92:1,5 92:6,9,9,11 94:2 105:8,12 107:25 122:20 123:14 130:1,6,7,10 regions 88:7 91:9 91:11 92:21 registration 52:1 55:1 regulation 53:6,10 56:2,6 58:25 59:13,23 60:4 62:12,14,17 63:1 63:8 65:15 73:22 74:15 76:7,25 96:15 regulations 132:19 relate 71:22 related 64:4 82:4,4 85:9,17 86:16,18 133:21 134:1 135:8 relating 84:14 relationship 79:21 81:3,21 82:15 83:12 85:6 86:3 86:15 87:7 88:17 95:7 124:3,19 relationships 80:2 81:8,16 82:25 83:9 84:13 87:3 87:13 relative 135:10 relatively 86:5 98:20 releases 103:25 releasing 117:9 relevance 113:21 115:10 remain 59:3 82:9 87:23 111:11 125:4 133:15,22</p>	<p>134:16 remaining 134:8 remedy 108:2 renewed 95:15 renewing 70:8 repeat 106:12 rephrase 115:13 121:25 report 54:5,9 64:19 64:22 65:1 66:4,5 67:11,14,18 109:24 132:20,21 reported 55:20 reporter 58:3 72:24 96:9 99:6 100:16,18,20,21 102:25 103:2 106:9 115:22 135:1,4 reports 66:18 72:2 represent 98:17 represented 61:16 representing 60:14 77:13 represents 92:24 reputation 129:12 request 59:22 73:7 82:10 87:16 108:7 109:17 requested 67:19 72:9 133:14 requesting 59:1 required 59:6,13 63:12 72:9 82:19 82:20 123:22 requirement 81:7 88:6 134:3 requirements 74:22 82:22 86:4 86:21 requires 73:3 114:11 reread 106:8,9 reset 59:15 134:5 resolved 82:11 respect 71:21 73:2</p>	<p>100:12 103:11 104:20 110:17 113:9,14 114:17 116:14 respond 108:4 109:16 110:6 133:18 responded 85:5 responds 96:9 response 73:4 107:9 114:3 128:21,25 133:25 restabilize 126:21 result 89:5 107:24 108:3 111:3,14 112:2 123:15 resulted 106:16 results 105:12 retain 89:12 125:4 retained 54:16 64:16 65:25 reveal 74:19 75:1,6 75:14,21 review 58:18 65:15 69:16 74:17,19 75:1,6,14,21 115:21 120:13,16 reviewed 120:1 right 60:8 63:21,22 64:1 65:8 68:3,10 68:13,15,22,23 70:9 76:14 89:6 90:11 92:14 98:7 99:3,8,17,18 100:7 101:9 104:3 110:7,20 112:4 113:18 120:1,6 125:17 127:15,22 128:7 rnr 55:21 135:3 role 81:15 84:12 roll 129:8 room 55:10 57:6 58:13 81:7 98:20 119:2 ross 56:7 62:11</p>
---	--	--	--	---

<p>roughly 79:22 round 80:25 rpr 55:21 135:3 rule 107:23 ruling 68:14 69:3 71:4 run 87:6</p> <hr/> <p style="text-align: center;">S</p> <p>satisfaction 82:12 85:5 satisfy 74:21 says 118:8 134:10 scheduling 94:17 scored 81:1 seal 66:25 70:18 second 103:1 104:15,16 105:17 108:12 112:12,13 secret 66:7 108:12 section 59:4,6,11 59:14,15 60:6 sector 113:9 see 79:19 83:3 85:11 96:14 112:4 115:10 126:5 130:9 133:8 seeing 63:18 64:13 83:5 seek 125:1,13 131:21 seeking 94:12 seen 70:19,20 103:23,25 109:24 121:1 sees 130:13 segments 101:7,19 select 126:8 sell 75:8 89:8 selling 111:20 sense 94:11 sentence 103:5 separate 102:3,4,5 102:8,10 107:16 111:24 114:19 separately 101:17</p>	<p> 102:14,16 separation 115:8 september 58:20 82:17 95:12,13,13 95:14 124:25 126:2 129:2 serve 79:11 82:16 87:13 served 80:2 service 91:14 94:7 services 53:13 55:22 57:3 61:10 61:19 78:20 80:4 81:10,18 87:18 89:16 93:22 94:1 94:12,13 servng 79:5 set 59:2 134:6 seven 72:10 94:2,3 shannon 53:21 54:14 118:2,20 120:16 shape 82:7 share 67:6 105:5,9 105:13 107:25 121:14 shares 100:8 101:13 116:3 shift 130:9 shifts 113:1,17 short 62:21 83:22 84:19 85:3,3 86:13 shortly 122:16,17 shortterm 94:16 shoulder 90:20 shoulders 91:24 show 66:10 shut 124:11 signature 119:23 significant 113:16 122:18 125:6 significantly 93:7 123:13 similar 113:13 131:25</p>	<p>similarly 71:4 simple 85:1 simplest 110:5 simplicity 91:21 93:6 simply 85:24 114:6 simultaneous 110:19 single 88:7 110:5 110:13 sir 73:20 78:16 88:2 90:22 sit 104:17 107:23 situation 96:21 situations 131:14 six 94:2,2 slow 100:17,19 101:1 slowly 99:11,16 101:8 smaller 101:17 social 53:13 57:3 61:10,19 78:20 80:1 87:18 89:16 solely 108:20 somewhat 114:13 sorry 64:12 95:2 100:16 102:25 105:16 107:11 109:2 110:8 112:9 sort 85:11 88:16 103:20 sorts 94:15 sounds 99:9 south 56:11 91:13 speak 85:15 87:10 89:14 91:20 99:11 99:15 101:8 129:16 speaker 98:20 special 64:17 79:17 79:25 specialist 85:11 123:19,21 130:13 130:16 131:21 specialists 126:6</p>	<p>specialized 123:25 specialneeds 82:2 82:24 83:25 84:14 84:23 87:13 specialty 94:6,17 specific 85:14 87:4 88:3 101:16 119:14 122:15 specifically 94:4 96:19 108:23 133:14 specified 116:4 speeds 79:25 spencer 56:13 square 116:3 ssm 83:16 86:7 st 81:23 82:17 83:17,18 stability 75:3 standards 84:21 100:10 stands 91:24 start 89:7 103:4 state 52:2 53:18 55:2,10 56:18 58:14 60:12,15,17 60:20 74:5 77:13 78:10,16 79:10,21 79:22 80:11,14,22 80:24 83:10 84:9 84:16 87:6,7 93:19,22,25 95:6 95:22 98:1,18 104:1 109:13 118:6,8,13,18,21 118:22,24 119:5,9 120:17 121:5,7 122:5,6,7,19,23 123:17,22 124:23 125:3,5,6,14 126:2,7 128:5 130:2,6,15,19 131:17,22 132:1 132:12,23 135:4 stated 113:24 114:18 116:16</p>	<p> 133:1 statement 53:3,6,8 53:16 58:21 59:17 59:25 62:18,21 66:15,19 69:19 99:23 116:18 121:20 statements 121:24 states 84:17 statewide 92:20,23 93:2 97:2 100:12 101:11 statute 63:20,22 65:8 114:14 statutes 101:14 statutory 103:12 stay 123:19,21 stayed 95:3,3 steady 89:13,13 stepped 83:18 steven 56:10 62:7 stewart 55:21 135:3,17 sticker 118:8 stinson 56:20 stipulated 64:25 65:10,21,21 68:19 stipulates 64:20 stipulation 62:25 63:4,7,10,18 64:4 64:5 65:6 67:12 68:19,24 71:14,17 96:24 stipulations 96:14 stop 102:25 strategic 122:8 street 55:10 56:14 56:23 57:6 stricken 109:18 strong 81:14 87:12 106:19 strongly 80:6,10 structure 75:10 study 110:23 subject 107:16 133:23</p>
---	---	---	--	---

<p>submit 72:15 submitted 77:2 101:22 subsidiaries 65:17 subsidiary 80:24 89:9 substance 120:21 substantial 61:13 79:15 81:25 82:3 83:7 84:5 86:18 87:1,12 suddenly 82:25 84:1 suite 55:23 56:14 sum 116:3 summary 66:4 69:13,18,18,25 99:22 100:13 101:6 116:7,9 119:15 132:20 support 80:1 101:22 supported 107:2 suppose 110:4 sure 64:23 70:20 88:5 93:17 96:17 99:5 101:10 104:16 109:6 112:21 118:20 119:13 sustain 112:18 115:5 sustained 65:5 108:18 109:3,22 110:10 swear 98:11 switch 131:8 switched 95:5 switching 83:9 sworn 74:2 78:12 78:13 98:9,12 118:15 system 83:16,18,23 84:2 86:7,7 87:5 94:25 95:5 systems 85:18</p>	<p>86:12,16</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 89:2 97:18 106:3 107:5 126:21 133:7 taken 97:22 126:17 126:23 133:9 135:6,10 talk 99:4 127:22 talked 92:7 93:17 94:4 131:1,6 talking 94:6 99:4 101:5 127:21 131:5 tamara 56:3 62:13 targets 114:22 taxpayer 80:16 technology 117:17 telephone 77:18 78:9 97:20 tell 92:8 95:11 97:1 100:6 116:9 ten 93:13 106:20 tender 127:1 term 84:19,19,20 123:2,4 126:1 terminate 123:5 131:23 terminated 82:15 termination 82:21 123:10,15,16 124:25 126:12 terms 81:20 82:20 84:20 testified 105:7,8 108:19 114:9 115:6 123:20 124:18,21 testify 76:16 114:9 testimony 61:14 68:4 77:14 88:1 90:18 98:21 117:14 119:3,6 120:2 127:17 129:21 135:5</p>	<p>thank 60:18,24 61:3,15,20 62:9 62:15 63:2 65:11 67:4,16 69:6,7 70:6,12 71:23 72:4,7 73:17,19 73:20 76:4,9 77:5 77:6 78:4 79:2 87:21,22 90:3,14 90:17 95:23 96:2 96:6,10 97:9,12 98:3 99:19 106:11 116:8,19,21 117:4 117:11,15,18 118:12 121:11 128:12,19 132:3,7 132:9,11,22 thats 78:1 90:10 92:6 97:9 98:6 101:6 106:22 107:6 108:2,10,12 110:2,7 111:19 115:3 125:24 126:4 131:9 therapies 80:4 therapists 81:12 thereof 66:11 thereto 135:12 theyre 82:18 86:7 126:6 thing 110:5 131:5 things 116:15 think 64:23 79:6 82:3,7 85:19 92:7 93:5 95:12 99:3 100:13,21,24 101:4 104:3 107:6 112:15 114:14 115:2 117:13 124:5,16,17 129:23 130:22 132:2 third 86:22 88:3 89:10 thirdtothe 119:23 thought 110:7</p>	<p>thousands 82:24 threat 82:1 83:14 84:5 threatened 84:7 86:13 three 80:25 81:24 85:8 88:7 89:11 93:18 111:12 113:20 114:6 115:11 threshold 101:14 116:4 thresholds 101:18 tight 104:17 time 60:14 61:25 62:23 63:18 64:13 67:23 69:2,4,10 69:24 71:2,6 72:1 73:7,18 76:23 77:5,7 78:25 82:9 83:23 84:17,25 95:10 96:15 97:17 101:24 106:4 108:11,12 115:10 117:12,21 120:16 120:19,22 129:24 130:17 133:6 134:9 timeframe 85:3 times 84:14 timing 110:18 123:11 title 102:2,4 titled 66:19 69:18 today 60:20 61:17 72:11 73:23 107:19,23 113:2,6 119:2 121:18 127:22,24 128:1 133:13,16 134:1 today's 72:17 top 81:2 total 88:8 92:6,12 92:24 trade 66:7 115:21 training 79:15</p>	<p>transaction 61:13 74:20 79:10 127:21,25 transcript 52:10 135:6 transfer 124:1 125:7 130:15 131:2,7 transferred 125:2 transfers 130:3,7 transparency 69:17 treatments 80:4 tremendous 84:10 tried 127:7 true 101:13 truman 55:10,23 58:14 trying 110:2 112:23 124:11 turbulence 81:25 turmoil 82:1 turning 106:22 twelve 93:13 two 66:3,18 79:9 86:11 88:11 105:10 107:24 111:23 123:16 127:6 132:23 type 81:17 typewriting 135:7 typically 130:11</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 124:24 128:4 um 113:18 uncertainty 83:3 uncontested 63:7 understand 94:21 96:20 98:21 100:6 101:20 104:3 106:3 111:25 112:19,23 123:11 129:21 132:2 understanding</p>
---	---	---	--	--

85:22 86:22 103:7 103:15,18,20 109:7,12 114:15 unfair 75:11 university 82:15 83:1,12 84:2 85:2 85:7,17,24 86:15 87:5 89:19 122:12 122:22 123:1,2,6 123:9,18,24 124:3 124:20,25 125:2 125:14 126:6,13 126:14 128:24 131:18,20 unreasonable 75:11 unsure 106:2 unusual 106:1 123:7 upheaval 83:7 upside 106:23 usa 52:4 55:4 58:9 58:22 91:4 92:10 92:22 123:1,2,8 124:18 125:11,15 126:8,12,14,18 128:23 131:25 use 115:21 118:6 123:3 utilization 94:19	voir 68:16 70:9 volatile 66:12 volume 52:9 55:8 <hr/> W <hr/> wacker 56:11 wait 99:5 waive 70:20 want 64:23 84:11 85:21 88:13 94:25 109:11 119:14 123:3 124:6 126:1 129:13 wanted 85:1 95:17 wants 124:17 wash 85:20 94:5,6 94:10 95:7,18 131:12 washington 66:1 82:15 83:1,12 84:1 85:2,7,16,24 86:15 87:4 89:18 122:11,22 123:1,2 123:6,9,18,24 124:3,20,25 125:2 125:13 126:5,13 128:24 131:18,20 way 63:22 99:3 112:20 116:11 121:23 wed 68:5 weeks 123:17 weinberg 73:5 welcome 78:4 91:18 117:19 wellcare 121:20 133:21 went 130:17 wenzel 56:13 62:4 62:4 72:5 west 55:10 56:23 57:6 88:25 92:8 weve 93:17 119:8 whites 66:1 whitmer 53:8,24 56:10 62:6,7	63:14 67:25 70:3 72:5,7,21,23 73:17 76:3 77:4 90:1,2 96:2 106:24 108:4,6 109:10,13 112:9 112:14 114:2,4,21 117:3,4 120:18 127:3,5 128:12 132:6 134:12 wholly 78:1 wish 61:6,14,23 62:18 66:16 73:22 78:6 85:14 97:14 117:21 133:7 134:9 wished 123:18,21 wishes 90:8 117:7 133:5 wishing 60:25 withdraws 132:23 withheld 71:5 withhold 68:14 69:3 witness 60:22 64:24 65:2 68:4 68:16,16 70:10 74:1,2 76:4,7,12 76:16,17 78:13 98:12 99:18 103:4 104:14 105:3,20 106:7 108:19 109:16,20,24 114:8,23 115:6,11 117:10,15,19,23 118:15 121:10 123:5 124:6 127:2 128:14 129:23 130:21 132:5 witnesses 60:9 63:21 65:9 68:11 68:12,23 witness 114:15 women 82:5 83:21 wont 85:20 word 118:8	words 106:20 111:9 working 81:4,5 write 74:22 127:7 written 60:10 61:24 133:25 wrong 127:8 <hr/> X <hr/> xix 102:2,4 <hr/> Y <hr/> years 78:22 80:22 83:5 95:9 123:9 youd 127:24 youll 87:23 youre 70:9 78:3 91:18 97:12 98:21 107:23 117:19 127:21,24 128:6 132:9,14 youve 66:15 <hr/> Z <hr/> 0 <hr/> 00 55:9 000 79:21,23 86:5 125:7 004 92:15 05 58:5 060 59:11,15 60:6 65:8 095 59:4,6,14 66:6 <hr/> 1 <hr/> 1 54:13 81:1 82:17 118:7,13 119:9 120:17 121:6,7 10 53:23 59:7 83:5 11 130:2,10 111 56:11 115 92:2 118 53:21 54:14 11th 124:25 12 53:17 92:19 120920539c 52:7 55:4 58:12	121 53:22 54:14 124 53:22 126 53:23 127 53:24 13 122:24 130 53:24 133 54:6,9 14 53:3 54:14 93:4 15 53:15,20,22 54:10,11,12 58:2 69:22 72:14,16 73:1,1,7,13,15 83:5 96:19 123:9 124:18 128:23 15th 66:21 85:5 92:1 95:14 124:10 125:23 126:3 16 53:16 54:12 58:2 72:16 73:4,8,13 73:15 92:4 96:19 17 53:6,21,22 67:14 17th 58:20 18 67:14 92:4 186 92:1 19 52:11 55:9 67:14 92:3 19th 58:6 1st 119:1 130:4,18 <hr/> 2 <hr/> 2 54:11,12 116:6 20 67:14 2012 58:20,24 59:7 59:9 80:23 84:4 119:1 130:4,5,18 2013 52:11 55:9 58:6 59:12,16 66:22 69:22 207 55:23 20th 122:16,17 21 67:14 215 126:7 22 67:15 221 57:6 222 56:14 224 92:23
--	---	---	---	--

225 92:3 93:2	<u>5</u>	89 92:2		
23 67:12 71:17	5 53:24 92:15	<u>9</u>		
230 56:23 57:6	500 116:6	9 55:9 58:5		
24 67:12 71:17	52 92:18	90 53:16 93:4		
25 53:24 71:17 93:3	5226115 56:5	104:10,19 105:4		
25th 59:9	5263552 56:8	105:10,13 106:17		
26 71:17	55 93:3	107:25		
27 71:18,21	564 92:1	900 79:21		
278 92:12	573 55:25 56:5,8,16	940 55:10		
28 71:19,21	56:25 57:8	95 92:3 93:2		
29 71:19,21	577 92:24	96 53:17		
29th 59:12	58 54:11,12	964 93:3		
<u>3</u>	59 92:24	98 53:20		
3 53:12,16 54:6,9	<u>6</u>			
59:4,14 60:6 66:6	6 64:12 125:7			
30 92:15	60606 56:11			
301 55:10	61 92:2			
308 56:14	6348112 56:16			
312 56:12	6366263 56:25			
31st 130:4	6367551 55:25			
33 92:3	65 53:3 88:8,24			
34 92:14	89:3			
3432 55:23	65101 55:11 56:4,8			
35 93:3	56:15,24 57:7			
36 92:19	65109 55:24			
37 92:3	66 53:6			
375 92:24	67 54:6,9			
382 59:4,6,11,14,15	690 56:4,7			
60:6 65:8 66:6	<u>7</u>			
388 92:23	7 53:8 92:19 102:1			
3rd 58:24	116:17			
<u>4</u>	70 92:12			
4 59:6 64:15	72 53:8			
401 55:21 135:18	73 54:11,12			
425 79:23	74 53:12 92:24			
43 92:19	7511334 57:8			
4431869 56:12	78 53:15			
459 92:2	79 53:16			
470 92:15	<u>8</u>			
48 86:5	8 54:6,9,14			
49 92:18	804 92:14			
490 58:13	85 130:7			
4th 59:16	880 92:3			