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1 BEFORE THE DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION
2 STATE OF MISSOURI
3
4 DIVISION OF INSURANCE)
COMPANY REGULATION,)
5)
Petitioner,)
6)
vs.) Case No. 160325191C
7)
AETNA INC.)
8 and HUMANA INC.,)
)
9 Respondents.)
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14 HEARING
15 VOLUME I
16 (Petitioner's Case in Chief)
17 May 16, 2016
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1 APPEARANCES
2
3 FOR THE PETITIONER:
4 KELLY A. HOPPER
5 Legal Counsel
6 Department of Insurance, Financial
7 Institutions and Professional
8 Registration
9 301 West High St
10 Jefferson City, MO 65109
11 (573)751-2619
12 Kelly.Hopper@insurance.mo.gov
13
14 JAY ANGOFF
15 Attorney at Law
16 MEHRI & SKALET, PLLC
17 1250 Connecticut Avenue NW, Suite 300
18 Washington, DC 20036
19 (202)822-5100
20 jay.angoff@findjustice.com
21
22 FOR THE RESPONDENT AETNA INC.:
23 CHARLES W. HATFIELD
24 Attorney at Law
25 STINSON LEONARD STREET
26 230 W. McCarty Street
27 Jefferson City, MO 65101-1553
28 (573)636-6827
29 chuck.hatfield@stinsonleonard.com
30
31 STEVEN T. WHITMER
32 ASHLEE M. KNUCKEY
33 TIMOTHY S. FARBER
34 Attorneys at Law
35 LOCKE LORD, LLP
36 111 South Wacker Drive
37 Chicago, IL 60606
38 (312)443-0694
39 aknuckey@lockelord.com
40 swhitmer@lockelord.com

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1 FOR THE RESPONDENT HUMANA INC.:
2 ELENA M. COYLE
3 MICHAEL HOMISON
4 Attorneys at Law
5 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
6 4 Times Square
7 New York, NY 10036
8 (212)735-2099
9 elena.coyle@skedden.com
10
11 REPORTED BY:
12 KELLENE K. FEDDERSEN, RPR, CSR, CCR
13 Missouri CCR No. 838
14 Midwest Litigation Services
15 3432 West Truman Boulevard, Suite 207
16 Jefferson City, MO 65109
17 (573)636-7551
18
19
20
21
22
23
24
25

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1 (WHEREUPON, the hearing began at
2 9:20 a.m.)
3 HEARING OFFICER ERICKSON: I call
4 this hearing to order on May 16, 2016. This
5 hearing is in the matter of Division of Insurance
6 Company Regulation, Petitioner versus Aetna Inc.
7 and Humana Inc., Respondents, Case No. 160325191C.
8 This hearing is being held in Room
9 520B of the Harry S Truman State Office Building,
10 Jefferson City, Missouri, with audio only available
11 in Room 520A to accommodate additional attendees.
12 My name is Mary Erickson. I am chief
13 counsel, Insurance Division with the Missouri
14 Department of Insurance, Financial Institutions and
15 Professional Registration. I have been appointed
16 the hearing officer in this matter.
17 This matter comes before the director
18 upon the filing of a request for hearing by the
19 Division of Insurance Company Regulation, Missouri
20 Department of Insurance, Financial Institutions and
21 Professional Registration regarding a Form E
22 pre-acquisition notification filed by Aetna Inc.
23 pursuant to Section 382.095, Missouri Revised
24 Statutes 2015 to acquire Humana Inc.
25 As provided by the notice regarding

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1 this public hearing, any interested person may
2 attend this hearing. If they choose, any
3 interested person on their own behalf or on behalf
4 of any entity or organization may provide oral or
5 written comments regarding Aetna's proposed
6 acquisition of Humana.
7 This hearing will proceed as follows:
8 The parties may make opening statements, with the
9 option for the respondent to reserve the right to
10 make their opening statements prior to the
11 presentation of the evidence in their case.
12 The Division of Insurance Company
13 Regulation, which I will refer to as the Division,
14 will present its evidence first. Aetna and Humana
15 may then present their evidence. The division will
16 have an opportunity to present additional evidence
17 in rebuttal. The Division and the insurers will
18 have an opportunity to cross-examine each other's
19 witnesses.
20 After the presentation of evidence by
21 the parties, I will ask if there are any interested
22 persons who wish to come forward and make an oral
23 comment or to submit a written comment or both.
24 Additionally, any interested person may submit
25 written comments that must be received no later

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1 than four o'clock p.m., Thursday, May 19, 2016. As
 2 outlined in the Amended Notice of Hearing found on
 3 the Department's webpage dedicated to this matter,
 4 www.insurance.mo.gov/Aetnahumana, the public
 5 written comments will be posted on the Department's
 6 webpage. All open evidence will be posted on the
 7 webpage as well as the transcript as soon as it
 8 becomes available.
 9 At this time I ask each counsel for
 10 the parties to identify themselves for the record
 11 and to identify the party they represent.
 12 Division?
 13 MR. ANGOFF: Jay Angoff, your Honor,
 14 for the Division of Insurance Company Regulation.
 15 MR. HOPPER: Kelly Hopper for the
 16 Division of Insurance Company Regulation.
 17 MR. WHITMER: Good morning, your
 18 Honor. Steven Whitmer representing Aetna Inc.
 19 MR. FARBER: Tim Farber representing
 20 Aetna Inc.
 21 MR. HATFIELD: Chuck Hatfield with
 22 the Stinson Leonard Street law firm, representing
 23 Aetna Inc.
 24 MS. COYLE: Elena Coyle representing
 25 Humana Inc.

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1 MR. HOMISON: Michael Homison
 2 representing Humana Inc.
 3 HEARING OFFICER ERICKSON: Thank you.
 4 Does the Division -- let me, before I begin with
 5 opening statements, are there any stipulations that
 6 the parties wish to make on the record today?
 7 MR. WHITMER: Yes, your Honor. There
 8 is a stipulation that we would like to collectively
 9 read into the record at this time.
 10 HEARING OFFICER ERICKSON: Please
 11 proceed, Mr. Whitmer.
 12 MR. WHITMER: The stipulation states,
 13 Aetna Inc, Humana Inc. and the Division of
 14 Insurance Company Regulation, collectively the
 15 parties, hereby stipulate and agree that with
 16 respect to the line health-only reporters,
 17 disability, long-term care, stop loss and other
 18 health, which is identified in Aetna's Form E
 19 submission, the effect of the proposed acquisition
 20 in the captioned matter would not be substantially
 21 to lessen the competition or tend to create a
 22 monopoly therein pursuant to Section 382.095,
 23 Missouri statutes.
 24 Your Honor, we respectfully request
 25 the opportunity to approach the bench and present

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1 that written stipulation at this time.
 2 HEARING OFFICER ERICKSON: Please
 3 proceed. Does the Division agree to this
 4 stipulation?
 5 MR. HOPPER: It does.
 6 HEARING OFFICER ERICKSON: Thank you.
 7 Stipulation is entered into the record. Are there
 8 any other stipulations the parties wish to make at
 9 this time?
 10 MR. WHITMER: Not at this time, your
 11 Honor.
 12 MR. HOPPER: Your Honor, it was my
 13 understanding that we were going to stipulate to
 14 the admissibility of some exhibits. Is that no
 15 longer the case?
 16 MR. WHITMER: We had no other written
 17 stipulations, your Honor. We're prepared to
 18 address the exhibits at this time.
 19 HEARING OFFICER ERICKSON: All right.
 20 If the parties would like to proceed with the
 21 discussion of what exhibits are stipulated to, I do
 22 have the parties' exhibit lists in front of me.
 23 The Division, would you please proceed first?
 24 MR. HOPPER: The Division is prepared
 25 to stipulate to the admissibility of Exhibits A

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1 through EE, which I believe is the entirety of
 2 Aetna and Humana's exhibit list.
 3 MR. WHITMER: And Aetna agrees, of
 4 course, to that stipulation.
 5 HEARING OFFICER ERICKSON: As to
 6 Exhibits A through EE offered today by Aetna and
 7 stipulated to by the Division, are there any
 8 records that need to be ordered closed or
 9 confidential or that have already been ordered
 10 closed and confidential?
 11 MR. WHITMER: Yes, your Honor. We
 12 will address those each in turn. First of all,
 13 Exhibit A is the Form E, and that document is
 14 explicitly given confidential treatment pursuant to
 15 Missouri law and pursuant to your Honor's May 2nd,
 16 2016 order. The specific statutes that apply here
 17 are the Sunshine laws, Section 610.021, sub 14, and
 18 also the Holding Company Act to which you just
 19 referred, your Honor, which is Section 382.095,
 20 sub 3.
 21 The second document is Exhibit B,
 22 and Exhibit B is Aetna's response to the
 23 Department's initial request. That document is
 24 also protected pursuant to Section 610.21, sub 14,
 25 20 CSR 10-2.400, sub 3, sub K, sub 2, and

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1 Section 417.453, and finally Section 382.095.3.
 2 That document is also protected pursuant to your
 3 Honor's May 2nd, 2016 order.
 4 The next document is Exhibit C. This
 5 is Dr. McCarthy's report. That document is
 6 protected pursuant to all the same statutes that I
 7 just read into the record. With respect to
 8 Exhibit B, it is also protected pursuant to your
 9 Honor's May 2nd, 2016 order, and that document
 10 contains trade secret information that is defined
 11 by Section 417.45, sub 4.
 12 In addition, your Honor, I'm going to
 13 lump together Exhibits I, J, K, N, O, P and Q.
 14 These documents contain data and analyses that are
 15 with respect to both Aetna and Humana and their
 16 businesses. All of these documents were produced
 17 in response to the Division's document requests in
 18 this matter, which we've referred to as the second
 19 request.
 20 These documents are protected
 21 pursuant to section -- well, the same sections that
 22 we've identified. I'll mention them briefly.
 23 610.021, sub 14. 20 CSR 10-2.400, sub 3, sub K,
 24 sub 2, and Section 417.453. These are additionally
 25 protected pursuant to your Honor's May 2nd, 2016

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1 order, and we would note specifically that these
 2 documents contain trade secret information as
 3 defined by Section 417.453, sub 4.
 4 HEARING OFFICER ERICKSON: And that's
 5 the grouping on that, Mr. Whitmer, I, J, K, O, P,
 6 Q?
 7 MR. WHITMER: You missed N, your
 8 Honor.
 9 HEARING OFFICER ERICKSON: Thank you.
 10 MR. WHITMER: Correct. And it is our
 11 understanding that the Department both stipulates
 12 to the confidentiality of those documents and to
 13 the closure of those documents with respect to this
 14 proceeding, but Mr. Hopper can speak to that.
 15 HEARING OFFICER ERICKSON:
 16 Mr. Hopper?
 17 MR. HOPPER: We do.
 18 MR. WHITMER: And with that, your
 19 Honor, we are going to at this time confirm that
 20 Aetna and Humana have stipulated to certain of the
 21 documents on Petitioner's exhibit list, and that's
 22 Exhibits 1 through 34, which are identified on the
 23 list that has been provided to your Honor.
 24 There are two additional documents
 25 that we just discussed with counsel this morning.

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1 That's Exhibit 35 and 36. We have not yet had the
 2 opportunity to review those, as we just received
 3 them. We will address later whether they are also
 4 going to be stipulated with respect to
 5 admissibility. Mr. Hopper may confirm what I just
 6 said.
 7 MR. HOPPER: Yes, that confirms the
 8 understanding with regard to Exhibits 1 to 34 of
 9 the Division, and we agree to that stipulation.
 10 HEARING OFFICER ERICKSON: Does the
 11 Division have any exhibits that it wishes to be
 12 held closed and confidential?
 13 MR. HOPPER: We do. Not as many as
 14 Respondents. Exhibit No. 8 is confidential as to
 15 the public, as well as to the party Humana Inc.,
 16 pursuant to Missouri statute, Section 610.021,
 17 sub 14, and Section 382.095.3 -- excuse me. Not
 18 that statute. Also pursuant to an order of Madam
 19 Hearing Officer in this case, as well as to the
 20 trade secret law cited by Mr. Whitmer. This
 21 exhibit is a subset of an exhibit that will be
 22 offered by the other side.
 23 An additional confidential exhibit
 24 will be Exhibit 11. This is the Form E that was
 25 filed with the Department. This document is closed

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1 pursuant to Section 610.021, sub 14, and
 2 Section 382.095.3.
 3 Our final confidential exhibit will
 4 be Exhibit 12, which is closed pursuant to those
 5 same two statutes. This is a letter sent by the
 6 Division in response to the Form E.
 7 MR. WHITMER: And, your Honor, Aetna
 8 confirms that we are in agreement with the
 9 confidentiality as discussed by counsel.
 10 MS. COYLE: And, your Honor, Humana
 11 confirms as well.
 12 HEARING OFFICER ERICKSON: Thank you,
 13 counsel. Regarding the Exhibit 12, that document
 14 has already been previously filed, I note, by
 15 Aetna/Humana with regards to a motion and had not
 16 been previously requested to have confidential
 17 treatment.
 18 MR. WHITMER: Your Honor, it was
 19 provided to you in a redacted form. There's an
 20 amended motion which confirms it was provided to
 21 you in redacted form.
 22 HEARING OFFICER ERICKSON: Counsel,
 23 please approach.
 24 (AN OFF-THE-RECORD DISCUSSION WAS
 25 HELD.)

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1 HEARING OFFICER ERICKSON: Back on
 2 the record. Mr. Hopper, could you clarify, please,
 3 Exhibit -- Mr. Hopper, could you please clarify
 4 Exhibit 12?
 5 MR. HOPPER: Yes. With regard to
 6 Exhibit 12, the first page of Exhibit 12 is public.
 7 The remainder of Exhibit 12 is closed and
 8 confidential pursuant to the statutes previously
 9 mentioned.
 10 MR. WHITMER: Your Honor, if I can
 11 confer with counsel for a second?
 12 We've got it figured out. Thank you,
 13 your Honor.
 14 HEARING OFFICER ERICKSON: Thank you.
 15 Pursuant to stipulation, Petitioner's Exhibits 1
 16 through 34 are offered and admitted.
 17 (PETITIONER'S EXHIBIT NOS. 1 THROUGH
 18 34 WERE RECEIVED INTO EVIDENCE.)
 19 HEARING OFFICER ERICKSON: For the
 20 record, I am ordering that exhibits of Petitioner
 21 Division of Company Regulation, Exhibits 8, 11, and
 22 12, except for the first page, be declared
 23 confidential and closed records, not subject to
 24 disclosure, for the reasons stated by the parties.
 25 Regarding the Respondent's exhibits

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1 presented and offered by Aetna, Exhibit A through
 2 EE are admitted.
 3 (RESPONDENT'S EXHIBITS A THROUGH EE
 4 WERE RECEIVED INTO EVIDENCE.)
 5 HEARING OFFICER ERICKSON: For the
 6 record, I am ordering that Exhibits A, B, C, I, J,
 7 K, N, O, P, Q be declared confidential and closed
 8 records and not subject to disclosure for the
 9 reasons stated by the parties.
 10 Counsel, does that adequately review
 11 all of the exhibits that have been offered and
 12 admitted, except for two exhibits of the Division?
 13 Is that correct?
 14 MR. HOPPER: That is correct.
 15 MR. WHITMER: It does, your Honor.
 16 HEARING OFFICER ERICKSON: Thank you.
 17 Does the Division wish to make an opening
 18 statement?
 19 MR. ANGOFF: Yes, we do, your Honor.
 20 HEARING OFFICER ERICKSON: Please
 21 proceed. Use the microphone, if you could, sir.
 22 MR. ANGOFF: Your Honor, the Division
 23 of Insurance Company Regulation has concluded that
 24 the Aetna/Humana merger would tend to substantially
 25 lessen competition in multiple lines of insurance

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1 in Missouri. The evidence is uncontroverted that
 2 in the small group market, the market shares of the
 3 parties combined are around 20 percent or in excess
 4 of 20 percent. In the large group market, the
 5 evidence is uncontroverted that market shares are
 6 above 20 percent. In the individual market, the
 7 evidence is uncontroverted that the market shares
 8 are above 40 percent. And in the Medicare
 9 Advantage business, the evidence is uncontroverted
 10 that the combined market shares are above 55
 11 percent.
 12 Now, this is a national merger. In
 13 many states the merger would not have any
 14 competitive effects, but in this state it's clear
 15 that it does. And the reason those market shares
 16 that I mentioned are so significant, your Honor, is
 17 that there's a very specific prescriptive statute
 18 that controls this case, 382.095 of the Missouri
 19 Insurance Holding Company Act.
 20 And that statute sets up market share
 21 thresholds pursuant to which, if the merging
 22 parties have market shares that exceed the
 23 thresholds in the statute, the merger is deemed
 24 prima facie anti-competitive.
 25 Now, the parties under the statute

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1 can rebut that prima facie case by introducing
 2 other evidence, by showing, for example, that the
 3 number of competitors in the market undercut the
 4 prima facie case or that the amount of
 5 concentration in the market undercut the prima
 6 facie case or that the ease of entry into the
 7 market undercuts the prima facie case.
 8 In this case, your Honor, though,
 9 those factors and others don't undercut the prima
 10 facie case. They don't rebut the prima facie case.
 11 They reaffirm the prima facie case. They
 12 strengthen it.
 13 Now, the statute also allows the
 14 parties to defend on the grounds that even if the
 15 merger is anti-competitive, the merger would create
 16 efficiencies of such magnitude that they would
 17 outweigh any anti-competitive effects of the
 18 merger.
 19 The Missouri Insurance Department has
 20 never adopted that, recognized that argument, and
 21 to our knowledge, to the extent that we could find
 22 decisions in other insurance departments, no other
 23 insurance department has either.
 24 And the federal government under its
 25 antitrust statute, the Clayton Act, which is

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1 different than the Missouri statute, but under that
 2 statute federal courts have never recognized an
 3 efficiencies defense. It's particularly difficult
 4 to make in this case, your Honor, both because the
 5 market shares exceed the statutory thresholds to
 6 such a great extent and because the other relevant
 7 factors don't weaken the prima facie case but
 8 rather strengthen it.

9 Two final points, your Honor. First,
 10 today this merger looks even more anti-competitive
 11 than it did when Aetna filed its Form E, through no
 12 fault of the parties but changed circumstances, and
 13 the one big changed circumstance is this: One of
 14 Aetna's major arguments as to why the merger is not
 15 anti-competitive in the individual market is that
 16 even if the merger were approved and the parties
 17 did engage in super-competitive pricing, consumers
 18 would be protected because United Health Care is
 19 both the largest company in the individual market
 20 and in particular on the exchange and the lowest
 21 priced company on the exchange.

22 A few weeks ago, as the evidence will
 23 show, the Division received a letter from United
 24 saying that they were withdrawing from the exchange
 25 market in Missouri for 2017. So that increases our

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1 concern about the likelihood that there will be an
 2 anti-competitive effect of this merger.

3 And final point, your Honor, is this:
 4 In most states the insurance director has the
 5 authority to disapprove excessive health insurance
 6 rates. So the argument in those states can be made
 7 that if an insurance merger is approved and it
 8 turns out that, due to the merger, the companies do
 9 engage in super-competitive pricing, that they do
 10 charge excessive rates, there is a safety valve
 11 because the insurance director can disapprove an
 12 excessive rate.

13 That safety valve, your Honor, does
 14 not exist in Missouri. The insurance director has
 15 no authority to disapprove an excessive rate.

16 A few days ago before the Legislature
 17 adjourned, the Legislature did pass a law that for
 18 the first time required insurance companies to file
 19 their rates in Missouri, but it did not give any
 20 authority to the director to disapprove excessive
 21 rates.

22 So in conclusion, your Honor, the
 23 Division believes that this merger in Missouri
 24 would tend to substantially lessen competition in
 25 multiple lines of insurance, and for that reason,

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1 we'd be asking the director to issue an order that
 2 would prevent a consummation of this merger.

3 HEARING OFFICER ERICKSON: Thank you,
 4 Mr. Angoff. Mr. Whitmer, would you like to make an
 5 opening statement at this time or defer?
 6 MR. WHITMER: Defer, your Honor.

7 HEARING OFFICER ERICKSON: Thank you.
 8 Humana?
 9 MS. COYLE: We would also like to
 10 defer at this time.

11 HEARING OFFICER ERICKSON: Thank you.
 12 Mr. Angoff, Mr. Hopper, please proceed with the
 13 Division's evidence.

14 MR. HOPPER: Pursuant to
 15 20 CSR 800-1.100, sub 6, sub E, a rule promulgated
 16 by the Missouri Department of Insurance, Financial
 17 Institutions and Professional Registration,
 18 official notice at this hearing may be taken of all
 19 facts of which judicial notice may be taken and the
 20 other facts of a technical nature within the
 21 specialized knowledge and experience of the
 22 director. Judicial notice of federal law may be
 23 taken pursuant to Section 490.080 of the Revised
 24 Statutes of Missouri.

25 The Division moves and requests that

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1 the hearing officer take official notice of
 2 Title 42 of the United States Code entitled the
 3 Public Health and Welfare.

4 HEARING OFFICER ERICKSON: Any
 5 objection?
 6 MR. WHITMER: Your Honor, all
 7 statutes are in play today. No objection.

8 HEARING OFFICER ERICKSON: Thank you.
 9 Official notice is taken of Title 42 of the United
 10 States Code.

11 MR. HOPPER: Thank you. Judicial
 12 notice of federal regulations may be taken pursuant
 13 to Missouri common law. The Division moves and
 14 requests that the hearing officer take official
 15 notice of Title 42 of the Code of Federal
 16 Regulations, entitled Public Health.

17 MR. WHITMER: No objection.

18 HEARING OFFICER ERICKSON: Thank you.
 19 Official notice is taken of Title 42 of Code of
 20 Federal Regulations.

21 MR. HOPPER: The Division next moves
 22 and requests that the hearing officer take official
 23 notice of the certificates of authority and
 24 licenses issued by the Missouri Department of
 25 Insurance, Financial Institutions and Professional

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1 Registration and the identifies of the entities to
 2 which those certificates of authority and licenses
 3 have been issued, which are facts of a technical
 4 nature within the specialized knowledge and
 5 experience of the director.
 6 HEARING OFFICER ERICKSON: And which
 7 certificates of authority or licenses do you wish
 8 the hearing officer to take official notice of?
 9 MR. HOPPER: All certificates of
 10 authority issued to health maintenance
 11 organizations.
 12 MR. WHITMER: Your Honor, I don't
 13 believe these are identified as exhibits for this
 14 matter.
 15 MR. HOPPER: No, they are not.
 16 MR. WHITMER: They certainly could
 17 have been. So we object.
 18 HEARING OFFICER ERICKSON:
 19 Mr. Whitmer, do you agree that the director is the
 20 holder and custodian of the certificates of
 21 authority and licenses that have been issued to
 22 insurers?
 23 MR. WHITMER: Absolutely.
 24 HEARING OFFICER ERICKSON: And that
 25 just as a court may take judicial notice of its own

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1 records, that the director may take official notice
 2 of his own records?
 3 MR. WHITMER: Your Honor, we have no
 4 objection to that. Our concern is about if there's
 5 going to be questions asked to witnesses today
 6 about specific documents that were not introduced
 7 as exhibits. That's our objection. But certainly
 8 we have no concern of the director or your Honor
 9 taking judicial notice of those filings.
 10 HEARING OFFICER ERICKSON:
 11 Mr. Hopper?
 12 MR. HOPPER: That is what we asked
 13 for, so that's acceptable.
 14 HEARING OFFICER ERICKSON: You will
 15 not be using the physical documents to discuss the
 16 subject matter on those documents with the
 17 witnesses; is that correct?
 18 MR. HOPPER: No, we will not be
 19 introducing physical documents containing
 20 certificate of authority or licensing information
 21 that have not been admitted as evidence.
 22 HEARING OFFICER ERICKSON: At this
 23 time I will take official notice of certificates of
 24 authority and licenses issued to health maintenance
 25 organizations as requested by Petitioner. I do

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1 note the objection. However, these are records
 2 that are maintained by the Department, and the
 3 director may take official notice of the records.
 4 If, however, the point comes where the parties need
 5 to address specific documents, a certified copy can
 6 be obtained and will be produced to show any
 7 witness, and you may preserve your objection at
 8 this time, Mr. Whitmer.
 9 MR. WHITMER: Thank you, your Honor.
 10 HEARING OFFICER ERICKSON: Thank you.
 11 Mr. Hopper, proceed.
 12 MR. HOPPER: Your Honor, the request
 13 was intended to continue and include Chapter 376,
 14 life and health insurance companies, as well as
 15 Chapter 379, property and casualty insurance
 16 companies.
 17 MR. WHITMER: Same objections, your
 18 Honor.
 19 HEARING OFFICER ERICKSON: To
 20 clarify, the request is for the hearing officer to
 21 take official notice of all certificates of
 22 authority or licenses issued to companies organized
 23 under Chapters 376 and 379; is that correct,
 24 Mr. Hopper?
 25 MR. HOPPER: That is correct.

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1 HEARING OFFICER ERICKSON: Noting
 2 Mr. Whitmer's objection, official notice will be
 3 taken of those certificates of authority and
 4 licenses of chapters for insurers organized under
 5 Chapters 376 and 379. However, Mr. Whitmer
 6 reserves the right to raise an objection should it
 7 become necessary. Proceed.
 8 MR. HOPPER: The Division moves and
 9 requests that the hearing officer take official
 10 notice of NAIC company codes and group codes that
 11 are assigned by the National Association of
 12 Insurance Commissioners, which are facts of a
 13 technical nature within the specialized knowledge
 14 and experience of the director.
 15 Every company that files a statement
 16 and possesses a license or certificate of authority
 17 with the Missouri Department files this company
 18 code and group code information with the
 19 Department.
 20 Additionally, the director of the
 21 Department is the president of the NAIC currently.
 22 And to address what I believe will be Mr. Whitmer's
 23 objection, any company codes and group codes used
 24 at this hearing will be present in evidence that
 25 has been admitted.

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1 HEARING OFFICER ERICKSON:
 2 Mr. Whitmer?
 3 MR. WHITMER: Your Honor. Again,
 4 these are the types of issues we would object. It
 5 should have been resolved and discussed between
 6 counsel before we're at this point right now. So
 7 we object for the same reasons. These documents
 8 have not been discussed between counsel, have not
 9 been identified as exhibits, and we certainly most
 10 specifically object to any of our witnesses being
 11 asked questions or the Division's witnesses being
 12 asked questions about those specific documents at
 13 this time.
 14 HEARING OFFICER ERICKSON:
 15 Mr. Hopper, response?
 16 MR. HOPPER: No additional documents
 17 containing this information will be used at this
 18 hearing that have not been admitted as exhibits
 19 already.
 20 HEARING OFFICER ERICKSON:
 21 Mr. Whitmer and Ms. Coyle, is it agreed and
 22 understood that the insurers in the course of
 23 performing business of insurance in Missouri, you
 24 routinely -- your insurers routinely submit
 25 information and documentation to this department as

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1 the regulator of insurance and often your companies
 2 are referred to by company codes or group codes for
 3 particular lines of insurance; is that correct?
 4 MR. WHITMER: That is correct, your
 5 Honor, but that's not the nature of our concern.
 6 HEARING OFFICER ERICKSON: Can you
 7 reidentify, then, the nature of your concern?
 8 MR. WHITMER: Sure. It is our
 9 understanding that under Missouri law we should
 10 have been given notice that judicial notice could
 11 and would be taken of this proceeding and counsel
 12 should have addressed these issues with us prior to
 13 this point.
 14 HEARING OFFICER ERICKSON: Do you
 15 have specific law that indicates that official
 16 notice requests must be made to the opposing party
 17 prior to the hearing?
 18 MR. WHITMER: We would request the
 19 opportunity to present that after the next break,
 20 and I'd also ask for the opportunity to discuss
 21 these issues with counsel at the next break, but I
 22 think we should move forward at this time. Perhaps
 23 we can reach agreement on these issues and not take
 24 hearing time.
 25 HEARING OFFICER ERICKSON: Given the

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1 fact that the company codes and the group codes
 2 assigned by the National Association of Insurance
 3 Commissioners are a matter of public record that
 4 are on our website, these are part of the annual
 5 filings by the companies, they are part of the
 6 department's records in the regulation of the
 7 insurers involved and all other insurers who are
 8 authorized to do business, we will take official
 9 notice of the codes, the NAIC codes and group
 10 codes, subject to the objection.
 11 However, I am not aware of any law
 12 that says a party cannot realize that it needs to
 13 bring forward evidence the day of the hearing and
 14 that they would be precluded from asking at the
 15 time of the hearing. Mr. Hopper?
 16 MR. HOPPER: Thank, your Honor. I do
 17 have one last question, request, which hopefully
 18 will be less objectionable. Division moves and
 19 requests that the hearing officer take official
 20 notice of the identities of Missouri's 114 counties
 21 and the City of St. Louis, which are geographical
 22 facts known to Missouri courts of which judicial
 23 notice may be taken.
 24 HEARING OFFICER ERICKSON:
 25 Mr. Whitmer?

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1 MR. WHITMER: I think -- actually, I
 2 think we do object. I think they're off by one
 3 number. Maybe it's 115.
 4 MR. HOPPER: I believe the 115 is the
 5 City of St. Louis.
 6 MR. WHITMER: With that caveat, no
 7 objection.
 8 HEARING OFFICER ERICKSON: Thank you.
 9 Recognizing that circuit courts may take notice of
 10 geographic regions of the state, including
 11 counties, official notice is taken of 114 counties
 12 plus the City of St. Louis.
 13 MR. WHITMER: Thank you.
 14 MR. HOPPER: Thank you, your Honor.
 15 The Division calls Angela Nelson.
 16 (Witness sworn.)
 17 ANGELA NELSON, being sworn, testified as follows:
 18 DIRECT EXAMINATION BY MR. HOPPER:
 19 **Q. Good morning.**
 20 A. Good morning.
 21 **Q. For the record, what is your full**
 22 **name?**
 23 A. Angela Nelson.
 24 **Q. Are you currently employed by the**
 25 **Missouri Department of Insurance, Financial**

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1 **Institutions and Professional Registration?**
 2 A. Yes, I am.
 3 **Q. If I refer to that name as the**
 4 **Department during your testimony, will you**
 5 **understand what I mean?**
 6 A. Yes, I will.
 7 **Q. What is your current position with**
 8 **the Department?**
 9 A. I am the director of the Division of
 10 Insurance Market Regulation, as well as the
 11 Department's chief industry liaison.
 12 **Q. Approximately how long have you been**
 13 **in that position?**
 14 A. I've been in this position since
 15 January 2012.
 16 **Q. What other positions have you held**
 17 **with the Department?**
 18 A. I was initially hired as an insurance
 19 product analyst. I've held the position of
 20 workers' compensation specialist. I've held the
 21 position of market conduct analyst. I have held
 22 the position of the property and casualty section
 23 manager, and I have also held the position of the
 24 Division of Consumer Affairs director.
 25 **Q. Approximately how long have you**

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1 **worked at the Department?**
 2 A. Since July 2002.
 3 **Q. What is your post high school**
 4 **educational background?**
 5 A. I have a bachelor of science in
 6 management, and I also have a master's of business
 7 administration from William Woods University.
 8 **Q. Do you have any professional**
 9 **certifications?**
 10 A. I do.
 11 **Q. What are they?**
 12 A. I have a market conduct manager
 13 designation from the Insurance Regulatory Examiners
 14 Society.
 15 **Q. Do you currently or have you ever**
 16 **held any professional licenses?**
 17 A. I have.
 18 **Q. What are those?**
 19 A. I have held an insurance agent
 20 license in the state of Missouri.
 21 **Q. What lines of business on that**
 22 **insurance producer license did you hold?**
 23 A. I held both life and health, as well
 24 as property and casualty.
 25 **Q. Is that license currently active?**

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1 A. No. It is currently deactivated.
 2 Department policy actually precludes me or
 3 prohibits me from holding an active license, as
 4 that would constitute a conflict of interest. Upon
 5 the termination of my employment with the
 6 Department, my license will be reinstated.
 7 **Q. In order to obtain that license, did**
 8 **you have to pass any tests?**
 9 A. Yes, I did.
 10 **Q. Did you have to pass a test for both**
 11 **life and health and property and casualty**
 12 **insurance?**
 13 A. Yes, I did.
 14 **Q. Did you have to complete any**
 15 **continuing education for both of those licenses to**
 16 **maintain them?**
 17 A. Yes, I did.
 18 **Q. What functions are performed by the**
 19 **Division of Insurance Market Regulation?**
 20 A. The Division performs three primary
 21 functions, first of which, we have two sections
 22 that are devoted to the review of product filings
 23 in the state of Missouri. Those are separated by
 24 the two different lines, I would say. The property
 25 and casualty section obviously reviews product

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1 filings that are in the property and casualty line
 2 of insurance. Our life and health section reviews
 3 life and health insurance products.
 4 We have our statistics section which
 5 does review, receive data and other information
 6 from the insurance companies that are operating in
 7 the state of Missouri, produces a number of
 8 analyses and reports regarding the Missouri
 9 insurance market.
 10 And then our final function is market
 11 conduct, or market conduct section, and that is
 12 where we perform essentially retrospective audits
 13 of insurance company dealings with consumers and
 14 their policyholders.
 15 **Q. What are your personal duties as**
 16 **director of the Division of Insurance Market**
 17 **Regulation?**
 18 A. I do oversee the operations of the
 19 Division in all those three units, review the work,
 20 supervise the staff. I also provide advice and
 21 counsel to other divisions within the Department
 22 regarding happenings and occurrences. Provide
 23 legislative testimony when asked.
 24 **Q. As part of the your job duties, are**
 25 **you expected to have knowledge of insurance**

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1 products offered to Missouri residents?
 2 A. I am.
 3 **Q. Do you have that knowledge of**
 4 **insurance products offered to Missouri residents?**
 5 A. I do.
 6 **Q. Have you developed that knowledge in**
 7 **the course of your employment with the Department?**
 8 A. I have.
 9 **Q. As part of your job duties, is it**
 10 **expected that you build and maintain knowledge**
 11 **about each of the insurance markets in Missouri and**
 12 **how they function?**
 13 A. Yes.
 14 **Q. Have you so built and maintained that**
 15 **knowledge?**
 16 A. I have.
 17 **Q. Have you built and maintained that**
 18 **knowledge in the course of your employment with the**
 19 **Department?**
 20 A. I have.
 21 **Q. Are you familiar with an entity named**
 22 **Anthem Incorporated?**
 23 A. Yes, I am.
 24 **Q. How are you familiar with Anthem**
 25 **Incorporated?**

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1 A. That is one of the insurance groups
 2 in our state that operates, provides primarily
 3 health insurance.
 4 **Q. Does Anthem Incorporated own any**
 5 **subsidiary insurance companies?**
 6 A. Yes, they do.
 7 **Q. Do those subsidiary insurance**
 8 **companies write insurance in the state of Missouri?**
 9 A. Yes, they do.
 10 **Q. Where in Missouri?**
 11 A. They write predominantly the
 12 84 counties plus the City of St. Louis that
 13 comprise what I would call the eastern half of the
 14 state.
 15 **Q. Are you familiar with an entity known**
 16 **as the Blue Cross and Blue Shield of Kansas City**
 17 **Group?**
 18 A. Yes, I am.
 19 **Q. How are you familiar with that group?**
 20 A. Likewise, they are an insurance
 21 group that operates within the state of Missouri
 22 primarily offering health insurance products.
 23 **Q. Does Blue Cross and Blue Shield of**
 24 **Kansas City own any subsidiary insurance companies?**
 25 A. Yes, they do.

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1 **Q. Do Blue Cross and Blue Shield of**
 2 **Kansas City and its subsidiary insurance companies**
 3 **write insurance in the state of Missouri?**
 4 A. Yes, they do.
 5 **Q. Where in Missouri?**
 6 A. They write in the 30 counties on the
 7 western part of the state centralized around the
 8 Kansas City metropolitan area.
 9 **Q. Is there any geographic overlap**
 10 **between the Missouri counties and City of St. Louis**
 11 **in which Anthem Incorporated and Blue Cross and**
 12 **Blue Shield of Kansas City insurance companies**
 13 **operate?**
 14 A. Not to my knowledge.
 15 **Q. Why is that?**
 16 A. My understanding is that there is
 17 agreement between the two entities that they will
 18 not compete within the state of Missouri.
 19 **Q. I'm handing you what has been marked**
 20 **as Exhibit 1. Do you recognize this document?**
 21 A. Yes, I do.
 22 **Q. What is this document?**
 23 A. This is a map which denotes the
 24 service area of the Anthem/Blue Cross Blue Shield
 25 entities in the state of Missouri.

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1 **Q. What is the source of this document?**
 2 A. This was a document that was publicly
 3 available on the Internet.
 4 **Q. Who created this document?**
 5 A. I believe it was Anthem/Blue Cross
 6 Blue Shield.
 7 **Q. Why do you believe that?**
 8 A. Looking at the document itself, it
 9 has their logo. It has clear disclaimers regarding
 10 their underwriting affiliations and administration
 11 of their policies, who the underwriting entities
 12 within the Anthem group are. It has a form number
 13 that I am familiar with in terms of Anthem's common
 14 marketing materials.
 15 The document also contains a
 16 toll-free telephone number that advises individuals
 17 how they can contact the sales department. I
 18 personally called that telephone number and
 19 verified that that was the Anthem sales department
 20 telephone number.
 21 **Q. Did you personally locate and view**
 22 **this document on the Internet?**
 23 A. Yes, I did.
 24 **Q. Is Exhibit 1 a true and accurate copy**
 25 **of the document you found and viewed on the**

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1 **Internet?**
 2 A. Yes, it is.
 3 **Q. Is this document consistent with your**
 4 **understanding of the service area of the insurance**
 5 **company subsidiaries of Anthem, Incorporated in**
 6 **Missouri?**
 7 A. Yes, it is.
 8 **Q. Exhibit 1 has already been admitted**
 9 **into evidence, so I will not make such a motion.**
 10 **If you could hold on to Exhibit 1 for**
 11 **a moment, I'm now going to hand you what's been**
 12 **marked as Exhibit 2. And I would ask if you**
 13 **recognize this document.**
 14 A. Yes, I do.
 15 **Q. What is it?**
 16 A. This is a frequently asked questions
 17 document that came from the blueKC.com website.
 18 **Q. Having reviewed this document**
 19 **previously, Ms. Nelson, does it contain any**
 20 **information regarding the service area of Blue**
 21 **Cross and Blue Shield of Kansas City?**
 22 A. Yes, it does.
 23 **Q. What is the source of this document?**
 24 A. Again, this came from www.blueKC.com.
 25 So it appears to be a publicly available document.

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1 **Q. Have you personally located and**
 2 **viewed this document on the blueKC.com website?**
 3 A. I have.
 4 **Q. Is Exhibit 2 a true and accurate copy**
 5 **of the document you found and viewed on that**
 6 **website?**
 7 A. It is.
 8 **Q. Is the information regarding the**
 9 **service area of Blue Cross and Blue Shield of**
 10 **Kansas City in Exhibit 2 consistent with your**
 11 **understanding of the service area of Blue Cross and**
 12 **Blue Shield of Kansas City in Missouri?**
 13 A. Yes, it is.
 14 **Q. Exhibit 2 has also already been**
 15 **admitted into evidence.**
 16 **Ms. Nelson, you testified earlier**
 17 **that this document contains information about the**
 18 **service area of Blue Cross and Blue Shield of**
 19 **Kansas City. Could you please point me toward and**
 20 **read the paragraph of the document that describes**
 21 **that service area?**
 22 A. Yes. Within the general section, the
 23 first -- or excuse me -- fourth full paragraph,
 24 it's entitled, What geographic areas does BlueKC
 25 cover? BlueKC is proud to be largest provider of

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1 health insurance plans in a 32-county area serving
 2 greater Kansas City and northwest Missouri. The
 3 Missouri counties covered are Andrew, Atchison,
 4 Bates, Benton, Buchanan, Caldwell, Carroll, Cass,
 5 Clay, Clinton, Daviess, DeKalb, Gentry, Grundy,
 6 Harrison, Henry, Holt, Jackson, Johnson, Lafayette,
 7 Livingston, Mercer, Nodaway, Pettis, Platte,
 8 Saline, St. Clair, Vernon and Worth. We also serve
 9 Johnson and Wyandotte Counties in Kansas.
 10 **Q. Is Ray County also included in that**
 11 **list?**
 12 A. Yes. I misspoke. I apologize.
 13 **Q. Comparing that list of counties to**
 14 **Exhibit 1, which you have in front of you, is there**
 15 **any overlap between these areas of operation?**
 16 A. No, there is not.
 17 **Q. Is that consistent with your**
 18 **understanding, the areas of operation of Anthem,**
 19 **Incorporated and Blue Cross and Blue Shield of**
 20 **Kansas City do not overlap?**
 21 A. That is accurate, yes.
 22 **Q. Do Exhibits 1 and 2 relate to the**
 23 **issue of the number of competitors in various**
 24 **Missouri health insurance markets?**
 25 A. It does in that these two documents

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1 demonstrate that these two entities do not directly
 2 compete in any of the counties in Missouri.
 3 **Q. You say they don't compete. Do**
 4 **Anthem, Incorporated and Blue Cross and Blue Shield**
 5 **of Kansas City cooperate or coordinate in any way?**
 6 A. It's my understanding that, yes, they
 7 do. They work through the National Blue Cross Blue
 8 Shield Association in terms of providing a
 9 coordinated delivery of health care to their shared
 10 members within the state of Missouri.
 11 **Q. Is there a name for that**
 12 **coordination?**
 13 A. I believe it's referred to as the
 14 Blue Card System.
 15 **Q. Thank you. You can set aside**
 16 **Exhibits 1 and 2. Ms. Nelson, are you familiar**
 17 **with an insurance entity named United Health Care**
 18 **Group?**
 19 A. I am.
 20 **Q. How are you familiar with that**
 21 **entity?**
 22 A. Again, that's another group of
 23 insurance companies that operate within the state
 24 offering primarily health insurance coverage.
 25 **Q. Does United Health Care Group own any**

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1 subsidiary insurance companies?
 2 A. Yes, they do.
 3 **Q. Do United Health Care Group and its**
 4 **subsidiary health care companies write insurance in**
 5 **the state of Missouri?**
 6 A. Yes, they do.
 7 **Q. Where in Missouri?**
 8 A. Throughout the entire state.
 9 **Q. I'm now handing you what's been**
 10 **marked as Exhibit 3. Do you recognize this**
 11 **document?**
 12 A. Yes, I do.
 13 **Q. What is this document?**
 14 A. This is a printout of a product
 15 filing that was submitted to the Division through
 16 the SERRF system.
 17 **Q. What is the SERRF system?**
 18 A. The SERRF system is a -- is actually
 19 the first -- it's an acronym that refers to the
 20 state electronic rate rule filing system. It is a
 21 system that was created by the National Association
 22 of Insurance Commissioners to allow for electronic
 23 submission of product form files between the
 24 insurance industry and insurance regulators.
 25 **Q. How do you know that Exhibit 3 came**

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1 **from the SERRF filing system?**
 2 A. I can tell this by the information on
 3 the front cover page, which is a summary page or
 4 filing at a glance that comes from our SERRF
 5 system. It denotes the name of the company. It
 6 provides a tracking number. It lists the date
 7 submitted, filing type, the implementation date,
 8 the close date and the final disposition status of
 9 the Department's review.
 10 **Q. Why do insurance companies utilize**
 11 **the SERRF system in Missouri?**
 12 A. The use of SERRF is actually mandated
 13 by rule in the State of Missouri.
 14 **Q. How is a SERRF filing record created?**
 15 A. Once an insurance company compiles
 16 all the components of a product filing they wish to
 17 submit for the Department's review, they upload
 18 those documents into the SERRF electronic system, a
 19 record is created, and then that record is
 20 transmitted to the Department for its review.
 21 **Q. Are those records created**
 22 **contemporaneously with the filing submission by an**
 23 **insurance company?**
 24 A. Yes, they are.
 25 **Q. Which division of the Department**

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1 **received and reviewed the electronic filing shown**
 2 **in Exhibit 3?**
 3 A. The Division of Insurance Market
 4 Regulation.
 5 **Q. Are electronic SERRF filings made in**
 6 **the regular course of business of the Department?**
 7 A. Yes, they are.
 8 **Q. How many SERRF filings are made with**
 9 **the Department each year, roughly?**
 10 A. Just over 12,000.
 11 **Q. And are each of those filings**
 12 **maintained by the Department?**
 13 A. Yes, they are.
 14 **Q. Is a SERRF filing considered an**
 15 **official record or document maintained by the**
 16 **Department?**
 17 A. Yes. Of these product files that are
 18 made, that are submitted in compliance with
 19 Missouri law, yes.
 20 **Q. Is Exhibit 3 a true and accurate copy**
 21 **of electronic filing made by United Health Care**
 22 **Life Insurance Company with the Department pursuant**
 23 **to Missouri law, as we stated?**
 24 A. Yes, it is.
 25 **Q. Exhibit 3 has previously been**

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1 **admitted into evidence. Is United Health Care Life**
 2 **Insurance Company a subsidiary company of United**
 3 **Health Care Group?**
 4 A. Yes, it is.
 5 **Q. Could you please turn to page 9 of**
 6 **Exhibit 3. It looks like you're there. What**
 7 **information is contained in Exhibit -- excuse me --**
 8 **in page 9 of Exhibit 3?**
 9 A. Yes. This is a formal notice of an
 10 intent to effectuate an individual market exit.
 11 And this particular filing was submitted on behalf
 12 of United Health Care Life Insurance Company.
 13 **Q. Could you please read the first**
 14 **paragraph of the notice beneath the line, Dear**
 15 **Director Huff?**
 16 A. Yes. I am providing you with this
 17 formal notice of our intention to effectuate an
 18 individual market exit effective January 1st, 2017,
 19 consistent with Missouri law and in the federal
 20 laws under 45 CFR Section 147.106, subsection D and
 21 Section 148.122, subsection E, as well as our
 22 decision not to participate on the individual
 23 exchange for 2017.
 24 **Q. Is this company required to provide**
 25 **this notice to the Department?**

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1 A. For market exits or withdrawals, yes,
 2 180 days notice is required.
 3 **Q. Does that requirement come from**
 4 **Missouri law?**
 5 A. Yes, it does.
 6 **Q. Are there any consequences for a**
 7 **company withdrawing from a particular health**
 8 **insurance market?**
 9 A. Yes. There is a five-year moratorium
 10 when an insurance company exits or withdraws from
 11 an entire market.
 12 **Q. Will United Health Care Life**
 13 **Insurance Company be able to issue or renew health**
 14 **insurance in the Missouri comprehensive individual**
 15 **health insurance market after January 1st, 2017?**
 16 A. Pursuant to this notice and action,
 17 no.
 18 **Q. When would United Health Care Life**
 19 **Insurance Company be -- first be able to issue new**
 20 **health insurance coverage in the Missouri**
 21 **comprehensive individual health insurance market?**
 22 A. Pursuant to this notice and action,
 23 January 1st, 2022.
 24 **Q. Thank you. You can set aside**
 25 **Exhibit 3. I'm now going to hand you what has been**

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1 **marked as Exhibit 4. I would ask if you recognize**
 2 **this document?**
 3 A. Yes, I do.
 4 **Q. What is this document?**
 5 A. This is a printout of a SERRF filing
 6 that was submitted on behalf of All Savers
 7 Insurance Company.
 8 **Q. Was this Exhibit 4 -- excuse me.**
 9 **Strike that.**
 10 **Was the electronic record to which**
 11 **Exhibit 4 relates maintained and created in the**
 12 **same manner as you testified to for Exhibit 3?**
 13 A. Yes, it was.
 14 **Q. Is All Savers Insurance Company a**
 15 **subsidiary company of United Health Care?**
 16 A. Yes, it is.
 17 **Q. Who made the filing that is shown in**
 18 **Exhibit 4?**
 19 A. It looks like the author submitting
 20 it on behalf of All Savers was someone by the name
 21 of Crystal Dillon.
 22 **Q. And I believe you may have already**
 23 **said this, but was this filing made by All Savers**
 24 **Insurance Company?**
 25 A. Yes, it was.

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1 **Q. Exhibit 4 has previously been**
 2 **admitted into evidence.**
 3 **Could you please turn to page 7 of**
 4 **Exhibit 4.**
 5 A. Yes.
 6 **Q. What is page 7 of Exhibit 4?**
 7 A. Again, page 7 is a formal notice
 8 submitted to Director Huff.
 9 **Q. Is page 7 of Exhibit 4 identical to**
 10 **page 9 of Exhibit 3?**
 11 A. Yes, it is.
 12 **Q. Do you understand page 7 of Exhibit 4**
 13 **to apply to All Savers Insurance Company?**
 14 A. Yes.
 15 **Q. Will All Savers Insurance Company be**
 16 **subject to the same restrictions in the**
 17 **comprehensive individual health insurance market to**
 18 **which you testified with regard to United Health**
 19 **Care Life Insurance Company?**
 20 A. Yes, it would.
 21 **Q. Thank you. You can set aside**
 22 **Exhibit 4.**
 23 **As part of your job duties as**
 24 **Division of Insurance Market Regulation director,**
 25 **do you keep abreast of the Missouri comprehensive**

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1 **individual health insurance market?**
 2 A. Yes, I do.
 3 **Q. Why do you do that?**
 4 A. First off, I'm expected to be able to
 5 report to the director as to the status and the
 6 happenings within the insurance market, as well as
 7 advise policy makers in the state as to what is
 8 going on with the various insurance, individual
 9 health insurance market included.
 10 **Q. With regard to the individual health**
 11 **insurance market specifically, what have you**
 12 **observed about that market in Missouri?**
 13 A. I would say over the last few years,
 14 what we've seen has obviously been, with the
 15 passage of the Affordable Care Act, we've seen an
 16 increase in the number of covered lives, and we've
 17 also seen the volume of total written premium in
 18 this market increase substantially. Conversely to
 19 that, we've seen the number of insurance companies
 20 operating within this market contracting and the
 21 concentration of the market increasing.
 22 **Q. Do you monitor events that may impact**
 23 **this market?**
 24 A. Absolutely.
 25 **Q. How do you do that?**

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1 A. I do it a number of different ways.
 2 Obviously I follow very closely any trade
 3 publications. I visit with my own internal staff
 4 regarding product filings and market conduct
 5 action. I review reports and analyses done by the
 6 statistics section within our division.
 7 I'm also very active within the
 8 National Association of Insurance Commissioners,
 9 with various committees and working groups that are
 10 focused upon health insurance. And then finally,
 11 it is my goal as chief industry liaison for the
 12 Department, I also am expected to have good working
 13 relationships with those on the industry side and
 14 to have open communication with them as well.
 15 **Q. Based on your experience as director
 16 of the Division of Insurance Market Regulation,
 17 your observations of the comprehensive individual
 18 health insurance market that you just related to us
 19 and the events that you monitor may impact on the
 20 market, what impact, if any, will these two
 21 withdrawals have the Missouri comprehensive
 22 individual health insurance market?**
 23 A. Certainly without question we have
 24 two fewer insurance companies operating within the
 25 state starting on January 1st, 2017. From both a

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1 regulatory perspective as well as a consumer
 2 perspective, any time you have fewer insurance
 3 companies operating within a market, that means
 4 consumers have less choice in terms of who their
 5 health insurer will be, and they also have less
 6 choice in terms of the products that they can
 7 choose from and purchase.
 8 **Q. We don't need to get into specific
 9 numbers, but will the impact of these two
 10 withdrawals be significant to the comprehensive
 11 individual health insurance market in Missouri?**
 12 A. Yes, they will.
 13 **Q. As part of your duties as the
 14 director of the Division of Insurance Market
 15 Regulation, do you also monitor public programs and
 16 the impact they have on insurance markets and
 17 insurance companies in Missouri?**
 18 A. Yes, I do.
 19 **Q. Why?**
 20 A. Well, you know, it may seem
 21 antithetical to want to be abreast of what's going
 22 on with public programs, but the reality is in most
 23 cases there are direct impacts that come from these
 24 public programs on the private health insurance
 25 market.

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1 And I'll give you one very good
 2 example. The states do regulate Medicare
 3 supplement products. To the extent there are
 4 changes that occur at the federal level on the
 5 underlying Medicare coverages, those absolutely
 6 impact the coverages and the markets that we
 7 regulate at the state level.
 8 **Q. Are you familiar with the acronym
 9 CMS?**
 10 A. I am.
 11 **Q. What does CMS stand for?**
 12 A. It stands for the Centers for
 13 Medicare and Medicaid Services.
 14 **Q. Is CMS part of a state government?**
 15 A. No, it is not.
 16 **Q. Is CMS part of the federal
 17 government?**
 18 A. Yes, it is.
 19 **Q. Is CMS part of the U.S. Department of
 20 Health and Human Services?**
 21 A. Yes, it is.
 22 **Q. What functions does CMS perform?**
 23 A. I think one of its most well-known
 24 functions is to oversee and administer, obviously,
 25 the Medicare program, which is a federal program.

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1 They also oversee the administration of Medicaid
 2 programs throughout the country. And finally, they
 3 have the Center for Consumer Insurance Information
 4 and Oversight, which is charged with enforcing the
 5 provisions of the recently enacted Affordable Care
 6 Act, and they also oversee the operation of the
 7 federal -- federally facilitated marketplaces, also
 8 known as exchanges.
 9 **Q. As the director of the Division of
 10 Insurance Market Regulation, do you have a
 11 familiarity and understanding of how Medicare
 12 operates?**
 13 A. I do.
 14 **Q. Do you know the different parts of
 15 the Medicare program?**
 16 A. I do.
 17 **Q. What are those parts?**
 18 A. There is Part A, Part B, Part C and
 19 Part D.
 20 **Q. What is your understanding of
 21 Medicare Part A?**
 22 A. Part A is a program again offered at
 23 the federal level. Everyone is automatically
 24 eligible and enrolled within Part A. It provides
 25 basic hospitalization services. That's its primary

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1 function.

2 **Q. What is your understanding of**

3 **Medicare Part B?**

4 A. Part B is an optional coverage.

5 Folks need to enroll in that. It provides what I

6 would call are the more enhanced outpatient

7 benefits that most folks are accustomed to with

8 health insurance. Those would be things like

9 doctor visits, specialists, your therapies. It

10 also provides some skilled nursing care.

11 The combination of Part A and part B

12 together -- put together, really they are what's

13 referred to as traditional Medicare.

14 **Q. What is your understanding of**

15 **Medicare Part C?**

16 A. Part C is a plan that is administered

17 by private insurance companies. It is done through

18 contract with the Centers for Medicare and Medicare

19 Services. Part C coverage has to provide at least

20 the benefits that are available in Part A and

21 Part B.

22 **Q. Do plans offered under Part C**

23 **typically provide -- I believe you said at least**

24 **the benefits of Parts A and B. Do those Part C**

25 **plans typically provide the same benefits or would**

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1 **they provide different benefits?**

2 A. They can also provide additional

3 benefits. With many, not all, but with most Part C

4 Medicare plans, you will see coverage for vision

5 services, examinations, glasses. You will find

6 coverage of prescription drugs in most of those

7 plans, coverage of wellness programs. Sometimes

8 gym memberships are also paid for.

9 **Q. Those things you just mentioned,**

10 **vision services, prescription drugs, wellness**

11 **programs, are any of those features provided by**

12 **Medicare Parts A and B?**

13 A. No, they're not.

14 **Q. Do Medicare Part C plans sometimes**

15 **offer dental benefits?**

16 A. They could.

17 **Q. Do Medicare Parts A and B offer**

18 **dental benefits?**

19 A. No, they do not.

20 **Q. What is your understanding of**

21 **Medicare Part D?**

22 A. Medicare Part D is, again, a

23 voluntary program. It provides prescription drug

24 benefits to those individuals who are enrolled in

25 Part A and B Medicare and will also avail

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1 individuals covered under a Part C Medicare

2 Advantage plan that does not provide prescription

3 drug benefits.

4 **Q. Is Part D available to all Part C**

5 **plans that do not offer prescription drug coverage**

6 **or only certain types of plans?**

7 A. Only the ones that do not provide

8 prescription drug coverage.

9 **Q. How do the benefits of Medicare**

10 **Part D compare to the benefits provided by Medicare**

11 **Part C?**

12 A. Again, Part C provides at least the

13 benefits that are provided under Parts A and B,

14 which would be basic hospitalizations, in addition

15 to outpatient doctors visits, specialists,

16 therapies, in addition to other benefits that would

17 be provided with that prescription. Part D

18 coverage is solely prescription drug coverage, so

19 not the same.

20 **Q. I'm going to hand you what's been**

21 **marked as Exhibit 5. I would ask if you recognize**

22 **this document.**

23 A. Yes, I do.

24 **Q. What is this document?**

25 A. This is a monthly summary report.

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1 This is data regarding the Medicare Advantage cost,

2 the Pace program, demo, prescription drug plan,

3 contract information. It's dated as of April 2016.

4 **Q. What is the source of this document?**

5 A. This is a report that is publicly

6 available on the website for the Centers for

7 Medicare and Medicaid Services.

8 **Q. Is this report published yearly,**

9 **monthly?**

10 A. It's made available monthly, so

11 individuals can go and download this information on

12 a monthly basis.

13 **Q. Have you personally found and viewed**

14 **this particular document on the CMS website?**

15 A. Yes, I have.

16 **Q. Is this the type of record or**

17 **document you would rely on in the ordinary course**

18 **of your regulatory activities as the director of**

19 **the Division of Insurance Market Regulation?**

20 A. Yes, it is.

21 **Q. Is Exhibit 5 a true and accurate copy**

22 **of the document you found and viewed on the CMS**

23 **website?**

24 A. Yes, it is.

25 **Q. Exhibit 5 has previously been**

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1 **admitted into evidence. Below the first row, which**
 2 **contains titles, do you see a row that begins**
 3 **total, quote, prepaid, close quote, contracts?**
 4 A. Yes, I do.
 5 **Q. If we consider that row to be row 1,**
 6 **could you please read the next five rows beneath**
 7 **it?**
 8 A. Yes. So the first is the total
 9 prepaid contract. The next line after that are the
 10 local CCPs or coordinated care programs. The next
 11 line is PFFS, which is private fee for service.
 12 The next one is MSA, medical savings accounts. The
 13 next line is regional PPOs or preferred provider
 14 organizations. And then the last one is
 15 MA, Medicare Advantage, subtotal.
 16 **Q. What are local CCP contracts?**
 17 A. Those are contracts to provide
 18 benefits, Medicare Advantage plans on a county by
 19 case basis, with those insurance companies meeting
 20 CMS standards regarding network adequacy.
 21 **Q. Are these local CCP contracts offered**
 22 **on a county by county basis?**
 23 A. Yes.
 24 **Q. What are PFFS contracts?**
 25 A. Again, those are private fee for

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1 service plans. These are also another type of
 2 Medicare Advantage plan where benefits can be
 3 provided outside of a restricted or network
 4 provider arrangement, but fees would be obviously
 5 paid to a provider based upon a schedule.
 6 **Q. I believe you've explained what a**
 7 **MSA contract is. What are regional PPO contracts?**
 8 A. Again, that's a PPO that is
 9 structured to provide benefits or having network on
 10 a regional basis, and those regions are actually
 11 determined by the Centers for Medicare and Medicaid
 12 Services.
 13 **Q. Is the region to which Missouri**
 14 **belongs as defined by CMS a region of Missouri and**
 15 **Arkansas?**
 16 A. Yes, it is.
 17 **Q. What types of plans are rows 2**
 18 **through 5 which you just read?**
 19 A. They are all Part C Medicare
 20 Advantage.
 21 **Q. Okay. Let's move down to the line of**
 22 **MA subtotal where you stopped reading. Could you**
 23 **please read the next six rows?**
 24 A. Yes. The next line is the
 25 Medicare/Medicaid plan. The next line is the 1876

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1 cost plan. The next line is the 1833 cost plan,
 2 referred to as HCPP, the health care pre-payment
 3 program. The PACE program, which is an
 4 all-inclusive type of care delivery system or
 5 program, and the last is pilot.
 6 **Q. What is the line below pilot?**
 7 A. I'm sorry. That's other subtotal.
 8 **Q. Thank you. Are the contract types**
 9 **that you just read in rows 7 through 11 Medicare**
 10 **Advantage plans?**
 11 A. No, they're not.
 12 **Q. Do those contract types listed in**
 13 **rows 7 through 11 provide equivalent benefits to**
 14 **Medicare Advantage plans?**
 15 A. No, they do not.
 16 **Q. Do the contract types listed in**
 17 **rows 7 through 11 have the same eligibility**
 18 **requirement as Medicare Advantage plans?**
 19 A. No, they do not.
 20 **Q. Based on the titles of those rows 7**
 21 **through 11 and based on the row which states other**
 22 **subtotal, is any of the data reported in rows 7**
 23 **through 11 of Exhibit 5 reflective of coverage**
 24 **provided under a Medicare Advantage plan?**
 25 A. No, it is not.

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1 **Q. Based on your understanding, what**
 2 **does the data in rows 7 through 11 reflect?**
 3 A. They're specialized programs that are
 4 generally targeted, again, on a pre-payment basis
 5 to certain populations or sets of otherwise
 6 Medicare-eligible individuals. So the
 7 Medicare/Medicaid plan is really what we refer to
 8 as dual eligible programs. So those are targeted
 9 to low-income seniors who need assistance with
 10 perhaps the Part D premiums.
 11 The 1876 and 1833 cost plans are
 12 union or employer-based plans where they are
 13 providing essentially Part B services and, again,
 14 there is a pre-payment function going on where the
 15 employers are being subsidized for those Part B
 16 services that they are paying for.
 17 The PACE program is, again, an
 18 all-inclusive setting where a senior might go to an
 19 all-day facility and a variety of services are
 20 provided to them in one setting.
 21 **Q. Beginning where you left off, the row**
 22 **titled other subtotal, could you read the next**
 23 **three rows, please?**
 24 A. Yes. The first line is total PDPs or
 25 prescription drug plans. The next line is employer

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1 slash union only direct contract PDP, prescription
 2 drug plan, and the last one is all other PDP, which
 3 would be prescription drug plans.
 4 **Q. What types of plans are reflected in**
 5 **these three rows?**
 6 A. Prescription drug plans.
 7 **Q. Are the plan types reflected by these**
 8 **three rows Medicare Advantage plans?**
 9 A. No, they are not.
 10 **Q. All right. I'd like to direct your**
 11 **attention to the column titles running along the**
 12 **row that begins with current contract summary.**
 13 **Could you please read the three, for lack of a**
 14 **better word, major category titles that are**
 15 **displayed to the right of the column number of**
 16 **contracts?**
 17 A. Yes. The first grouping is drug plan
 18 enrollments. The second grouping is special needs
 19 plan enrollments. And the third grouping is
 20 employer plan enrollments.
 21 **Q. What information is contained under**
 22 **the major heading drug plan enrollment?**
 23 A. For those columns it's giving a -- at
 24 the final column a summary of the total universe of
 25 enrollees that have drug plan enrollment. The

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1 first two columns are segmenting that between those
 2 that do not have prescription drug coverage and
 3 those who do have prescription drug plan coverage.
 4 **Q. Do any differences in eligibility**
 5 **requirements exist between Medicare Advantage plans**
 6 **with or without prescription drug coverage?**
 7 A. No, they do not.
 8 **Q. Is the full population of Medicare**
 9 **Advantage eligible individuals who are selecting a**
 10 **local CCP, PFFS, MSA or regional PPO-type contract**
 11 **able to choose between Medicare Advantage plans**
 12 **with and without prescription drug coverage?**
 13 A. Yes, they are.
 14 **Q. Moving to the next grouping of three**
 15 **columns, what information is contained under the**
 16 **heading special need plan enrollment?**
 17 A. Again, just like with drug plan
 18 enrollment, this is looking at the subset of these
 19 individuals who are obtaining a special needs plan.
 20 So you get the total column with a total universe,
 21 those that are enrolled in a special needs plan
 22 versus those who are not enrolled in a special
 23 needs plan.
 24 **Q. What is a special needs plan?**
 25 A. A special needs plan is a more

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1 comprehensive bundle of coverage that is
 2 specifically targeted to a population, for
 3 instance, who have a chronic condition. The most
 4 commonly known is end-stage renal disease. Another
 5 example would be HIV or AIDS. Those would both be
 6 SSNIPs or special needs plans.
 7 **Q. Do special needs plans have the same**
 8 **or different eligibility requirements as compared**
 9 **to other Medicare plans?**
 10 A. Yes, they do. You would need to
 11 have -- you would be eligible for coverage by
 12 virtue of if you were being cared for in a special
 13 type facility catering to that special need or you
 14 would have to have one of those chronic conditions.
 15 **Q. Is the full population of Medicare**
 16 **Advantage eligible individuals who are selecting a**
 17 **local CCP, PFFS, MSA or regional PPO contract type**
 18 **able to choose between special needs plans and**
 19 **non-special needs plans?**
 20 A. No, they're not.
 21 **Q. Moving to the last grouping of three**
 22 **columns, what information is contained under the**
 23 **heading employer plan?**
 24 A. So again, this is looking further
 25 segmentation in terms of these Medicare Advantage

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1 policies, and it is showing, again, in that far
 2 column the total universe of enrollees. This
 3 particular group of columns is looking at who is
 4 obtaining this coverage through an employer or
 5 union-based distribution channel versus those who
 6 are getting the coverage on their own or
 7 individually.
 8 **Q. What are Medicare Advantage employer**
 9 **plans?**
 10 A. Those are Medicare Advantage plans
 11 that are offered by an employer on a group basis to
 12 either current employees who would otherwise be
 13 qualified, they're Medicare eligible, over age 65,
 14 or to their retirees who would be qualified for
 15 Medicare.
 16 **Q. Is the full population of Medicare**
 17 **Advantage eligible individuals selecting a local**
 18 **CCP, PFFS, MSA or regional PPO contract type able**
 19 **to choose between employer plans and non-employer**
 20 **plans?**
 21 A. Only if they work for an employer
 22 that is offering one.
 23 **Q. Can an individual choose between**
 24 **multiple different employer plans?**
 25 A. No, they cannot.

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1 **Q. Thank you. You can set aside**
 2 **Exhibit 5. I'm now going to hand you what has been**
 3 **marked as Exhibit 6. I would ask if you've seen**
 4 **this document before.**
 5 A. Yes, I have.
 6 **Q. What is this document?**
 7 A. This is an application form for
 8 health insurers to become -- or to obtain contract
 9 status, to become a provider of a Medicare
 10 Advantage plan.
 11 **Q. What is the source of this document?**
 12 A. Again, this is one of those documents
 13 that is publicly available on the website for the
 14 Centers for Medicare and Medicare Services.
 15 **Q. Have you personally found and viewed**
 16 **this document at CMS' website?**
 17 A. Yes, I have.
 18 **Q. Is this the type of record or**
 19 **document you rely on in the ordinary course of your**
 20 **regulatory activities as the director of the**
 21 **Division of Insurance Market Regulation?**
 22 A. Yes, it would.
 23 **Q. Is Exhibit 6 a true and accurate copy**
 24 **of the document you found and viewed on CMS'**
 25 **website?**

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1 A. Yes, it is.
 2 **Q. Exhibit 6 has been previously**
 3 **admitted. Would you please turn to page 12 of**
 4 **Exhibit 6.**
 5 A. Yes.
 6 **Q. Would you please read the first**
 7 **paragraph of this page, beginning with applications**
 8 **must be submitted?**
 9 A. Yes. Applications must be submitted
 10 by 8 p.m. Eastern Standard Time February 17th,
 11 2016. CMS will not review applications received
 12 after this date and time. Applicant's access to
 13 application fields within HPMS will be blocked
 14 after this date and time.
 15 **Q. Does this page include a timeline for**
 16 **applicants wishing to contract with CMS to become a**
 17 **Medicare Advantage provider or expand to their**
 18 **contract service area?**
 19 A. Yes, it does.
 20 **Q. When did an applicant need to submit**
 21 **its application to write Medicare Advantage or**
 22 **expand its contract service area in 2017?**
 23 A. By February 17th, 2016.
 24 **Q. If a company licensed to write health**
 25 **insurance in Missouri today decided on May 16th,**

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1 **2016 that it wanted to write Medicare Advantage in**
 2 **Missouri for the first time, when is the earliest**
 3 **that the company could begin offering Medicare**
 4 **Advantage in Missouri?**
 5 A. January 1st, 2018.
 6 **Q. If a company licensed to write health**
 7 **insurance in Missouri that was currently offering**
 8 **Medicare Advantage contracts in certain Missouri**
 9 **counties decided today, May 16, 2016, that it**
 10 **wanted to expand its contract service area, when is**
 11 **the earliest that the company could begin offering**
 12 **its contracts in the expanded service area?**
 13 A. January 1st, 2018.
 14 **Q. January 1st, 2018 is more than a year**
 15 **and a half from now?**
 16 A. I believe that would be accurate.
 17 **Q. Is that type of delay between intent**
 18 **to offer a product and ability to offer a product**
 19 **typical of Missouri state insurance laws?**
 20 A. That is not.
 21 **Q. For example, if a company licensed to**
 22 **write automobile insurance in Missouri decided**
 23 **today, May 16, 2016, that it wanted to offer a new**
 24 **automobile insurance product in Missouri, when is**
 25 **the earliest that the company could begin offering**

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1 **that new product?**
 2 A. Assuming, of course, that they have a
 3 valid certificate of authority with the requisite
 4 lines of authority to write that coverage, they
 5 could write it today, so long as they submit their
 6 forms, rates and rules no later than ten days after
 7 today.
 8 **Q. If the company properly licensed, as**
 9 **you said, to write automobile insurance in Missouri**
 10 **decided today, May 16th, 2016, that it wanted to**
 11 **expand to a new geographic area within Missouri,**
 12 **when is the earliest that that company could begin**
 13 **offering their product in the new area?**
 14 A. Today.
 15 **Q. Would any filings be required to be**
 16 **made with the Department in order to make that**
 17 **expansion?**
 18 A. No, it would not.
 19 MR. HOPPER: Thank you, Ms. Nelson.
 20 The Division has no further questions for this
 21 witness.
 22 HEARING OFFICER ERICKSON:
 23 Mr. Whitmer.
 24 CROSS-EXAMINATION BY MR. WHITMER:
 25 **Q. Good morning, Ms. Nelson.**

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1 A. Good morning.
 2 **Q. You'd agree that you're not an**
 3 **economist, right?**
 4 A. I would agree.
 5 **Q. And also that you're not here today**
 6 **to present any opinions on any economic issues?**
 7 A. I would agree.
 8 **Q. And you're not here today to rebut**
 9 **any of the findings in Dr. McCarthy's report; do**
 10 **you agree with that?**
 11 A. Yes. I have not reviewed it.
 12 **Q. And you've also had no opportunity to**
 13 **review the report of John Orszag, the other expert**
 14 **that will be testifying today?**
 15 A. No, I have not.
 16 **Q. So it would be fair to say that you**
 17 **have no basis to object to that report either?**
 18 A. No.
 19 **Q. I'm going to start by going to**
 20 **Exhibit 3. If you could, turn to page 9. This is**
 21 **one of the pages that we just discussed a few**
 22 **minutes ago. This is the letter that was written**
 23 **Director Huff from United Health Care, correct?**
 24 A. Yes.
 25 **Q. And this letter identifies two**

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1 **affiliates of United Health Care, All Savers and**
 2 **United Health Care?**
 3 A. Yes.
 4 **Q. How many total affiliates are there,**
 5 **do you know, of United Health Care?**
 6 A. I do not know that. Any time I have
 7 questions about those sorts of things, I consult
 8 with our online licensure database, because
 9 obviously licensure status of insurance companies
 10 can change daily, so I try not to rely on memory
 11 for those types of things.
 12 **Q. You're certainly aware there are more**
 13 **than two?**
 14 A. Yes, I am.
 15 **Q. Do you have a general guess as to how**
 16 **many there are?**
 17 A. I would say in the four to five
 18 range.
 19 **Q. How about United Health Care --**
 20 **United Health Care Insurance Company, for example?**
 21 A. That's one, yes.
 22 **Q. United Health Care of the Midlands,**
 23 **perhaps?**
 24 A. Of Midwest.
 25 **Q. Of Midwest, that's one as well?**

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1 A. Yes.
 2 **Q. There are many of them, right?**
 3 A. There are.
 4 **Q. So when you provided testimony about**
 5 **the moratorium, the five-year moratorium, that**
 6 **moratorium would apply only to the two lines that**
 7 **you had identified; is that right?**
 8 A. For the two individual underwriting
 9 companies, yes.
 10 **Q. And, in fact, there would be no**
 11 **moratorium impact on any other United affiliated**
 12 **companies as a result of this withdrawal?**
 13 A. That is correct.
 14 **Q. Is that something that you also**
 15 **considered as part of your analysis for today?**
 16 A. I'm sorry?
 17 **Q. Sure. Did you have the opportunity**
 18 **to consider the other United entities and whether**
 19 **they may, in fact, be impacted by any moratorium?**
 20 A. Yes.
 21 **Q. And you've confirmed that they would**
 22 **not?**
 23 A. Yes, that is correct.
 24 **Q. Let's go ahead and take a look at**
 25 **Exhibit 1.**

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1 A. Yes.
 2 **Q. This is the service area map that you**
 3 **testified to. What's the time frame that this map**
 4 **covers, from what month to what month, what year to**
 5 **what year?**
 6 A. Well, I see the original edition
 7 date, which is commonly, again, how insurance
 8 companies do it when they create these documents.
 9 Shows that this is August 2008. But I'm not aware
 10 of any changes, and it is still publicly available
 11 as of yesterday.
 12 **Q. Do you know whether there are any**
 13 **other revisions to this document?**
 14 A. I do not.
 15 **Q. You talked about Medicare Advantage,**
 16 **and talked a little bit about traditional Medicare.**
 17 A. Uh-huh.
 18 **Q. You haven't done any economic**
 19 **analysis that compares the level of competition**
 20 **between Medicare Advantage on one hand and**
 21 **traditional Medicare on the other; is that right?**
 22 A. No, I have not.
 23 **Q. You haven't done any -- reviewed any**
 24 **data, for example, with respect to any competition**
 25 **that exists between those two?**

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1 A. No, I have not.

2 **Q. You haven't done any calculations to**

3 **determine, for example, how that competition may or**

4 **may not impact this particular transaction we're**

5 **talking about here today?**

6 A. No, I have not.

7 **Q. In fact, you'd agree that you haven't**

8 **done any analysis as to whether the transaction**

9 **that we're talking about here today, that the**

10 **effect of the transaction would be substantially to**

11 **lessen competition in the state or tend to create a**

12 **monopoly herein?**

13 A. No, I have not.

14 **Q. You have no opinion whatsoever on**

15 **this issue?**

16 A. No, I do not.

17 MR. WHITMER: Thank you for your

18 time.

19 HEARING OFFICER ERICKSON: Redirect?

20 MR. HOPPER: Yes, just very briefly,

21 your Honor.

22 REDIRECT EXAMINATION BY MR. HOPPER:

23 **Q. Ms. Nelson, do you have any**

24 **information indicating that any other affiliate of**

25 **United Health Group intends to increase its written**

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1 **individual comprehensive health insurance agreement**

2 **in 2017 and beyond?**

3 A. We have no information.

4 MR. HOPPER: Thank you.

5 HEARING OFFICER ERICKSON: Recross?

6 RECROSS-EXAMINATION BY MR. WHITMER:

7 **Q. You'd agree you have no information**

8 **whatsoever about whether any United entity intends**

9 **to participate in the exchanges in 2018?**

10 A. That is correct. We have no

11 involvement with the federally facilitated

12 marketplaces in Missouri.

13 **Q. That's just an unknown for us today,**

14 **correct?**

15 A. That is correct.

16 MR. WHITMER: Thank you. No further

17 questions.

18 HEARING OFFICER ERICKSON:

19 Mr. Hopper?

20 MR. HOPPER: Nothing further.

21 HEARING OFFICER ERICKSON: Thank you.

22 Ms. Nelson, you may step down.

23 Mr. Hopper, will the exhibits that

24 are currently at the witness stand need to remain

25 there or should we set them aside?

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1 MR. HOPPER: They will not need to

2 remain there. They can be set aside.

3 HEARING OFFICER ERICKSON: At this

4 time that clock shows just after 10:45. Let's take

5 about a ten-minute break, and we will go off the

6 record.

7 (A BREAK WAS TAKEN.)

8 HEARING OFFICER ERICKSON. We are

9 back on the record. The Division may proceed with

10 its evidence.

11 MR. HOPPER: For the record,

12 Exhibit 7 has previously been admitted. I would

13 just like to note that this exhibit is an affidavit

14 of Debbie Doggett, D-e-b-b-i-e, D-o-g-g-e-t-t,

15 which was served upon Aetna Inc. and Humana Inc. on

16 May 6, 2016, pursuant to Section 536.070, sub 12 of

17 the Revised Statutes of Missouri. Certificate of

18 service has been filed in the record previously in

19 this matter.

20 HEARING OFFICER ERICKSON: The

21 hearing officer did receive the certificate of

22 service. Thank you.

23 MR. HOPPER: I will bring this copy

24 to the court reporter. At the same time,

25 Exhibit 8, which as stated at the outset of this

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1 hearing is a confidential document, this document

2 is confidential as to both the public and as to

3 Humana Inc. Just state for the record that this

4 document is admissible as a statement of party

5 opponent Aetna Inc., and has been previously

6 admitted.

7 MR. WHITMER: I'm going to object to

8 the statement. I don't think he meant it that way,

9 but I just want to clarify. The document has been

10 admitted. Nothing within the document has been

11 admitted, but I don't think he was going there.

12 MR. HOPPER: Correct. I was

13 attempting to say the document has been admitted.

14 MR. WHITMER: We agree on that.

15 HEARING OFFICER ERICKSON: Thank you.

16 MR. HOPPER: The Division calls John

17 Rehagen.

18 JOHN REHAGEN, being sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. HOPPER:

20 **Q. Good morning, Mr. Rehagen.**

21 A. Good morning.

22 **Q. Okay. For the record, what is your**

23 **full name?**

24 A. John Rehagen.

25 **Q. How do you spell Rehagen?**

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1 A. R-e-h-a-g-e-n.
 2 **Q. Are you currently employed by the**
 3 **Missouri Department of Insurance, Financial**
 4 **Institutions and Professional Registration?**
 5 A. Yes.
 6 **Q. If I would abbreviate that name to**
 7 **the Department during your testimony, will you**
 8 **understand what I mean?**
 9 A. Yes.
 10 **Q. What is your current position with**
 11 **the Department?**
 12 A. I'm the division director for the
 13 Division of Insurance Company Regulation.
 14 **Q. If I abbreviate the Division of**
 15 **Insurance Company Regulation to the Division during**
 16 **your testimony, will you understand me to mean the**
 17 **Division of Insurance Company Regulation?**
 18 A. Yes.
 19 **Q. Approximately how long have you been**
 20 **the director of the Division of Insurance Company**
 21 **Regulation?**
 22 A. Almost two and a half years.
 23 **Q. Have you held any other positions**
 24 **with the Department?**
 25 A. Yes. I have been a financial

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1 analyst, a financial examiner, the captive
 2 insurance program manager and also deputy division
 3 director.
 4 **Q. How long have you worked at the**
 5 **Department?**
 6 A. About 13 and a half years.
 7 **Q. What is your post high school**
 8 **educational background?**
 9 A. I have a bachelor's of science in
 10 business administration with an emphasis in
 11 accounting.
 12 **Q. Do you have any professional**
 13 **certifications?**
 14 A. Yes. I'm a certified financial
 15 examiner.
 16 **Q. Which entity awards that**
 17 **certification?**
 18 A. The Society of Financial Examiners.
 19 **Q. Is that the highest certification**
 20 **awarded by that society?**
 21 A. Yes, it is.
 22 **Q. What are your duties as the director**
 23 **of the Division of Insurance Company Regulation?**
 24 A. I oversee division activities as it
 25 relates to solvency, monitoring of the insurance

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1 companies.
 2 **Q. What functions are performed by the**
 3 **Division?**
 4 A. There's a financial analysis,
 5 financial examination. There's company licensing,
 6 captive insurance, surplus lines, and then there's
 7 some other regulated entities such as CPAs, NPAs
 8 that we also regulate.
 9 **Q. As part of your job duties, is it**
 10 **important that you have knowledge of companies**
 11 **licensed and authorized to write health insurance**
 12 **business in Missouri?**
 13 A. Yes.
 14 **Q. Have you developed that knowledge in**
 15 **the course of your employment with the Department?**
 16 A. Yes.
 17 **Q. As part of your job duties, is it**
 18 **important that you have knowledge of the holding**
 19 **company structures of companies licensed and**
 20 **authorized to write health insurance business in**
 21 **Missouri?**
 22 A. Yes.
 23 **Q. Have you developed that knowledge in**
 24 **the course of your employment with the Department?**
 25 A. Yes.

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1 **Q. Is regulation of holding companies an**
 2 **important aspect to solvency regulation?**
 3 A. Definitely, yes.
 4 **Q. Are you aware of a proposed**
 5 **transaction involving Aetna Inc. and Humana Inc.?**
 6 A. Yes.
 7 **Q. What is your high level understanding**
 8 **of that transaction?**
 9 A. Aetna Inc. proposes to purchase
 10 Humana Inc. and its subsidiaries.
 11 **Q. If that transaction is consummated,**
 12 **will the proposed transaction result in Aetna Inc.**
 13 **acquiring control over Humana Inc. and its**
 14 **subsidiaries?**
 15 A. Yes.
 16 **Q. Were any filings made with the**
 17 **Department in conjunction with that proposed**
 18 **transaction?**
 19 A. Yes. Aetna filed a Form E.
 20 **Q. And by Aetna, do you mean Aetna Inc.?**
 21 A. Aetna Inc., correct.
 22 **Q. If you say Aetna or if I say Aetna**
 23 **during your testimony, will you understand that to**
 24 **be Aetna Inc., the party in this matter?**
 25 A. Yes. Uh-huh.

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1 **Q. If you say Humana or I say Humana, we**
 2 **understand that to mean Humana Inc., a party to**
 3 **this matter?**
 4 A. Uh-huh. Yes.
 5 **Q. What division of the Department**
 6 **reviewed the Form E filing made by Aetna?**
 7 A. The Division of Insurance Company
 8 Regulation.
 9 **Q. Is that your division?**
 10 A. Yes.
 11 **Q. Generally speaking, how does a Form E**
 12 **filing differ from a Form A filing?**
 13 A. A Form A would be if a Missouri
 14 domestic was going to be purchased. A Form E is if
 15 both parties are licensed in Missouri.
 16 **Q. Do any affiliates of Aetna Inc. write**
 17 **health insurance business in the state of Missouri?**
 18 A. Yes.
 19 **Q. Do any affiliates of Humana Inc.**
 20 **write health insurance business in the state of**
 21 **Missouri?**
 22 A. Yes.
 23 **Q. I'm now going to pass you what has**
 24 **been marked Exhibit 9. I have put a screen shot of**
 25 **part of Exhibit 9 up on the screen. Do you**

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1 **recognize this document?**
 2 A. Yes.
 3 **Q. Is this a true and accurate paper**
 4 **copy of electronic company licensing records**
 5 **showing companies within the Aetna Inc. group that**
 6 **are licensed in Missouri?**
 7 A. Yes, it is.
 8 **Q. What system maintains those**
 9 **electronic company licensing records?**
 10 A. We call it SBS.
 11 **Q. Does SBS stand for state-based**
 12 **systems?**
 13 A. Yes.
 14 **Q. Is SBS used by the Department to**
 15 **create and maintain electronic company licensing**
 16 **records?**
 17 A. Yes, it is.
 18 **Q. Who creates the electronic company**
 19 **licensing records that are stored in SBS?**
 20 A. The division.
 21 **Q. Does SBS also maintain other types of**
 22 **records such as producer licensing records?**
 23 A. Yes, it does.
 24 **Q. Are the electronic company licensing**
 25 **records created at or near the time that a license**

Page 91

1 **or certificate of authority is issued or updated?**
 2 A. Yes.
 3 **Q. Does the Division create and maintain**
 4 **those electronic company licensing records in the**
 5 **regular course of business?**
 6 A. Yes.
 7 **Q. Exhibit 9 has been previously**
 8 **admitted into evidence. Looking towards the top of**
 9 **Exhibit 9, directly under the heading company**
 10 **search, first row beginning with number, could you**
 11 **tell me what information is found on this row?**
 12 A. Yeah. There's a number 1, and that's
 13 NAIC group number.
 14 **Q. To whom does NAIC group No. 1 belong?**
 15 A. It's the Aetna group.
 16 **Q. Moving down the page under the**
 17 **heading search results, what information is**
 18 **contained in the column titled company name?**
 19 A. That's the name of the Aetna Inc.
 20 group company.
 21 **Q. Okay. Does each row in the SERRF**
 22 **results represent a different license held by an**
 23 **Aetna Inc. company?**
 24 A. Yes.
 25 **Q. Moving to the next column titled**

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1 **domicile, what information is contained in this**
 2 **column?**
 3 A. Domestic and foreign. The three
 4 companies that are listed as domestic obviously are
 5 Missouri domestics, and the others are domiciled in
 6 a foreign jurisdiction, such as another state.
 7 **Q. For those of us who are not familiar**
 8 **with insurance company terminology, does domestic**
 9 **or domicile, I believe you said, in Missouri mean**
 10 **that a company is based in Missouri?**
 11 A. Means they're organized in Missouri.
 12 **Q. I believe you said Aetna has three**
 13 **Missouri domestic companies; is that correct?**
 14 A. Correct.
 15 **Q. Moving over to the next column, what**
 16 **information is contained in the column titled**
 17 **company type?**
 18 A. That's the licensing type for each
 19 entity.
 20 **Q. What types of companies in the Aetna**
 21 **group are licensed in Missouri?**
 22 A. I see health maintenance
 23 organizations, prepaid dentals, life and health.
 24 There's also property and casualty. There's a
 25 discount medical plan and also a purchasing group.

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1 **Q. Can a health maintenance organization**
2 **write health insurance business in Missouri?**
3 A. Yes, it can.
4 **Q. Can a prepaid dental company write**
5 **health insurance business in Missouri?**
6 A. Yes.
7 **Q. Can it write all kinds of health**
8 **insurance?**
9 A. It's limited to dental.
10 **Q. Can a life and health company write**
11 **health insurance business in Missouri?**
12 A. Yes.
13 **Q. Can a purchasing group write health**
14 **insurance business in Missouri?**
15 A. No.
16 **Q. Can a property and casualty company**
17 **write health insurance business in Missouri?**
18 A. Yes.
19 **Q. Looking towards the middle of this**
20 **section, why is Aetna Life Insurance Company listed**
21 **twice?**
22 A. They're dually licensed as both a
23 life and health insurer and a discount medical
24 plan.
25 **Q. Can Aetna Life Insurance Company**

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1 **write health insurance in Missouri pursuant to its**
2 **life and health license?**
3 A. Yes.
4 **Q. Setting aside the purchasing group,**
5 **are the other 13 companies, since you've just**
6 **indicated that the life insurance company holds two**
7 **licenses, are the other 13 companies listed on**
8 **Exhibit 9 affiliated with Aetna Inc.?**
9 A. Yes.
10 **Q. Setting aside the purchasing group,**
11 **are the other 13 companies listed on Exhibit 9**
12 **subsidiaries of Aetna?**
13 A. Yes.
14 **Q. Are you aware of any companies**
15 **licensed in Missouri and affiliated with Aetna Inc.**
16 **that are not listed on Exhibit 9?**
17 A. No.
18 **Q. I do not know if I asked you this**
19 **question. I apologize if I'm repeating myself.**
20 **Can a property and casualty company write health**
21 **insurance business in Missouri?**
22 A. Yes.
23 **Q. You can set aside Exhibit 9. Now I'm**
24 **going to pass you what's been marked as Exhibit 10.**
25 **Ask you if you recognize that document.**

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1 A. Yes, I do.
2 **Q. Does this document contain the same**
3 **type of information as Exhibit 9, except with**
4 **relation to the Humana Inc. group?**
5 A. Yes.
6 **Q. Are the records portrayed in**
7 **Exhibit 10 created and maintained in the same**
8 **manner as Exhibit 9?**
9 A. Yes.
10 **Q. Exhibit 10 has previously been**
11 **admitted into evidence. How do you know this is**
12 **the Humana Inc. group portrayed on Exhibit 10?**
13 A. The group, the NAIC group number 119,
14 that's the Humana group number.
15 **Q. How many companies are listed on**
16 **Exhibit 10?**
17 A. Ten.
18 **Q. Are these ten companies authorized to**
19 **do business in the state of Missouri?**
20 A. Yes.
21 **Q. Does the Humana Inc. group have any**
22 **Missouri domestic companies?**
23 A. No.
24 **Q. Are there any company types listed on**
25 **Exhibit 10 that are not listed on Exhibit 9?**

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1 A. No.
2 **Q. Are all the companies listed on**
3 **Exhibit 10 affiliated with Humana Inc.?**
4 A. Yes.
5 **Q. Are all of the companies listed on**
6 **Exhibit 10 subsidiaries of Humana Inc.?**
7 A. Yes.
8 **Q. Are you aware of any companies**
9 **licensed in Missouri and affiliated with Humana**
10 **Inc. that are not listed on Exhibit 10?**
11 A. No.
12 **Q. You can set aside Exhibit 10. At**
13 **this time I'm going to pass you what's been marked**
14 **as Exhibit 11. Exhibit 11 is entirely confidential**
15 **as to the public. It has previously been**
16 **stipulated to by the parties. Have you seen this**
17 **document before?**
18 A. Yes.
19 **Q. Is this a true and accurate copy of**
20 **the Form E filing made by Aetna Inc. with the**
21 **Department pursuant to its proposed acquisition of**
22 **Humana Inc. and its subsidiaries?**
23 A. Yes.
24 **Q. Was this Exhibit 11 date stamped as**
25 **received on October 15th, 2015 by the Department?**

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1 A. Yes.

2 **Q. Were any alterations to this document**

3 **made by the Department upon receipt, outside of the**

4 **date stamp?**

5 A. No.

6 **Q. Exhibit 11 has been previously**

7 **admitted. When was Exhibit 11 received by the**

8 **Department?**

9 A. October 15th, 2015.

10 **Q. You can set aside Exhibit 11. I'm**

11 **now going to pass you what's been marked as**

12 **Exhibit 12. The first page of Exhibit 12 is a**

13 **public record, and the remainder of Exhibit 12 is**

14 **confidential, as previously stipulated by the**

15 **parties today. Do you recognize this document?**

16 A. Yes.

17 **Q. Is this a true and accurate copy of**

18 **the letter sent by the Division to Aetna Inc.**

19 **requiring additional information relating to the**

20 **Form E filed by Aetna Inc. on October 15 the, 2015?**

21 A. Yes.

22 **Q. Did you have input into the**

23 **preparation and drafting of this letter?**

24 A. Yes.

25 **Q. On what day was that letter sent to**

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1 **Aetna Inc.?**

2 A. November 13th, 2015.

3 **Q. How do you know that?**

4 A. The letter's dated that, and I also

5 received an e-mail confirming it had been sent on

6 that date.

7 **Q. Exhibit 12 has been previously**

8 **admitted. You can set aside that exhibit. Now**

9 **handing you what's been marked as Exhibit 13.**

10 **Exhibit 13 is a public document despite the fact**

11 **that it has been stamped confidential. Do you**

12 **recognize this document?**

13 A. Yes.

14 **Q. Is this a true and accurate copy of**

15 **the cover letter for the response from Aetna Inc.**

16 **to the Division's November 13th, 2015 letter?**

17 A. Yes.

18 **Q. Were there additional documents**

19 **attached to this letter in the response from Aetna**

20 **Inc.?**

21 A. Yes.

22 **Q. Are those documents included in**

23 **Exhibit 13?**

24 A. No.

25 **Q. Was this Exhibit 13 date stamped as**

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1 **received on March 2nd, 2016 by the Department?**

2 A. Yes.

3 **Q. Were any alterations to this document**

4 **made by the Department upon receipt, outside of the**

5 **date stamp?**

6 A. No.

7 **Q. Exhibit 13 has been previously**

8 **admitted into evidence. Did you receive an**

9 **electronic copy of Exhibit 13 prior to March 2nd,**

10 **2016?**

11 A. Yes, I did.

12 **Q. When did you receive that?**

13 A. On February 26th.

14 **Q. You can set aside Exhibit 13. With**

15 **apologies, there is a second page to Exhibit 13,**

16 **which has the word enclosures and nothing further.**

17 **Exhibit 13 with the two pages has already been**

18 **admitted. Do you recognize the second page as part**

19 **of Exhibit 13?**

20 A. Yes.

21 **Q. The cover letter. I'm handing you**

22 **what's been marked as Exhibit 14. Do you recognize**

23 **this document?**

24 A. Yes.

25 **Q. Is this the Division's request for**

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1 **hearing, the filing of which initiated the matter**

2 **that brings us here today?**

3 A. Yes, it is.

4 **Q. While Exhibit 14 is already part of**

5 **the case record prior to today, it has also been**

6 **admitted into evidence. What day was this request**

7 **for hearing filed?**

8 A. March 25th, 2016.

9 **Q. You can set that aside. I believe**

10 **you previously testified that Aetna Inc. made a**

11 **Form E filing with the Department in conjunction**

12 **with its proposed acquisition of Humana Inc.; is**

13 **that correct?**

14 A. Yes.

15 **Q. Did the Division conduct a review of**

16 **the Form E filed by Aetna Inc.?**

17 A. Yes.

18 **Q. What did that review entail?**

19 A. Analysis of market share.

20 **Q. What market share was analyzed in**

21 **that review?**

22 A. The health insurance market share.

23 **Q. What lines of business were analyzed**

24 **in that review?**

25 A. Well, initially we used the default

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1 lines of coverage in the health statement from the
 2 state page.
 3 **Q. What do you mean by state page?**
 4 A. State page is a page in the annual
 5 statement that identifies by filing type different
 6 lines of coverage by state with the premium amount
 7 by each state.
 8 **Q. So if a company were writing business**
 9 **shown on the state page in 50 different states, how**
 10 **many state pages would they file?**
 11 A. They'd have one for each state, so
 12 50 states and then a grand total page.
 13 HEARING OFFICER ERICKSON: Counsel,
 14 could you clarify, when you're talking about
 15 statement, are you talking about the Form E or are
 16 you talking -- is the witness talking about a
 17 different statement?
 18 MR. HOPPER: He's talking about a
 19 different statement.
 20 HEARING OFFICER ERICKSON: Could you
 21 please clarify in that area?
 22 MR. HOPPER: Sure. And perhaps it
 23 would help if I put the statement into the record.
 24 BY MR. HOPPER:
 25 **Q. Mr. Rehagen, your previous testimony**

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1 **when you referenced the state page and a statement,**
 2 **which statement were you referring to?**
 3 A. The health annual statement. It's
 4 the NAIC, the NAIC form.
 5 **Q. I'm now passing you what's been**
 6 **marked as Exhibit 15. Do you recognize this**
 7 **document?**
 8 A. Yes. It is the health annual
 9 statement blank.
 10 **Q. Is this the health annual statement**
 11 **blank that you were just referring to?**
 12 A. Yes.
 13 **Q. For which year is this, the health**
 14 **annual statement blank?**
 15 A. 2015.
 16 **Q. What type of company files this**
 17 **health annual statement blank?**
 18 A. Those companies that currently write
 19 health insurance.
 20 **Q. What is the source of Exhibit 15?**
 21 A. This is an NAIC document.
 22 **Q. Are companies licensed and operating**
 23 **in Missouri that write primarily health insurance**
 24 **required by law and regulation to file this**
 25 **Exhibit 15 with the Department?**

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1 A. Yes.
 2 **Q. Exhibit 15 has been previously**
 3 **admitted. I believe you said this is the annual**
 4 **statement blank for companies that primarily write**
 5 **health insurance; is that correct?**
 6 A. Yes.
 7 **Q. Are there other types of annual**
 8 **statements blank?**
 9 A. There are. There's a life, accident
 10 and health blank for those that primarily file for
 11 life insurance. There's also a property and
 12 casualty blank.
 13 **Q. Could you please turn to page 50 of**
 14 **Exhibit 15, and by 50, I mean the Bates stamp**
 15 **number, not the number on the side.**
 16 A. Right. Yes, I'm there. Found it.
 17 **Q. What is the title of page 50?**
 18 A. Exhibited premium, enrollment and
 19 utilization.
 20 **Q. Is this the state page for the health**
 21 **annual statement blank to which you previously**
 22 **referred?**
 23 A. Yes, it is.
 24 **Q. The other types of annual statement**
 25 **blank you mentioned, the life and the property and**

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1 **casualty, would those annual statement blanks have**
 2 **this same page within them?**
 3 A. No. They would be different.
 4 **Q. The columns are enumerated 1 through**
 5 **10. What information is contained in column titles**
 6 **1 through 10?**
 7 A. It is -- No. 1's the total, and then
 8 2 through 10 are the various default lines of
 9 business in this blank.
 10 **Q. Looking at the row that is numbered**
 11 **12, what does that row say?**
 12 A. Health premiums written.
 13 **Q. Are these direct premiums written?**
 14 A. Yes.
 15 **Q. I believe you previously mentioned**
 16 **default lines of business.**
 17 A. Uh-huh.
 18 **Q. Do you see any default lines of**
 19 **business on this page 50?**
 20 A. Yes. They're all default lines of
 21 business for this blank.
 22 **Q. Okay. You can set aside Exhibit 15**
 23 **for the moment, but please keep it close by. I'm**
 24 **now handing you what's been marked as Exhibit 16.**
 25 **Do you recognize this document?**

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1 A. Yes.

2 **Q. Is Exhibit 16 a true and accurate**

3 **copy of a spreadsheet prepared by the Division to**

4 **aid in the analysis of the default lines of**

5 **business from the state page that we just looked**

6 **at?**

7 A. Yes.

8 **Q. Are there any additional default**

9 **lines of business analyzed in Exhibit 16?**

10 A. Yes. There's also something in the

11 life, accident and health.

12 **Q. Are the lines of business from the**

13 **life, accident and health blank lines of business**

14 **from the state page in that annual statement blank?**

15 A. Yes.

16 **Q. What is the source of the information**

17 **contained in Exhibit 16?**

18 A. The NAIC.

19 **Q. Where does the NAIC collect its**

20 **information from?**

21 A. From the annual statements of all the

22 insurance companies that are filed.

23 **Q. Are companies that operate in**

24 **Missouri pursuant to a license or certificate of**

25 **authority required to file a copy of their annual**

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1 **statement with the NAIC?**

2 A. Yes.

3 **Q. Does NAIC stand for National**

4 **Association of Insurance Commissioners?**

5 A. Yes, it does.

6 **Q. How was the data in Exhibit 16**

7 **compiled by Division staff?**

8 A. Through the NAIC database, we were

9 able to analyze by group the various default lines

10 for each blank.

11 **Q. Was the creation of Exhibit 16 by the**

12 **Division triggered by the filing of a Form E by**

13 **Aetna Inc. to aid in the Division's analysis of the**

14 **filing?**

15 A. Yes.

16 **Q. Is it the Division's current, normal**

17 **procedure to create a record of this kind upon the**

18 **filing of a Form E?**

19 A. Yes.

20 **Q. Did an employee of the Division**

21 **create this Exhibit 16 at or near the time that the**

22 **Form E was filed and under review?**

23 A. Yes.

24 **Q. Does the Division maintain records of**

25 **this kind relating to filings made by insurance**

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1 **companies in the ordinary course of its business?**

2 A. Yes.

3 **Q. Exhibit 16 has been previously**

4 **admitted. How many different lines of business are**

5 **analyzed in Exhibit 16?**

6 A. 15, I believe. Yes, 15.

7 **Q. How many of those lines of business**

8 **relate to the state page of the health annual**

9 **statement blank or Exhibit 15?**

10 A. It's nine, I believe.

11 **Q. Is each of the lines of business from**

12 **the state page in Exhibit 15 analyzed in**

13 **Exhibit 16?**

14 A. Yes.

15 **Q. Would you please turn to pages 23 and**

16 **24 of Exhibit 16.**

17 A. Okay.

18 **Q. What line of business is analyzed on**

19 **pages 23 and 24 of Exhibit 16?**

20 A. It's the comprehensive group for

21 2015.

22 **Q. Is this a line of business from the**

23 **health annual statement blank state page?**

24 A. Yes.

25 **Q. Is this a line of business used in**

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1 **the annual statement required to be filed by**

2 **insurers doing business in the state?**

3 A. Yes.

4 **Q. Looking at page 23, what information**

5 **is contained in Section 1?**

6 A. Section 1 is market share analysis by

7 group from 2016 through -- excuse me -- 2006

8 through 2015.

9 **Q. What numbers support these market**

10 **shares?**

11 A. These are from the state page, the

12 filing made in the annual statement.

13 **Q. Do these numbers reflect direct**

14 **written premium written by these groups?**

15 A. Yes.

16 **Q. In Section 1, why are certain lines**

17 **of Section 1 highlighted?**

18 A. Because those are -- would be one of

19 the companies that are -- that is part of the

20 proposed acquisition.

21 **Q. Is Aetna GRP, the Aetna group**

22 **controlled by Aetna Inc. in this exhibit?**

23 A. Yes. I think it's Aetna Inc. and the

24 subsidiaries.

25 **Q. Is the Humana Inc., the Humana group**

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1 **controlled by Humana Inc.?**
 2 A. Yes.
 3 **Q. What was Aetna Inc.'s 2015 market**
 4 **share in the comprehensive group line of business**
 5 **from the health annual statement blank state page?**
 6 A. 20.34.
 7 **Q. Is that percent?**
 8 A. Percent, that's correct.
 9 **Q. What was Humana Inc.'s 2015 market**
 10 **share for the comprehensive group line of business**
 11 **from the health annual statement blank?**
 12 A. 4.17 percent.
 13 **Q. Moving down to Section 2, what**
 14 **information is shown in Section 2?**
 15 A. Section 2, the green, is -- the
 16 highlighted area are the two groups that are part
 17 of this proposed merger, and then the bottom line
 18 would be the combined post-merger numbers as if
 19 they'd been merged at that time.
 20 **Q. What would be the combined market**
 21 **share of Aetna Inc. and Humana Inc. in 2015 in the**
 22 **comprehensive group line of business from the**
 23 **health annual statement blank page?**
 24 A. 24.51 percent.
 25 **Q. Moving down to Section 3, what**

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1 **information is shown here?**
 2 A. Those are the various tests required
 3 under statute, concentration and trending.
 4 **Q. Okay. What was the combined total of**
 5 **the four largest groups market share in the**
 6 **comprehensive group list of business from the**
 7 **health annual state blank state page in 2015?**
 8 A. 95.65 percent.
 9 **Q. What was the combined total of the**
 10 **largest three groups in the comprehensive group**
 11 **line of business from the health annual statement**
 12 **blank state page?**
 13 A. Say it again.
 14 **Q. Same question as the previous except**
 15 **top three.**
 16 A. Okay. So we're in 2015?
 17 **Q. For 2015. My apologies.**
 18 A. And approximately?
 19 **Q. Approximately.**
 20 A. Would be about 91 percent.
 21 **Q. Could the exact total be calculated**
 22 **using Exhibit 16?**
 23 A. Yes.
 24 **Q. Looking at --**
 25 HEARING OFFICER ERICKSON: Excuse me,

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1 Mr. Hopper. Where would the approximate number
 2 that Mr. Rehagen is testifying to be found on this
 3 document?
 4 BY MR. HOPPER:
 5 **Q. Mr. Rehagen, where would the**
 6 **approximate number that you just testified to be**
 7 **found on this document?**
 8 A. You would have to add the three in
 9 the last column on page 23. I mean, I was just
 10 adding in my head the top three.
 11 HEARING OFFICER ERICKSON: The last
 12 column of?
 13 THE WITNESS: Page 23 at the top of
 14 Section 1.
 15 HEARING OFFICER ERICKSON: At the
 16 top, this column?
 17 THE WITNESS: Yes.
 18 HEARING OFFICER ERICKSON: Thank you,
 19 sir.
 20 BY MR. HOPPER:
 21 **Q. What are the three numbers that you**
 22 **approximated?**
 23 A. 44.72 percent, 26.26 percent and
 24 20.34 percent.
 25 **Q. Dropping the decimal, so this will be**

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1 **an underestimation, what is 44 plus 26 plus 20?**
 2 A. 90.
 3 **Q. Is that the minimal market share of**
 4 **the top three insurer groups --**
 5 A. Yes.
 6 **Q. -- in 2015?**
 7 **Is Aetna Inc. included in that group**
 8 **of the largest three market shares in this line of**
 9 **business in 2015?**
 10 A. Yes.
 11 **Q. If you could look toward the 2007**
 12 **market share in Section 1 for a moment, what is the**
 13 **approximate combined total of the three largest**
 14 **market shares in this line of business in 2007?**
 15 A. 71 without the decimals. So it would
 16 be actually a little higher.
 17 **Q. Is the combined market share of the**
 18 **top three groups in 2007 less than 80 percent?**
 19 A. Yes.
 20 **Q. Could you please turn to pages 25 and**
 21 **26 of Exhibit 16.**
 22 A. Okay.
 23 **Q. What line of business is analyzed on**
 24 **these two pages?**
 25 A. Comprehensive individual for 2015.

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1 **Q. Is the information contained on**
2 **pages 25 and 26 comparable to the information**
3 **contained on pages 23 and 24 except with regard to**
4 **the different line of business from the health**
5 **annual statement blank state page?**
6 A. Yes. It's the same type of
7 information.
8 **Q. What was Aetna Inc.'s 2015 market**
9 **share comprehensive individual line of business**
10 **from the health annual statement?**
11 A. 27.56 percent.
12 **Q. What was Humana Inc.'s 2015 market**
13 **share in the comprehensive individual line of**
14 **business from the health annual statement blank**
15 **state page?**
16 A. 2.37 percent.
17 **Q. What was the combined market share of**
18 **Aetna Inc. and Humana Inc. in 2015 in this line of**
19 **business?**
20 A. 49.9 percent.
21 **Q. What was the combined total of the**
22 **four largest market shares in this line of business**
23 **in 2015?**
24 A. 97.1 percent.
25 **Q. Approximately what was the combined**

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1 **total of the three largest market shares in this**
2 **line of business in 2015?**
3 A. 93 percent.
4 **Q. Could that number be calculated**
5 **exactly by adding the first three numbers in the**
6 **last column on page 25?**
7 A. Yes.
8 **Q. Is Aetna Inc. included in the three**
9 **largest market shares in this line of business in**
10 **2015?**
11 A. Yes.
12 **Q. What was the combined total of the**
13 **three largest market shares in this line of**
14 **business in 2007?**
15 A. About 87 -- 7-- yeah, 87. Correct.
16 **Q. Could that number be calculated**
17 **exactly using the first three numbers in the column**
18 **titled 2007 market share?**
19 A. Yes.
20 **Q. What is 94.74 minus 7?**
21 A. 94.74 minus 7 would be 87 without the
22 decimals, 74.
23 **Q. Thank you. Could you please turn to**
24 **pages 29 and 30 of Exhibit 16. Do pages 29 and 30**
25 **of Exhibit 17 contain comparable information to**

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1 **that in pages 23 and 24 and 25 and 26, except with**
2 **regard to a different line of business?**
3 A. Yes.
4 **Q. Which line of business is analyzed on**
5 **pages 29 and 30?**
6 A. It's the Title XVIII Medicare.
7 **Q. Is this Title XVIII Medicare a line**
8 **of business from the health annual statement bank**
9 **state page?**
10 A. Yes. This is for 2015.
11 **Q. Is this a line of business used in**
12 **the annual statement required to be filed by**
13 **insurers doing business in the state?**
14 A. Yes.
15 **Q. Looking at pages 29 and 30, and you**
16 **will likely need to look at both pages due to**
17 **column sizing, what market share did Aetna Inc.**
18 **have in 2015 in the Title XVIII Medicare line of**
19 **business from the health annual statement blank**
20 **state page?**
21 A. 32.11 percent.
22 **Q. What market share did Humana Inc.**
23 **have in 2015 in the Title XVIII Medicare line of**
24 **business from the health annual statement blank**
25 **state page?**

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1 A. 22.27.
2 **Q. What is the combined market share for**
3 **Humana Inc. and Aetna Inc. in this line of business**
4 **in 2015?**
5 A. 54.63 percent.
6 **Q. What was the combined total of the**
7 **four largest market shares in this line of business**
8 **in 2015?**
9 A. 98.52 percent.
10 **Q. Was Aetna Inc. included in the four**
11 **largest market shares in this line of business in**
12 **2015?**
13 A. Yes.
14 **Q. What was the combined total of the**
15 **four largest market shares in this line of business**
16 **in 2008?**
17 A. About 86 and a half.
18 **Q. Okay. Could that number be**
19 **calculated exactly using the first four numbers**
20 **beneath the heading 2008 market share?**
21 A. Yes.
22 **Q. You can set aside Exhibit 16. We**
23 **just looked at three lines of business from the**
24 **health annual statement blank state page, correct?**
25 A. Yes.

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1 **Q. Do those three lines of business give**
2 **a complete picture of those three markets?**
3 A. No. As I mentioned earlier, the life
4 and health or life and A&H companies and PC
5 companies could also write that type of business.
6 **Q. Is any health insurance business**
7 **written by life and A&H and the state filers for**
8 **property and casualty annual statement bank filers**
9 **included in Exhibit 16?**
10 A. No.
11 **Q. Are there other pages in the health**
12 **annual statement blank that you think would more**
13 **completely -- that you think more completely depict**
14 **any of these health insurance markets?**
15 A. Yes. There's a health care
16 supplemental exhibit.
17 **Q. Is that health care supplemental**
18 **exhibit contained in Exhibit 15?**
19 A. Yes, it is.
20 **Q. Could you please grab Exhibit 15**
21 **again and turn to Bates page 197.**
22 A. Okay.
23 **Q. What is the title of this page?**
24 A. Supplemental health care exhibit,
25 Part 2.

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1 **Q. Is this the page you were just**
2 **referencing?**
3 A. Yes, it is.
4 **Q. Why would market share information**
5 **based off this page more completely depict some**
6 **health insurance markets?**
7 A. Because it's broken down into finer
8 definitions, and also these are comparable between
9 the stated blank so that the life, P&C and health
10 insurers all would file the same supplemental
11 health care exhibit.
12 **Q. Is this page 197, the supplemental**
13 **health care exhibit, Part 2, does that page contain**
14 **the property and casualty annual statement blank?**
15 A. Yes.
16 **Q. Does that page contain the life and**
17 **accident and health annual statement blank?**
18 A. Yes.
19 **Q. Did the Division perform any market**
20 **share analysis based on the lines of business**
21 **listed in the supplemental health care exhibit,**
22 **Part 2?**
23 A. Yes.
24 **Q. Handing you what's been marked as**
25 **Exhibit 17. Do you recognize this document?**

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1 A. Yes.
2 **Q. Is this Exhibit 17 a true and**
3 **accurate copy of a spreadsheet prepared by the**
4 **Division to aid in the analysis of lines of**
5 **business from the supplemental health care exhibit,**
6 **Part 2, and the annual statement blanks filed by**
7 **life and accident and health, health and property**
8 **and casualty insurance companies in 2015?**
9 A. Yes.
10 **Q. What is the source of the information**
11 **contained in Exhibit 17?**
12 A. This came from SNL.
13 **Q. What is SNL?**
14 A. SNL is a service that we subscribe to
15 that helps us query information on the NAIC
16 database.
17 **Q. Where does SNL get its information?**
18 A. It's directly from the NAIC database.
19 **Q. Where does the information in the**
20 **NAIC database come from?**
21 A. From the financial filings the
22 companies make.
23 **Q. Is the information contained in**
24 **Exhibit 17 reflective of annual statement filings**
25 **made with the Department and with the NAIC?**

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1 A. Yes.
2 **Q. How is the data compiled by the**
3 **Division staff?**
4 A. How is it compiled? It's compiled
5 using SNL.
6 **Q. Let me rephrase. How does Division**
7 **staff acquire data from SNL?**
8 A. There's a method to query it.
9 **Q. Was the creation of Exhibit 17 by the**
10 **Division triggered by the filing of a Form E by**
11 **Aetna Inc. to aid in the Division's analysis of**
12 **filing?**
13 A. Yes.
14 **Q. Is it the Division's current normal**
15 **procedure to create a record of this kind upon the**
16 **filing of a Form E?**
17 A. Yes.
18 **Q. Did an employee of the Division**
19 **create this Exhibit 17 at or near the time that the**
20 **Form E was filed and under review?**
21 A. Yes.
22 **Q. Does the Division maintain records of**
23 **this kind relating to filings made by insurance**
24 **companies in the ordinary course of its business?**
25 A. Yes.

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1 **Q. Exhibit 17 has been previously**
2 **admitted. Looking at the first page of Exhibit 17,**
3 **the first column is titled company name. What**
4 **information is contained in Exhibit 17 in the first**
5 **column?**
6 A. That's the name of each company that
7 writes that type of business.
8 **Q. Is this a complete list of the**
9 **companies that filed a health care supplement --**
10 **excuse me.**
11 **Is this a complete list of companies**
12 **that filed the supplemental health care exhibit,**
13 **Part 2, and reported premium on that page in the**
14 **annual statement in 2015?**
15 A. Yes.
16 **Q. Moving to the second column entitled**
17 **NAIC code, period, code, what information is**
18 **contained in that column?**
19 A. That's the individual NAIC code for
20 each company.
21 **Q. Moving to the third column, titled**
22 **NAIC group code, what information is contained in**
23 **this column?**
24 A. That's the group code for each of the
25 companies.

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1 **Q. I believe you previously said that**
2 **Aetna Inc. was NAIC group code 1?**
3 A. Yes.
4 **Q. Do you see any Aetna Inc. companies**
5 **on this list?**
6 A. Yes, I do.
7 **Q. Do you see any Humana Inc. companies**
8 **on this list?**
9 A. Yes. They would be group code 119.
10 **Q. Moving to the next column, which**
11 **reads AR, colon, comp health and individual, what**
12 **information is contained in this column?**
13 A. That's the direct premiums written in
14 thousands by each company.
15 **Q. At the bottom of this column there is**
16 **a total for the entirety of the column?**
17 A. Yes.
18 **Q. What is that total?**
19 A. 1,406,615,726.
20 **Q. Moving to the next column, which**
21 **reads in part AR, colon, comp health, colon, small**
22 **GRP employer, what information is contained in this**
23 **column?**
24 A. It's the same premium information for
25 small group.

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1 **Q. Moving to the next -- excuse me. Is**
2 **this column also totaled?**
3 A. Yes, it is.
4 **Q. Moving to the next column titled AL,**
5 **colon, comp health, colon, large GRP employer, what**
6 **information is contained in that column?**
7 A. That's the premium information for
8 large group, and it is totaled.
9 **Q. What information is contained in the**
10 **final column of page 1 of Exhibit 17?**
11 A. That's the totals of the three
12 different lines.
13 **Q. Ignoring the last column, the**
14 **previous three columns for individual small group**
15 **and large group, do those columns correspond to**
16 **lines of business from the supplemental health care**
17 **exhibit, Part 2, in annual statements required to**
18 **be filed by insurance companies doing business in**
19 **Missouri?**
20 A. Yes.
21 **Q. Would you please turn to page 2 of**
22 **this exhibit. What information is contained on**
23 **page 2?**
24 A. This is the premium information that
25 we now -- by group, and it's in -- normally in

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1 thousands. It's in full dollars.
2 **Q. Do you see the Aetna group listed on**
3 **this page 2?**
4 A. Yes.
5 **Q. Is the Aetna group listed in the**
6 **first line of this page?**
7 A. Yes.
8 **Q. Is the Humana group also listed in**
9 **this page?**
10 A. Yes.
11 **Q. Is the information in the final**
12 **right-most four columns of this page comparable to**
13 **the right-most four columns of page 1 by total**
14 **budget?**
15 A. Yes.
16 **Q. Could you please turn to page 3.**
17 **What information is contained on page 3 of**
18 **Exhibit 17?**
19 A. This is the market share information
20 based on premium of market share.
21 **Q. What was the Aetna group's market**
22 **share in the comprehensive health individual line**
23 **of business from supplemental part 2 in 2015?**
24 A. 36.88 percent.
25 **Q. What was Humana's -- Humana group's**

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1 market share in that same frame?
 2 A. 1.93 percent.
 3 Q. Moving to the next column, what was
 4 the Aetna group's market share in the small group
 5 employer comprehensive health insurance line of
 6 business from the supplemental health care exhibit?
 7 A. 12.14 percent.
 8 Q. What about Humana group's market
 9 share?
 10 A. 5.99 percent.
 11 Q. Moving to the next column, large
 12 group employer comprehensive insurance from the
 13 supplemental health care exhibit, Part 2, what was
 14 Aetna group's market share in that line for 2015?
 15 A. 14.13 percent.
 16 Q. What was Humana group's market share
 17 under the same line of business?
 18 A. 0.85 percent.
 19 Q. What was the combined total of the
 20 top four groups in the comprehensive health ins--
 21 individual comprehensive insurance line of business
 22 from the supplemental health care center?
 23 A. 91.02 percent.
 24 Q. What about the top four groups in the
 25 small group employer comprehensive health insurance

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1 list of business from the same page?
 2 A. 88.49 percent.
 3 Q. What about the large group employer
 4 comprehensive health insurance line of business
 5 from the same page?
 6 A. 94.27 percent.
 7 Q. Set that aside. Just keep it handy.
 8 Next I'm going to pass you what's been marked as
 9 Exhibit 18. Do you recognize this document?
 10 A. Yes, I do.
 11 Q. Does Exhibit 18 contain comparable
 12 information to Exhibit 17, except from 2010 rather
 13 than 2008?
 14 A. Yes.
 15 Q. Was the information in Exhibit 18
 16 compiled in the same manner and for the same
 17 reasons as the information in Exhibit 17?
 18 A. Yes.
 19 Q. Exhibit 18 has previously been
 20 admitted into evidence. Comparing Exhibit 18 to
 21 Exhibit 17, looking at the first page of each
 22 exhibit, which exhibit contains more rows?
 23 A. Exhibit 18 has more rows.
 24 Q. What does that information mean to
 25 you?

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1 A. That means there were more individual
 2 insurers writing that type of business in 2010.
 3 Q. Moving to the bottom of the
 4 comprehensive individual health insurance line of
 5 business column, what was the total in that line of
 6 business in 2010?
 7 A. 525,596-- 525,596,708.
 8 Q. How does that number compare to the
 9 total for that same line of business in 2015?
 10 A. 2015 more than twice that much.
 11 Q. Does this mean that the size of this
 12 line of business has more than doubled from 2010 to
 13 2015?
 14 A. Yes.
 15 Q. Would you please turn to page 2 of
 16 the exhibit. Again, which page -- comparing the
 17 second page of Exhibit 17 and the second page of
 18 Exhibit 18, which page contains more rows?
 19 A. Exhibit 18 has more rows.
 20 Q. Looking at Exhibit 17, do you see a
 21 line and the NAIC group code of 23?
 22 A. Yes.
 23 Q. What group does that belong to?
 24 A. BCS Insurance Group.
 25 Q. How much premium did the BCS

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1 Insurance Group report in the comprehensive
 2 individual health insurance line of business in
 3 2010?
 4 A. None.
 5 Q. Excuse me. In 2015.
 6 A. Oh, 2015?
 7 Q. I misspoke. We were looking at 2015.
 8 I just confused you.
 9 A. Right. It reported none in the
 10 individual.
 11 Q. Okay. What about in the next column
 12 for small group employer comprehensive health
 13 insurance?
 14 A. No.
 15 Q. Moving down, do you see NAIC group
 16 code 661?
 17 A. Yes.
 18 Q. How much individual comprehensive
 19 health insurance business did this report in 2015?
 20 A. It was negative 47,142.
 21 Q. How could a group report negative
 22 premium?
 23 A. I suppose it could have been some
 24 returned premium.
 25 Q. Moving to the next column, small

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1 group employer health insurance, how much premium
 2 was reported by group 661?
 3 A. 15,231.
 4 Q. Moving down to group code 4826, do
 5 you see a group code 4826 in 2015?
 6 A. Yes, I do.
 7 Q. How much premium was reported in the
 8 individual comprehensive health insurance market
 9 for group code 4826 in 2015?
 10 A. 2,079.
 11 Q. I think you may be mixing up.
 12 A. Yes, I am.
 13 Q. Did that group report any other
 14 premium on this page?
 15 A. No.
 16 Q. Moving down one line to the group
 17 code NA with the company code 71439, how much
 18 business did this company report in the
 19 comprehensive individual health insurance line of
 20 business in 2015?
 21 A. 2,079.
 22 Q. Is any other business reported by
 23 this company in 2015 on this page?
 24 A. No.
 25 Q. Comparing the second page of

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1 Exhibit 17 with the second page of Exhibit 18, do
 2 you see the four -- the three group codes and the
 3 one company code that we just listed, listed on the
 4 second page of Exhibit 18?
 5 A. No.
 6 Q. What does that information tell you?
 7 A. Those were new groups that entered
 8 this market after 2010.
 9 Q. Do you see any other groups listed
 10 for 2010 in Exhibit 18 -- excuse me. Strike that.
 11 Do you see any other groups listed on
 12 the second page of Exhibit 17 for 2015 that are not
 13 listed on the second page of Exhibit 18 for 2010?
 14 A. No.
 15 Q. What does that information tell you?
 16 A. That there were no other groups that
 17 joined the market.
 18 Q. Do you see any groups listed for
 19 2015 -- excuse me. Sorry. Do you see any groups
 20 listed for 2010 in Exhibit 18 that are not listed
 21 in Exhibit 17 for 2015?
 22 A. Yes.
 23 Q. Approximately how many do you see?
 24 A. There's several. I would guess
 25 between 15 and 20.

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1 Q. What does that information tell you?
 2 A. Those are companies that are no
 3 longer writing that type of business as of 2015.
 4 Actually, those are groups that are no longer
 5 writing that business, not just companies.
 6 Q. Still looking at the second page of
 7 Exhibit 18, I see that three rows are highlighted?
 8 A. Yes.
 9 Q. Why is that the case?
 10 A. The Aetna and Humana are the two
 11 parties to this proposed merger. Coventry is now
 12 merged into Aetna after 2010.
 13 Q. Is the Coventry Corp group listed in
 14 the Exhibit 17 for 2015?
 15 A. No.
 16 Q. Did the merger between Aetna and
 17 Coventry occur between 2010 and 2015?
 18 A. Yes.
 19 Q. Looking at page 3 of Exhibit 18, does
 20 this page 3 of Exhibit 18 contain comparable
 21 information to page 3 of Exhibit 17, except for
 22 2010 instead of 2015?
 23 A. Yes.
 24 Q. What was the combined market share of
 25 the top four groups in the comprehensive individual

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1 health insurance line of business from the health
 2 care supplement -- from the supplemental health
 3 care exhibit, Part 2 in the annual statement?
 4 A. 83.5 percent.
 5 Q. Comparing the third page of
 6 Exhibit 18 with the third page of Exhibit 17, can
 7 you identify the top three groups in the individual
 8 comprehensive health insurance line of business in
 9 2010?
 10 A. 2010. Top three would be Anthem
 11 Inc., Blue Cross/Blue Shield of Kansas City and the
 12 United Health Care Group.
 13 Q. Can you identify the fourth largest
 14 group in this line of business?
 15 A. Coventry Corporation.
 16 Q. Looking down five rows, do you see
 17 market share greater than Coventry's in this line
 18 of business?
 19 A. Yes, Assurant, Inc. at that time.
 20 Q. Is Coventry the fifth largest market
 21 share in this line of business?
 22 A. Yes.
 23 Q. Is Aetna the sixth largest market
 24 share in this line of business?
 25 A. Yes.

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1 **Q. Looking at 2015, can you identify the**
2 **five largest groups in the individual comprehensive**
3 **health insurance line of business?**
4 A. Yes. It's Anthem Inc., United Health
5 Group, Aetna Inc. -- or Aetna group, Blue
6 Cross/Blue Shield of Kansas City and Cox.
7 **Q. Is the Assurant, Inc. group**
8 **possessing a higher market share than the Cox**
9 **insurance group?**
10 A. Yes. It is, yes.
11 **Q. Absent -- excuse me. Excluding the**
12 **Coventry Corp group from 2010, which you previously**
13 **said was acquired by Aetna, how did the identities**
14 **of the top five groups in this line of business**
15 **from 2010 compare to the identities of the top five**
16 **groups in this line of business in 2015?**
17 A. They're the same.
18 **Q. Moving to the next column in both**
19 **pages, for 2010, can you identify the top five**
20 **groups in the small group employer comprehensive**
21 **insurance line of business?**
22 A. Yes, it's Anthem, Blue Cross/Blue
23 Shield of Kansas City, United Health Group,
24 Coventry Corporation, Humana and Aetna.
25 **Q. Is Aetna the sixth largest?**

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1 A. Sixth largest. I'm sorry.
2 **Q. Looking at 2015, can you identify the**
3 **five largest groups in the comprehensive small**
4 **group employer health insurance line of business?**
5 A. Yes. It's Anthem Inc., United Health
6 Group, Aetna, Blue Cross/Blue Shield of Kansas City
7 and Cox.
8 **Q. Does Humana group have a higher**
9 **market share than Cox?**
10 A. I was looking at large. I'm sorry.
11 I'll go back to the small and redo that. It is
12 Anthem Inc., United Health, then Blue Cross/Blue
13 Shield of Kansas City, Aetna and then Humana.
14 **Q. Are the identities of the five**
15 **largest groups in this line of business between**
16 **2010 and 2015 excluding Coventry the same?**
17 A. Yes.
18 **Q. Moving to the next column, large**
19 **group employer comprehensive health insurance, in**
20 **this line of business, what are the identities of**
21 **the four largest groups in this line of business**
22 **from 2010?**
23 A. Anthem, Blue Cross/Blue Shield of
24 Kansas City, United Health and the Coventry group.
25 **Q. In 2015, what are the identities of**

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1 **the four largest groups in this line of business?**
2 A. Anthem, United Health, Aetna and Blue
3 Cross/Blue Shield of Kansas City. Not in that
4 order, though. Aetna's fourth.
5 **Q. I'm sorry. Did I cut you off?**
6 A. I was just saying Aetna's fourth.
7 **Q. Okay. Comparing the top four**
8 **insurers that you just read off in 2010 and 2015**
9 **and accounting for Aetna's acquisition of Coventry,**
10 **how do these two lists compare?**
11 A. They're the same.
12 **Q. You can set aside those two exhibits.**
13 **I'm now going to pass you what's been marked as**
14 **Exhibit 19. Do you recognize this document?**
15 A. Yes.
16 **Q. Is Exhibit 19 a true and accurate**
17 **copy of a Read-Me file from the CMS website that**
18 **accompanied data files available publicly on that**
19 **website?**
20 A. Yes.
21 **Q. Have you personally located and**
22 **viewed this document on the CMS website?**
23 A. Yes.
24 **Q. Is Exhibit 19 a true and accurate**
25 **copy of the document you found and viewed on that**

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1 **website?**
2 A. Yes.
3 **Q. Exhibit 19 has been previously**
4 **admitted into evidence. Below the title, what does**
5 **the first line of this document say?**
6 A. Says contract, slash, plan, slash,
7 state, slash, county package.
8 **Q. What does that mean?**
9 A. That means the information is by
10 contract, by plan, by state, every state and county
11 in the United States.
12 **Q. Okay. Skipping down two paragraphs**
13 **to the paragraph that begins with the CPSC**
14 **underscore contract. You don't need to read the**
15 **file name, but could you read the first of that**
16 **paragraph?**
17 A. This is a comma separated value text
18 file containing descriptive attributes for every
19 contract plan combination that appears in the CPSC
20 enrollment info file.
21 **Q. Okay. The next paragraph, again**
22 **skipping the file name, would you read that?**
23 A. Yes. This is a comma separated value
24 text file. It contains the enrollment data for the
25 month and year described in the file name for every

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1 contract plan in every state and county.
 2 **Q. Did the paragraphs you just read**
 3 **describe two data files that accompanied this**
 4 **Read-Me file on the CMS website?**
 5 A. Yes.
 6 **Q. What information was contained in the**
 7 **CPSC underscore contract, et cetera, file?**
 8 A. It's the various contract
 9 information.
 10 **Q. And what information was contained in**
 11 **the second?**
 12 A. The enrollment data.
 13 **Q. To what type of contract or plan do**
 14 **these two data files relate?**
 15 A. The Medicare.
 16 **Q. Okay. Moving down to the bottom of**
 17 **page 1 of Exhibit 19, what organization types were**
 18 **included in these two data files?**
 19 A. The local CCP, the regional CCP, the
 20 MSA and the PFFS.
 21 **Q. Does that list continue on to page 2?**
 22 A. Yes. And also included in that was
 23 demonstrations, national pace, 1876 costs, HCPP,
 24 1833 costs, employer-sponsored PDP and PDP.
 25 **Q. Does this list of organization types**

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1 **correspond with the list of contract types that**
 2 **Ms. Nelson previously testified to in Exhibit 5?**
 3 A. Yes.
 4 **Q. Which of these organization types**
 5 **offer Medicare Advantage contracts?**
 6 A. The first four on the first page,
 7 local CCP, regional CCP, MSA and PFFS.
 8 **Q. Moving to the second page under the**
 9 **heading special notes, would you read special**
 10 **note 1?**
 11 A. The privacy laws of HIPAA have been
 12 interpreted to prohibit publishing enrollment data
 13 values of 10 or less. Consequently some enrollment
 14 data in this file have been set to blank because
 15 the enrollment was ten or less.
 16 **Q. Paraphrasing that special note, what**
 17 **does that mean?**
 18 A. Basically if there's less than 10
 19 enrollees, the information is blank.
 20 **Q. Does that also apply to lines of**
 21 **10 enrollees?**
 22 A. Repeat that. I didn't hear you. Ten
 23 enrollees, correct.
 24 **Q. What does special note 2 tell you,**
 25 **just paraphrasing?**

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1 A. That this is a very large file and it
 2 likely did not work with Microsoft Excel, so you
 3 must use Access or some statistical package to
 4 download.
 5 **Q. Did the Division analyze the two data**
 6 **files that were included with this Read-Me file on**
 7 **the CMS website?**
 8 A. Yes.
 9 **Q. For which month and year -- which**
 10 **month and year did the two data files included with**
 11 **this Exhibit 19 on the CMS website pertain to?**
 12 A. The month of April from 2007 and then
 13 every April through 2016.
 14 **Q. So if I understand you correctly, the**
 15 **Division analyzed 10 separate sets of data?**
 16 A. Yes.
 17 **Q. Special note 2 mentions that the**
 18 **enrollment data file was very large, I think you**
 19 **said?**
 20 A. Right.
 21 **Q. And could not be handled by Excel.**
 22 **How did the Division analyze that data file?**
 23 A. We first had to download it into
 24 Access.
 25 **Q. Okay. What did the Division do next?**

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1 A. Then next we filtered out the
 2 non-Missouri information and the blank information.
 3 **Q. After filtering out the non-Missouri**
 4 **information and the blank information, what did the**
 5 **Division do next?**
 6 A. Then we exported it into Excel.
 7 **Q. Now that the file was exported into**
 8 **Excel, did the file contain multiple rows for each**
 9 **plan --**
 10 A. Yes.
 11 **Q. -- at this point? Is this because**
 12 **the CMS file contained a separate row for each**
 13 **county for each plan?**
 14 A. Yes, exactly.
 15 **Q. What did the Division do next to**
 16 **analyze this data?**
 17 A. We filtered the data such that there
 18 was only one row for each plan.
 19 **Q. Was this filtering done using Excel**
 20 **functions?**
 21 A. Yes.
 22 **Q. I'm now going to pass you what has**
 23 **been marked as Exhibit 35. For clarify of the**
 24 **record, these exhibits are out of order. Do you**
 25 **recognize Exhibit 35?**

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1 A. Yes.

2 **Q. Is Exhibit 35 a true and accurate**

3 **copy of an intermediate stage of data analysis by**

4 **the Division that you were just describing?**

5 A. Yes.

6 **Q. Does Exhibit 35 contain data**

7 **pertaining to Medicare Advantage and other Medicare**

8 **plans with enrollees in Missouri counties and the**

9 **City of St. Louis?**

10 A. Yes.

11 **Q. What is the source of the information**

12 **contained in Exhibit 35?**

13 A. This is from the CMS data.

14 **Q. Did an employee of the Division**

15 **create the file portrayed by Exhibit 35 to aid in**

16 **the Division's analysis of the Form E filed by**

17 **Aetna Inc.?**

18 A. Yes.

19 **Q. Is it the Division's current normal**

20 **procedure -- strike that.**

21 **Do you consider analysis documents of**

22 **this kind to be reliable in carrying out your**

23 **regulatory duties?**

24 A. Yes.

25 **Q. Is the subject matter of this**

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1 **document related to the issues of the relevant**

2 **product market, the relevant geographic market,**

3 **market shares, the volatility of ranking of market**

4 **leaders, the number of competitors, concentration**

5 **and trends of concentration in the industry, and**

6 **the ease of entry and exit into the market for --**

7 **in this matter?**

8 A. Yes.

9 MR. HOPPER: The Division offers

10 Exhibit 35 into evidence.

11 MR. WHITMER: No objection.

12 HEARING OFFICER ERICKSON: The

13 Division's Exhibit 35 is admitted.

14 (PETITIONER'S EXHIBIT 35 WAS RECEIVED

15 INTO EVIDENCE.)

16 BY MR. HOPPER:

17 **Q. Does Exhibit 35 portray the stage of**

18 **the analysis that you were just discussing whereby**

19 **each plan with enrollees in Missouri displays that**

20 **data on one row each?**

21 A. Each plan -- no. I don't see it.

22 **Q. I should probably rephrase. Does**

23 **each row in Exhibit 35 correspond to one plan?**

24 A. Yes.

25 **Q. For which months and years does**

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1 **Exhibit 35 contain information?**

2 A. It's the months of April from 2007

3 through every month through 2016.

4 **Q. Why didn't the Division analyze data**

5 **from April 2006 or earlier?**

6 A. It wasn't available.

7 **Q. Does Exhibit 35 contain information**

8 **from the second data file discussed in Exhibit 19,**

9 **I believe it's the contract info data file?**

10 A. No.

11 **Q. Does Exhibit 35 contain contract**

12 **information?**

13 A. Some contract information.

14 **Q. Okay. Does Exhibit 35 represent**

15 **information from both data files that were taken**

16 **from the CMS website?**

17 A. Yes.

18 **Q. Does Exhibit 35 contain any plans**

19 **with the organization type of 1876 cost plan, a**

20 **national PACE plan or any other organization types**

21 **from the second page of Exhibit 19?**

22 A. Yes.

23 **Q. Are those plans Medicare Advantage**

24 **plans?**

25 A. No.

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1 **Q. What did the Division do next to**

2 **analyze this data?**

3 A. We filtered out all those type of

4 plans.

5 **Q. After filtering all those types of**

6 **plans, did the data contain individual Medicare**

7 **Advantage plans?**

8 A. Yes.

9 **Q. Did the data contain employer group**

10 **Medicare Advantage plans?**

11 A. Yes.

12 **Q. Did the data contain special needs**

13 **Medicare Advantage plans?**

14 A. Yes, it did.

15 **Q. What did the Division do next to**

16 **analyze that?**

17 A. We secondly pulled that information

18 for each of those types out.

19 **Q. After separating that information,**

20 **did each parent organization listed in the data**

21 **still have more than one row if it offered more**

22 **than one plan in Missouri?**

23 A. Yes.

24 **Q. What did the Division do next to**

25 **analyze the data?**

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1 A. Then we combined those such that
 2 there was one row per parent.
 3 **Q. Did the Division do this for the ten**
 4 **data sets from April 2007 through April 2016?**
 5 A. Yes.
 6 **Q. After combining the data so that each**
 7 **parent organization had one row, what did the**
 8 **Division do next to analyze the data?**
 9 A. Then we looked at the market share
 10 for each -- for the individual and group compared
 11 to the total.
 12 **Q. How was that market share calculated?**
 13 A. The total for the group versus the
 14 total premiums written.
 15 **Q. Do these data files contain direct**
 16 **premium written or do they contain enrollment?**
 17 A. It is enrollment.
 18 **Q. We've looked at a lot of numbers**
 19 **today, and I understand --**
 20 A. Yes, we have. Yes.
 21 HEARING OFFICER ERICKSON: Counsel,
 22 could you reclarify the point for the hearing
 23 officer to make sure the record is clear?
 24 MR. HOPPER: Certainly.
 25 BY MR. HOPPER:

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1 **Q. Do the data files which are portrayed**
 2 **on Exhibit 35 contain enrollment figures or direct**
 3 **written premium figures?**
 4 A. Enrollment figures.
 5 **Q. Why do they contain enrollment**
 6 **figures?**
 7 A. Because that's how the data comes
 8 from CMS.
 9 **Q. Was comparable data available with**
 10 **direct written premium numbers?**
 11 A. No.
 12 **Q. You can set aside Exhibit 35. I'm**
 13 **now going to resume the sequence of numbering and**
 14 **pass you what's been marked as Exhibit 20. Do you**
 15 **recognize this document?**
 16 A. Yes.
 17 **Q. Is this document the final product of**
 18 **the Division's analysis of individual Medicare**
 19 **Advantage plans from April 2007 through April 2016?**
 20 A. Yes.
 21 **Q. Is this document an analysis work**
 22 **paper of the Division?**
 23 A. Yes.
 24 **Q. Do you typically rely upon analysis**
 25 **work papers of the Division in undergoing your**

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1 **regulatory duties?**
 2 A. Yes.
 3 **Q. Does this document relate to the same**
 4 **issues described in -- does this document relate to**
 5 **the same issues in this matter as Exhibit 19?**
 6 A. Yes.
 7 **Q. Does this document relate to the same**
 8 **issues relevant to this matter as Exhibit 35?**
 9 A. Yes.
 10 **Q. Okay. Looking at the first page of**
 11 **Exhibit 20, what information is contained in the**
 12 **first column?**
 13 A. That's the county.
 14 **Q. Looking at the first three pages of**
 15 **Exhibit 20, are the 114 counties and the City of**
 16 **St. Louis within Missouri listed for 2007?**
 17 A. Yes.
 18 **Q. Does this Exhibit 20 contain market**
 19 **share information for different parent**
 20 **organizations within those counties and the City of**
 21 **St. Louis?**
 22 A. Yes.
 23 **Q. Okay. Exhibit 20 has previously been**
 24 **admitted into evidence. In the second through**
 25 **eleventh columns, what information is listed here?**

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1 A. That's the parent company market
 2 share in each county.
 3 **Q. Okay. Is the statewide market share**
 4 **also listed?**
 5 A. Yes, the total.
 6 **Q. Where is that listed?**
 7 A. It's the total column.
 8 **Q. Is the statewide market share for**
 9 **each parent organization listed?**
 10 A. Yes, it's also the first two rows
 11 under the headings.
 12 **Q. Moving past the eleventh column,**
 13 **there is a column titled total. What information**
 14 **is contained in this column?**
 15 A. That's the totals for each county and
 16 statewide.
 17 **Q. What is the next column?**
 18 A. That's the combined totals for Aetna
 19 and Humana.
 20 **Q. What is the next column?**
 21 A. The number of providers.
 22 **Q. What is the next column?**
 23 A. HHI.
 24 **Q. What is HHI?**
 25 A. It's a measure of concentration of

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1 the market.

2 **Q. How do you calculate HHI?**

3 A. You take the percentages of each

4 individual in the market, square those and then add

5 them together.

6 **Q. Would you please turn to the last**

7 **three pages of Exhibit 20, Bates number 30 to 32.**

8 A. Yes.

9 **Q. Does the first column of pages 30 to**

10 **32 contain comparable information to the first**

11 **column of the rest of this exhibit?**

12 A. Yes.

13 **Q. What information is contained in**

14 **columns 2 through 8?**

15 A. That's the parent -- each line, each

16 different parent company and the total.

17 **Q. Do those columns contain enrollment**

18 **and market share information for the different**

19 **parent organizations in the individual Medicare**

20 **Advantage market in April of 2016 in Missouri?**

21 A. Yes.

22 **Q. What was Aetna's market share**

23 **statewide in the individual Medicare Advantage**

24 **market in April of 2016?**

25 A. 32.82 percent.

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1 **Q. What about Humana?**

2 A. 20.94 percent.

3 **Q. Where Aetna is listed in Exhibit 20,**

4 **is that representative of companies controlled by**

5 **Aetna Inc.?**

6 A. Yes.

7 **Q. Where Humana is listed in Exhibit 20,**

8 **is that representative of companies controlled by**

9 **Humana Inc.?**

10 A. Yes.

11 **Q. What would be Aetna and Humana's**

12 **combined market share in April of 2016?**

13 A. 53.76 percent.

14 **Q. Do these three pages also contain**

15 **market share by county?**

16 A. Yes.

17 **Q. Are the market shares of Aetna and**

18 **Humana and the combined market share of Aetna and**

19 **Humana discernible from this document for 2016 in**

20 **April in the individual Medicare Advantage market?**

21 A. Yes, they are.

22 **Q. What does the column title pre-merger**

23 **providers tell you?**

24 A. That's the number of groups that are

25 offering coverage prior to the merger.

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1 **Q. What does the column titled**

2 **post-merger providers tell you?**

3 A. That there will be one less provider

4 providing this coverage.

5 **Q. What does the column titled**

6 **pre-merger HHI tell you?**

7 A. That would be the pre-merger measure

8 of concentration in market.

9 **Q. What does the column titled**

10 **post-merger HHI tell you?**

11 A. That would be the post-merger market

12 concentration.

13 **Q. What does the column titled HHI**

14 **increase tell you?**

15 A. That's the amount the HHI increased.

16 **Q. Okay. What would be the statewide**

17 **HHI increase when accounting for this proposed**

18 **acquisition?**

19 A. 1,374.

20 **Q. What would be the HHI post merger**

21 **when accounting for this proposed acquisition?**

22 A. 3,846.6.

23 **Q. Looking back at columns 2 through 8**

24 **in these three pages, going to move to some**

25 **demonstrative exhibits. In approximately how many**

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1 **counties of Missouri did Aetna have individuals**

2 **enrolled in Medicare Advantage plans in April of**

3 **2016?**

4 MR. WHITMER: I'll object based on

5 foundation. I don't know that we've laid a

6 foundation for where this information came from.

7 BY MR. HOPPER:

8 **Q. Based on Exhibit 20, in approximately**

9 **how many counties does Aetna have non-zero market**

10 **share in this market?**

11 A. It looks from visually around half.

12 **Q. What does it look like based on**

13 **Exhibit 20?**

14 A. I'd have to get Exhibit 20.

15 **Q. Again, I'm looking at the last three**

16 **pages.**

17 A. Right. I'll have to count them.

18 **Q. Just approximately.**

19 A. It's probably about 60, just an

20 estimate.

21 HEARING OFFICER ERICKSON: I'm sorry.

22 Could you speak up?

23 THE WITNESS: It looks to be around

24 60 as an estimate.

25 BY MR. HOPPER:

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1 **Q. Would Exhibit 20 demonstrate the**
 2 **exact number of counties in which Aetna has**
 3 **non-zero market share?**
 4 A. Yes.
 5 **Q. In approximately how many counties in**
 6 **this market does Humana have non-zero market share**
 7 **in April of 2016?**
 8 A. Humana has very few, maybe three or
 9 four. Non-zero. I'm backwards. It only has three
 10 or four that are zeros. I said it backward.
 11 **Q. Would the exact number of non-zero**
 12 **market shares be discernible from Exhibit 20?**
 13 A. Yes.
 14 **Q. Looking at Exhibit 20, does Humana**
 15 **have non-zero enrollment in this market in every**
 16 **county in which Aetna has non-zero enrollment?**
 17 A. Yes.
 18 **Q. Can you speak into the microphone to**
 19 **make sure?**
 20 A. Yes. I'm sorry. Yes, it does.
 21 **Q. Okay. Looking at Exhibit 20, again,**
 22 **approximately in how many counties does UHC have**
 23 **non-zero enrollment in this market?**
 24 MR. WHITMER: I'm just going to
 25 object again, your Honor. The question's a fine

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1 one, but having the question asked with a visual
 2 that we still don't have a foundation for is
 3 troubling. So as long as the witness is answering
 4 based on his review of the document and not what's
 5 up on the board, then we don't have an objection.
 6 BY MR. HOPPER:
 7 **Q. Mr. Rehagen, does the document**
 8 **displayed on the screen derive its information**
 9 **directly from Exhibit 20?**
 10 A. Yes, it does. And there's one
 11 county, Worth County for UHC, according to this.
 12 That was the wrong one. Hang on.
 13 HEARING OFFICER ERICKSON: You need
 14 to speak up, sir. I'm sorry.
 15 THE WITNESS: I'm getting them
 16 confused with Aetna. I'm trying to follow the --
 17 BY MR. HOPPER:
 18 **Q. Does UHC operate in the majority of**
 19 **the state in this market?**
 20 A. Yes.
 21 **Q. Do any other of the parent**
 22 **organizations listed in pages 30 to 32, apart from**
 23 **Aetna, Humana and UHC, operate in as many counties**
 24 **as those three parent organizations do, based on**
 25 **Exhibit 20?**

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1 A. No.
 2 **Q. Based on Exhibit 20, do any other**
 3 **parent organizations apart from Aetna, Humana and**
 4 **UHC operate statewide in this market?**
 5 A. No.
 6 **Q. Going to the bottom of page 32, under**
 7 **the heading pre-merger providers, what is the**
 8 **bottom number in this column?**
 9 A. 2.87.
 10 **Q. Is that number an average of the**
 11 **pre-merger providers with non-zero enrollment in**
 12 **Missouri counties and the City of St. Louis?**
 13 A. Yes.
 14 **Q. What is the number at the bottom of**
 15 **the post-merger providers column?**
 16 A. 2.20.
 17 **Q. Is that number an average of the**
 18 **providers with non-zero enrollment n Missouri**
 19 **counties and the City of St. Louis taking into**
 20 **effect -- taking into account the proposed**
 21 **acquisition of Humana by Aetna?**
 22 A. Yes.
 23 **Q. Do pages 30 to 32 of Exhibit 20**
 24 **contain market share information for individual**
 25 **Medicare Advantage plans by county?**

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1 A. Yes.
 2 **Q. You can set aside Exhibit 20.**
 3 HEARING OFFICER ERICKSON:
 4 Mr. Hopper, on Exhibit 20, page 1, the exhibit
 5 sticker appears to cover some information. Is that
 6 substantively relevant information?
 7 MR. HOPPER: The HHI is an advisory
 8 reference but --
 9 HEARING OFFICER ERICKSON: I'm not
 10 asking you to testify. I'm asking if it's
 11 relevant. My simple request is, during the next
 12 break, you provide replacement cover pages to all
 13 the counsel and the hearing officer such that the
 14 exhibit sticker does not cover any information.
 15 MR. HOPPER: Understood. Thank you.
 16 HEARING OFFICER ERICKSON: And that
 17 would be the same for the next exhibit, 21. Thank
 18 you, sir.
 19 MR. HOPPER: Thank you.
 20 BY MR. HOPPER:
 21 **Q. I'm now passing you what's been**
 22 **marked as Exhibit 21. Do you recognize that**
 23 **exhibit?**
 24 A. Yes.
 25 **Q. Does Exhibit 21 contain comparable**

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1 information to Exhibit 20 but for group Medicare
 2 Advantage plans rather than individual Medicare
 3 Advantage plans?
 4 A. Yes.
 5 Q. Was Exhibit 21 prepared in the same
 6 manner as Exhibit 20?
 7 A. Yes.
 8 Q. Moving to the final three pages of
 9 this exhibit, Bates number 34 through 36, what was
 10 Aetna's market share in the group Medicare
 11 Advantage market statewide in Missouri in April
 12 2016?
 13 A. 18.77 percent.
 14 Q. What about Humana?
 15 A. 10.8 percent.
 16 Q. Exhibit 21 has previously been
 17 admitted into evidence. You can set that aside.
 18 Handing you what's been marked as Exhibit 22. Do
 19 you recognize this document?
 20 A. Yes.
 21 Q. What is this document?
 22 A. It's the 10-K for Aetna Inc.
 23 Q. Is this the 2015 10-K for Aetna Inc.?
 24 A. Yes, it is.
 25 Q. Could you please turn to page --

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1 HEARING OFFICER ERICKSON: Counsel,
 2 before you have him turn to any pages, would you
 3 have the witness explain what a 10-K is?
 4 MR. HOPPER: Certainly.
 5 BY MR. HOPPER:
 6 Q. Mr. Rehagen, what is a 10-K?
 7 A. It's an SEC filing that publicly
 8 traded companies are required to make. It includes
 9 some financial information.
 10 Q. Is this filing made annually?
 11 A. The 10-K, yes, is an annual filing.
 12 Q. With whom is the 10-K filed?
 13 A. The Securities and Exchange
 14 Commission.
 15 Q. The Securities and Exchange
 16 Commission is a branch of the Federal Government?
 17 A. Yes.
 18 Q. Does the Division rely on filings
 19 made with the Federal Government in the course of
 20 its regulatory duties?
 21 A. Yes.
 22 Q. Exhibit 22 has previously been
 23 admitted. Can you please turn to Bates number 32?
 24 A. Okay.
 25 Q. Can you tell me total assets for

Page 159

1 Aetna Inc. as of December 31, 2015?
 2 A. 24.16 billion, approximately.
 3 Q. Thank you. You can set that aside.
 4 Now passing you what's been marked as Exhibit 23.
 5 Do you recognize that document?
 6 A. Yes. This is the 2015 10-K for
 7 Humana Inc.
 8 Q. Does this Exhibit 23 contain
 9 information of the same type as Exhibit 22?
 10 A. Yes.
 11 Q. Was Exhibit 23 filed with the
 12 Securities and Exchange Commission?
 13 A. Yes.
 14 Q. Do you consider documents filed with
 15 the Securities and Exchange Commission reliable?
 16 A. Yes.
 17 Q. Have you personally located and
 18 viewed Exhibit 23 on the Securities and Exchange
 19 Commission website?
 20 A. Yes.
 21 Q. Have you personally found and viewed
 22 Exhibit 22 on the Securities and Exchange
 23 Commission website?
 24 A. Yes.
 25 Q. Can you please turn to page 85 of

Page 160

1 Exhibit 23?
 2 A. Okay.
 3 Q. Can you tell me the total assets for
 4 Humana Inc. as of December 31st, 2015?
 5 A. 4.7 billion.
 6 Q. Set that aside. Passing you what's
 7 been marked as Exhibit 24. Do you recognize this
 8 document?
 9 A. Yes. This is the 10-K for the United
 10 Health Group.
 11 Q. Does Exhibit 24 contain similar
 12 information to Exhibits 22 and 23?
 13 A. Yes.
 14 Q. Did you personally find and view this
 15 document on the Securities and Exchange Commission
 16 website?
 17 A. Yes.
 18 Q. Can you please turn to page 48 of
 19 Exhibit 24?
 20 A. Okay.
 21 Q. Can you tell me the total assets of
 22 United Health Group as of December 31st, 2015?
 23 A. 111.38 billion.
 24 Q. Set that aside. Now passing you
 25 what's been marked as Exhibit 25. Do you recognize

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1 this document?
 2 A. Yes, I do.
 3 Q. Is the information contained in
 4 Exhibit 25 comparable to Exhibits 22 through 24?
 5 A. Yes. This is the 10-K for Anthem,
 6 Inc.
 7 Q. Have you personally found and viewed
 8 this document on the Securities and Exchange
 9 Commission website?
 10 A. Yes.
 11 Q. Can you please turn to page 82 of
 12 Exhibit 25?
 13 A. Okay.
 14 Q. Can you tell me the total assets of
 15 Anthem, Inc. as of December 31st, 2015?
 16 A. 61.7 billion.
 17 Q. Set that aside. Now going to pass
 18 you what's been marked as Exhibit 26. Do you
 19 recognize this document?
 20 A. Yes, I do.
 21 Q. What is this document?
 22 A. It is the Cigna Corporation 10-K for
 23 12/31/2015.
 24 Q. You personally found and viewed this
 25 document on the Securities and Exchange Commission

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1 website?
 2 A. Yes.
 3 Q. Could you please turn to page 65 of
 4 exhibit 26?
 5 A. Okay.
 6 Q. What were the total assets of the
 7 Cigna Corporation as of December 31st, 2015?
 8 A. 57.1 billion.
 9 Q. Set that aside. Now passing you what
 10 has been marked as Exhibit 27. Do you recognize
 11 this document?
 12 A. Yes, I do.
 13 Q. What is this document?
 14 A. It's the statutory financial
 15 statement as of December 31st, 2015 for Blue
 16 Cross/Blue Shield of Kansas City.
 17 Q. Is Exhibit 27 different in form from
 18 Exhibits 22 through 26?
 19 A. Yes.
 20 Q. Was this document filed with the
 21 Securities and Exchange Commission like Exhibits 22
 22 through 26?
 23 A. No.
 24 Q. Who was this document filed with?
 25 A. With the Department.

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1 Q. Does this document contain financial
 2 information pertaining to Blue Cross and Blue
 3 Shield of Kansas City?
 4 A. Yes.
 5 Q. As the director of the Division, do
 6 you rely upon annual statements filed by companies
 7 in carrying out your regulatory duties?
 8 A. Yes.
 9 Q. Could you please turn to page 2, and
 10 can you tell me the total assets of Blue Cross and
 11 Blue Shield of Kansas City as of December 31st,
 12 2015?
 13 A. It's approximately 1.1 billion.
 14 Q. Set aside Exhibit 27. I'm now going
 15 to pass you what's been marked as Exhibit 28. Do
 16 you recognize this document?
 17 A. Yes.
 18 Q. What is this document?
 19 A. It is the audited financial statement
 20 for Cox Health as of September 30, 2014.
 21 Q. Have you personally found and viewed
 22 this document on the Internet?
 23 A. Yes.
 24 Q. Is this document the type of document
 25 that you rely upon as the director of the Division

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1 in the course of your regulatory duties?
 2 A. Yes.
 3 HEARING OFFICER ERICKSON: Excuse me,
 4 Mr. Rehagen. At the bottom, there's a footnote
 5 that speaks to AICPA. What relationship, if any,
 6 does this document have to do with that entity?
 7 THE WITNESS: That was the way we
 8 found this through publicly available information.
 9 This is filed with the Department confidentially,
 10 but that was where the search for that information
 11 occurred.
 12 HEARING OFFICER ERICKSON: So is the
 13 statement by the accountants filed with the
 14 Department confidentially, but you were able to
 15 locate a publicly available document on the
 16 Internet through the -- was this -- did you locate
 17 it from BKD's website, Cox's or from the American
 18 Institute of Certified Public Accountants?
 19 THE WITNESS: You know, I don't
 20 remember exactly which particular website it came
 21 from. What I did was basically Google the Cox
 22 information until I found it here that I wanted. I
 23 don't know that I have the link memorized where it
 24 came from.
 25 HEARING OFFICER ERICKSON: I

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1 understand. But your point is, is that the
 2 Department already holds such information
 3 confidentially pursuant to required filings by Cox
 4 Health?
 5 THE WITNESS: Right.
 6 HEARING OFFICER ERICKSON: But you
 7 found something on the Internet that we could
 8 share --
 9 THE WITNESS: Right.
 10 HEARING OFFICER ERICKSON: -- with
 11 everyone today?
 12 THE WITNESS: Yeah. The only
 13 difference is this cover letter is not in the
 14 Department's record.
 15 HEARING OFFICER ERICKSON: Thank you.
 16 Please proceed, Mr. Hopper.
 17 BY MR. HOPPER:
 18 **Q. What distinguishes an audited**
 19 **financial statement from an unaudited financial**
 20 **statement?**
 21 A. An audited financial statement would
 22 be where it has gone through the audit process and
 23 an auditor has assigned his opinion as to whether
 24 it's accurate.
 25 **Q. Is Exhibit 28 an audited financial**

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1 **statement or an unaudited financial statement?**
 2 A. It is an audited financial statement.
 3 **Q. Do you consider audited financial**
 4 **statements to be more or less reliable than**
 5 **unaudited financial statements?**
 6 A. Be more reliable.
 7 **Q. Looking at page 6 of Exhibit 28 --**
 8 A. Yes.
 9 **Q. -- what were the total assets of Cox**
 10 **Health as of September 30th, 2014?**
 11 A. Approximately 1.5 billion.
 12 **Q. Does Cox Health have any insurance**
 13 **company subsidiaries licensed to write health**
 14 **insurance in Missouri?**
 15 A. Yes.
 16 **Q. Could you please grab Exhibit 17?**
 17 A. Okay. Got it.
 18 **Q. On the first page of Exhibit 17, do**
 19 **you see any insurance companies listed that are**
 20 **subsidiaries of Cox Health?**
 21 A. Yes.
 22 **Q. Which ones?**
 23 A. Cox Health Systems Insurance Company
 24 and Cox Health System HMO, Inc.
 25 **Q. Are those companies members of NAIC**

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1 **group code 1203?**
 2 A. Yes.
 3 **Q. Do you see any insurance companies**
 4 **listed on the first page of Exhibit 17 that either**
 5 **are or -- are subsidiaries of Blue Cross and Blue**
 6 **Shield of Kansas City?**
 7 A. Yes.
 8 **Q. Which insurance companies are those?**
 9 A. There's Blue Cross/Blue Shield of
 10 Kansas City itself, and then there's Good Health
 11 HMO.
 12 **Q. Are those in group 537?**
 13 A. Yes.
 14 **Q. Do you see any insurance companies**
 15 **listed on the first page of Exhibit 17 that are**
 16 **subsidiaries of Cigna Corporation?**
 17 A. I don't see any.
 18 **Q. Toward the bottom, do you see NAIC**
 19 **group code 901?**
 20 A. There's one. Okay. Yes, Cigna
 21 Health and Life Insurance Company, Cigna Health
 22 Care of St. Louis and Connecticut General Life
 23 Insurance Company.
 24 **Q. Does Cigna Corporation control NAIC**
 25 **group code 901?**

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1 A. Yes.
 2 **Q. Do you see any companies on this**
 3 **first page of Exhibit 17 that are subsidiaries of**
 4 **Anthem, Incorporated?**
 5 A. I don't know. I can't find them
 6 through a search.
 7 **Q. This is real small printing. I**
 8 **apologize. Can you look at NAIC group code 671?**
 9 A. Yes, now I see them. Healthy
 10 Alliance Insurance Company HMO Missouri.
 11 **Q. Does Anthem, Incorporated control**
 12 **NAIC code 671?**
 13 A. Yes.
 14 **Q. I won't make you hunt and peck**
 15 **anymore in this small print. Does Humana Inc.**
 16 **control NAIC group code 119?**
 17 A. Yes.
 18 **Q. Does Aetna Inc. control NAIC group**
 19 **code 1?**
 20 A. Yes.
 21 **Q. Does United Health Group control NAIC**
 22 **group code 707?**
 23 A. Yes.
 24 **Q. You can set that aside. I'm now**
 25 **passing you what's been marked as Exhibit 29. Do**

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1 you recognize this document?
 2 A. Yes.
 3 Q. What is this document?
 4 A. This is a news release from Anthem
 5 through 8K, it looks like.
 6 Q. Does Exhibit 29 contain a collection
 7 of news releases and filings with the Securities
 8 and Exchange Commission?
 9 A. Yes, it does.
 10 Q. Did Division staff collect these news
 11 releases and SEC filings in the course of its
 12 analysis of the Form E filed by Aetna Inc.?
 13 A. Yes.
 14 Q. Do you typically rely on documents
 15 collected by Division staff in carrying out your
 16 regulatory duties?
 17 A. Yes.
 18 Q. Exhibit 29 has previously been
 19 admitted. You can set that aside.
 20 Now passing you what's been marked as
 21 Exhibit 30. Do you recognize this document?
 22 A. Yes.
 23 Q. Is this document a newsletter
 24 containing information and analysis of Medicare
 25 Advantage, Medicare Part D and Managed Medicare?

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1 A. Yes.
 2 Q. Have you personally found and viewed
 3 this document on the Internet?
 4 A. Yes.
 5 Q. Does the subject matter of this
 6 document relate to the relevant product market in
 7 this matter?
 8 A. Yes.
 9 Q. Exhibit 30 has previously been
 10 admitted. Set that aside.
 11 I'm now going to pass you what's been
 12 marked as Exhibit 31. Do you recognize this
 13 document?
 14 A. Yes.
 15 Q. Is this document an issue brief
 16 published by the Department of Health and Human
 17 Services?
 18 A. Yes.
 19 Q. Is the Department of Health and Human
 20 Services a branch of the Federal Government?
 21 A. Yes.
 22 Q. Does Exhibit 31 relate to the issue
 23 of the relevant product market in this matter?
 24 A. Yes.
 25 Q. Do you typically rely in your job

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1 duties as director of the Division upon
 2 publications of the Federal Government?
 3 A. Yes.
 4 Q. Exhibit 31 has been previously
 5 admitted. Now passing you what's been marked as
 6 Exhibit 32. Do you recognize this document?
 7 A. Yes.
 8 Q. Is this document an online news
 9 article relating to Medicare Advantage?
 10 A. Yes.
 11 Q. Have you personally found and viewed
 12 this article on the Internet?
 13 A. Yes.
 14 Q. Is this document relevant to issues
 15 presented in this matter?
 16 A. Yes.
 17 Q. Exhibit 32 has been admitted. I will
 18 now pass you what's been marked as Exhibit 33. Do
 19 you recognize this document?
 20 A. Yes.
 21 Q. Is this document a report relating to
 22 the subject matter of Exhibit 32?
 23 A. Yes.
 24 Q. Have you personally found and located
 25 and viewed Exhibit 33 on the Internet?

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1 A. Yes.
 2 Q. Does Exhibit 33 relate to issues
 3 raised in this matter?
 4 A. Yes.
 5 MR. HOPPER: You can set aside
 6 Exhibit 33. And the Division has no further
 7 questions for this witness.
 8 HEARING OFFICER ERICKSON: Counsel,
 9 seeing that it is now one o'clock, Mr. Whitmer, I
 10 believe you'll want to engage in cross-examination.
 11 MR. WHITMER: That's correct.
 12 HEARING OFFICER ERICKSON: I think
 13 that we will take a break. I realize we have a
 14 considerable amount of material still to cover
 15 today, so we will have a half-hour break, so please
 16 return by 1:30.
 17 Mr. Rehagen, when you return, please
 18 return to the witness desk -- chair and you will
 19 still be under oath.
 20 Thank you. We are off the record.
 21 (A BREAK WAS TAKEN.)
 22 HEARING OFFICER ERICKSON: We are
 23 back on the record. Mr. Rehagen, I remind you you
 24 are still under oath. Mr. Whitmer, you may
 25 proceed.

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1 CROSS-EXAMINATION BY MR. WHITMER:
2 **Q. Good afternoon, Mr. Rehagen. I'd**
3 **like to start with Exhibit 11.**
4 A. Okay. Yes.
5 **Q. Exhibit 11 is the confidential Form E**
6 **that you testified about on direct?**
7 A. Yes.
8 **Q. This is the document that you**
9 **received and reviewed at the time it was obtained**
10 **by the Department?**
11 A. Yes.
12 **Q. If we could go ahead and turn to**
13 **page 7 of this confidential document, I'd like to**
14 **talk with you about some of the lines that were not**
15 **discussed during your direct examination. Starting**
16 **with the bottom of page 7, under life and A&H**
17 **reporters. Do you see that?**
18 A. Yes.
19 **Q. The first one you'll see there is**
20 **ordinary life insurance. You'll agree, sir, that**
21 **there are no concerns at all with respect to this**
22 **transaction from the Division's standpoint with**
23 **respect to that line?**
24 A. I believe we did run some analysis on
25 those lines.

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1 **Q. But as of today, you have no**
2 **concerns, right?**
3 A. I don't see any that failed the test.
4 **Q. In fact, it's exempt under Missouri**
5 **statutes, correct?**
6 A. That I'm not aware. I don't know.
7 **Q. Well, let's take a look at group life**
8 **insurance. Let me take a step back, sir. You're**
9 **aware that the Division has put three lines of**
10 **insurance before the hearing officer today,**
11 **correct?**
12 A. Correct.
13 **Q. I'm talking about lines other than**
14 **those three --**
15 A. Okay.
16 **Q. -- that the Division has put before**
17 **the hearing officer today. I just would like to go**
18 **through them with you.**
19 A. Okay.
20 **Q. The second one is group life**
21 **insurance, again under the life and A&H reporters.**
22 **You'll agree that that also is an exempt line and**
23 **that the Division has no competition concerns for**
24 **that line as well?**
25 A. Those are only the three lines we

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1 identified.
2 **Q. And the reason you didn't identify**
3 **them is because you didn't have concerns about that**
4 **line, right, sir?**
5 A. I'm not a lawyer, so I can't say
6 whether it's exempt or not.
7 **Q. The next line at the top of page 8 is**
8 **accident and health group policies only?**
9 A. Yes.
10 **Q. You'll agree that line also is exempt**
11 **under Missouri statutes and that there are, by**
12 **definition, no competition concerns here today?**
13 A. Same as with the other lines. We
14 didn't identify that as an issue, that line as an
15 issue.
16 **Q. You're speaking in the past tense,**
17 **and I'm talking about today, as we sit here after**
18 **data has been reviewed, all the evaluations have**
19 **been conducted. You can now confirm for the**
20 **hearing officer that there are no concerns at all**
21 **about that line of insurance, correct?**
22 A. The data we presented would show no
23 line, no concerns for those other lines. That's
24 just our data.
25 **Q. So again, as we're going through**

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1 **these that are listed in the Form E, federal**
2 **employees HBP, that's another line for which there**
3 **are no competition concerns as we sit here today,**
4 **correct?**
5 A. Based on the data.
6 **Q. The next one is Medicare Title XVIII**
7 **exempt from state taxes or fees, again, another**
8 **line for which there are no concerns as we sit here**
9 **today?**
10 A. That would appear based on the data
11 we have.
12 **Q. Guaranteed renewable accident and**
13 **health, you can confirm for us that is an**
14 **additional line for which the Division has no**
15 **concerns as we sit here today?**
16 A. Yeah, based on the data.
17 **Q. And then you have the all other A&H,**
18 **that's another line for which the Division has**
19 **confirmed that it is exempt under Missouri statutes**
20 **and there are no competition concerns, correct?**
21 A. The Division did not confirm that
22 it's exempt. We provided the data, the data
23 analysis.
24 **Q. And the data analysis confirms there**
25 **is no concerns with respect to that line, correct,**

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1 **sir?**
 2 A. The data analysis shows that it
 3 appears that there is no concerns.
 4 **Q. I'd like to shift directions with you**
 5 **and move over to the health-only reporters. The**
 6 **first one is dental only. Can you confirm for us**
 7 **that the Division has no concerns with respect to**
 8 **that line as well?**
 9 A. Based on data, no, there would be no
 10 concerns.
 11 **Q. And your answer would be the same for**
 12 **the next one, which is the federal employees HBP?**
 13 A. Correct.
 14 **Q. And your answer also would be the**
 15 **same for the next one, which is Medicare**
 16 **supplement?**
 17 A. I believe so.
 18 **Q. As we move forward to the next one,**
 19 **which is Title 19 Medicaid, you can again confirm**
 20 **that the Division has no competition concerns for**
 21 **that line?**
 22 A. Correct.
 23 **Q. Last on that page is vision only.**
 24 **That line is also exempt, and you can confirm that**
 25 **the data you've reviewed and analyzed confirms**

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1 **there are no competition concerns?**
 2 A. Based on the data, there wouldn't
 3 appear to be any.
 4 **Q. Not only not appear, but as of today**
 5 **you can confirm for us there are no data concerns?**
 6 A. No concerns based on the data.
 7 **Q. Let's move then to the next page,**
 8 **page 9. Now, we're talking about a line, life and**
 9 **A&H reporters. For that particular line, you can**
 10 **also confirm for us, and specifically it's in the**
 11 **life and A&H reporter, but the line is nonrenewable**
 12 **stated reasons only?**
 13 A. Okay.
 14 **Q. As you sit here today, we can confirm**
 15 **there are no competition concerns with respect to**
 16 **that line, correct?**
 17 A. Correct.
 18 **Q. And although there was a stipulation**
 19 **that's been entered into, you being the person**
 20 **that's reviewed some of this information can**
 21 **confirm for us on page 12 that the line titled**
 22 **disability long-term care, stop loss and other is**
 23 **not a line for which the Division has any**
 24 **competition concerns?**
 25 A. Correct. That wasn't one of the

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1 lines we highlighted.
 2 **Q. So, sir, if I may, I'm going to --**
 3 **can you see that okay, sir?**
 4 A. Yes.
 5 **Q. So we're left with three lines that**
 6 **are up on the chart, and those are the three lines**
 7 **of insurance that we're here talking about today,**
 8 **the first being comprehensive group, right?**
 9 A. Correct.
 10 **Q. The second, comprehensive individual,**
 11 **correct?**
 12 A. Correct.
 13 **Q. And the third, Title XVIII Medicare?**
 14 A. Correct.
 15 **Q. And those are the three lines for**
 16 **which you provided testimony during your direct**
 17 **examination?**
 18 A. Correct.
 19 **Q. We'll come back to that in a second.**
 20 **Before we do, I'd like to go back to your**
 21 **experience. I believe you explained you have a BS**
 22 **in accounting?**
 23 A. No. It's a business administration
 24 with an emphasis in accounting.
 25 **Q. And you'd agree you're not an**

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1 **economist, sir, correct?**
 2 A. I'd agree.
 3 **Q. And you have had no training in the**
 4 **world of economics?**
 5 A. No, no training.
 6 **Q. And when it comes to issues such as**
 7 **how do you define a market, that's not the type of**
 8 **issue you deal with on a daily basis?**
 9 A. That wouldn't be the type of issue I
 10 would deal with on a daily basis, no.
 11 **Q. And with respect to here today, your**
 12 **testimony, you're not here to put on any economic**
 13 **opinion for the hearing officer; is that fair?**
 14 A. That is fair.
 15 **Q. And, sir, have you had the**
 16 **opportunity to review Dr. Thomas McCarthy's report**
 17 **that's been submitted in this matter?**
 18 A. Actually, no, I haven't.
 19 **Q. Okay. So then you could confirm for**
 20 **us that you're not here today to provide any sort**
 21 **of rebuttal to the written affidavit that's been**
 22 **presented and put into evidence concerning this**
 23 **transaction?**
 24 A. As far as from the economist point of
 25 view?

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1 **Q. Well, sir, you confirmed for us you**
 2 **haven't read it?**
 3 A. Right.
 4 **Q. So you're not here today to provide a**
 5 **rebuttal to something you haven't read, correct?**
 6 A. Correct.
 7 **Q. And with respect to John Orszag's**
 8 **report, which has also been submitted and put into**
 9 **evidence, have you reviewed that one?**
 10 A. No.
 11 **Q. So you could confirm for us you're**
 12 **not here today to provide any kind of rebuttal of**
 13 **that report as well?**
 14 A. That's correct.
 15 **Q. And you'd agree just further that you**
 16 **really don't have any basis, any factual basis**
 17 **whatsoever to rebut any of the findings that are**
 18 **set forth in Dr. McCarthy's report or Jonathan**
 19 **Orszag's report, correct?**
 20 A. Me personally, no.
 21 **Q. And you're not here today to provide**
 22 **any testimony with respect to either of those**
 23 **reports?**
 24 A. Correct.
 25 **Q. I'd like to direct your attention to**

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1 **Exhibit 10. You provided some testimony about**
 2 **Exhibit 10 during your direct examination. I'd**
 3 **like to actually talk about the lines -- the Humana**
 4 **lines that you testified about on direct. Do you**
 5 **recall that testimony?**
 6 A. Yes.
 7 **Q. And what page are you on, sir?**
 8 A. I'm on Exhibit 10, page 1.
 9 **Q. That's fine. How many total Humana**
 10 **lines do you find on that page?**
 11 A. Humana lines? The -- there's ten
 12 companies.
 13 **Q. Ten companies. Okay. With respect**
 14 **to those ten companies, sir, how many of those**
 15 **companies currently write business in the state of**
 16 **Missouri?**
 17 A. I'd have to have additional data.
 18 This wouldn't provide that data.
 19 **Q. So if I were to tell you that four of**
 20 **them actually don't write any business in this**
 21 **state, you would have no basis to disagree with**
 22 **that?**
 23 A. Yeah. I don't have the data in front
 24 of me.
 25 **Q. Okay. With respect to the other six,**

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1 **how much premium did those -- would they write? Do**
 2 **you have a basis or an ability today to speak to**
 3 **that question?**
 4 A. I don't have that data in front of
 5 me.
 6 **Q. Okay. So if I were to tell you that**
 7 **four of the six actually write less than \$1 million**
 8 **in premium annually in this state, you'd have no**
 9 **basis to disagree with that?**
 10 A. Right. I'd have to look up the data.
 11 **Q. So you haven't -- so we heard your**
 12 **direct testimony. You talked about these ten**
 13 **companies and you explained they're on the page,**
 14 **but you really haven't dug in to understand what**
 15 **these companies are actually doing in this state;**
 16 **is that fair?**
 17 A. We looked at it on a group basis
 18 because that's what the standard points us to.
 19 **Q. Well, let's go there. I'm going to**
 20 **ask Mr. Hopper, do you mind putting back up on the**
 21 **screen what we had earlier?**
 22 MR. HOPPER: Which slides are you
 23 talking about?
 24 MR. WHITMER: I'm going to actually
 25 turn your attention to Exhibit 16, but I think it

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1 would be helpful, I think, for all of us if we
 2 could put the exhibit, the slide up on the board.
 3 MR. HOPPER: Sure. This one
 4 (indicating)?
 5 MR. WHITMER: That's exactly right.
 6 Thank you.
 7 BY MR. WHITMER:
 8 **Q. So if you could, sir, if you could**
 9 **turn to pages 23 and 24 or, if you like, we can**
 10 **just go ahead and look up at the board together. I**
 11 **think that you can read that from where you're**
 12 **sitting; is that correct?**
 13 A. Yeah, I can read it.
 14 **Q. We're going to enlarge it by putting**
 15 **it on the slide show. There we go. All right. So**
 16 **this is -- what, again, is this page? Just if you**
 17 **could remind us, what line are we talking about**
 18 **here?**
 19 A. I have to look it up. I don't know.
 20 **Q. Take your time.**
 21 A. This is the comprehensive group line.
 22 **Q. Comprehensive group. Okay. So when**
 23 **you say comprehensive group, you're actually**
 24 **referring to the first of the three lines that are**
 25 **up on the chart we were just talking about, right?**

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1 A. Right.

2 **Q. First of all, I noticed on the**

3 **left-hand side that you've highlighted Aetna but**

4 **Coventry is not highlighted. Can you tell why that**

5 **is?**

6 A. Because Coventry is now part of

7 Aetna.

8 **Q. Let's try this a different way. The**

9 **reason it's not highlighted perhaps is because at**

10 **the time, 2007, Coventry was not yet part of Aetna?**

11 A. Yes. Exactly.

12 **Q. But it's part of Aetna today?**

13 A. It is part of Aetna.

14 **Q. So if you want to kind of look at the**

15 **Aetna and Humana on the left side and the right,**

16 **that's the part that you want to consider?**

17 A. I don't know -- what are you trying

18 to say?

19 **Q. Well, let's talk about the ones**

20 **you've highlighted on the right side, because**

21 **that's really where I want to focus. Aetna group**

22 **had 20.34 percent?**

23 A. Uh-huh.

24 **Q. And Humana group had 4.17 percent,**

25 **right?**

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1 A. Correct.

2 **Q. And you did a good job adding those**

3 **up. It's --**

4 A. About 24 and a half percent total

5 combined.

6 **Q. And so, sir, you mentioned you're not**

7 **an economist, but I want to come back to this. Are**

8 **you familiar with the viewpoint -- prevailing**

9 **viewpoint among economists that market share**

10 **underneath 30 percent generally is of no concern in**

11 **a merger context?**

12 A. No.

13 **Q. Never heard that before?**

14 A. Generally? Not really, I have not.

15 **Q. Do you have any reason to disagree**

16 **with that assertion that generally market shares**

17 **lower than 30 percent are not problematic in this**

18 **context?**

19 MR. HOPPER: Objection. That calls

20 for a legal conclusion, outside the scope of what

21 Mr. Rehagen's testified to as his experience.

22 HEARING OFFICER ERICKSON: As to the

23 objection regarding outside the scope, there is no

24 limitation in administrative practice on

25 cross-examination. Regarding whether it calls for

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1 a legal conclusion, I think the question is

2 straightforward. If you would like to repeat your

3 question.

4 BY MR. WHITMER:

5 **Q. Sure. So, sir, from a factual**

6 **perspective, do you have any basis to disagree**

7 **with the proposition that a share of approximately**

8 **30 percent as part of a merger like this one is**

9 **generally not a concern?**

10 A. I have no reason to object to that.

11 **Q. So if you look at the 20 percent and**

12 **the 4 percent which you said is still under**

13 **25 percent, what additional analysis did you do,**

14 **sir, other than just looking at two numbers?**

15 A. That's what we did. That's the

16 analysis.

17 **Q. Nothing beyond looking at two**

18 **numbers, adding them up and seeing if they're**

19 **higher than what, higher than the exemption**

20 **threshold?**

21 A. We compared those to the requirement

22 under the statute.

23 **Q. So what you did is you confirmed that**

24 **they are not exempted under the law, correct?**

25 A. That was the basis of our analysis

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1 was to, first, see if they, in our opinion -- not

2 opinion, but based on the data, were they exempt.

3 **Q. And they're certainly not exempt,**

4 **right, because those exemption standards are set**

5 **forth right in the standard?**

6 A. Correct.

7 **Q. But you understood, sir, that that's**

8 **a starting point, that these are just starting**

9 **thresholds, correct?**

10 A. Yes.

11 **Q. And that additional analysis may be**

12 **considered to put things in context, correct?**

13 A. Right.

14 **Q. So what I'm trying to figure out is**

15 **what additional things did you as the Division do**

16 **to try to put these numbers into some kind of**

17 **context?**

18 A. From the Division's standpoint, what

19 I did with my staff is we did the data analysis.

20 **Q. Okay. Did you consult with any**

21 **economists?**

22 A. Me personally, no.

23 **Q. Now, sir, you understand that the**

24 **threshold we're talking about today, those are NAIC**

25 **thresholds that are relatively low to determine**

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1 **whether an exemption is met or not? You'd agree**
 2 **with that?**
 3 A. You're saying NAIC threshold.
 4 **Q. I'm talking about the statutory**
 5 **thresholds we're talking about here today, those**
 6 **are relatively low thresholds, you'd agree?**
 7 A. No. They are what they are. The
 8 statute is the statute.
 9 **Q. But just talking about process here,**
 10 **you understand that whether something exceeds the**
 11 **exemption amount or not is just the beginning of**
 12 **the analysis?**
 13 A. It is the beginning.
 14 **Q. Just the beginning, right? Let's go**
 15 **ahead and turn to the very next page. We now have**
 16 **Exhibit 16 at pages 25 through 26, and if you could**
 17 **just remind us, what line are we looking at now?**
 18 A. This is the comprehensive individual.
 19 **Q. So comprehensive individual, if you**
 20 **look back at our chart, that's the second of the**
 21 **three lines that are on the chart in front of you?**
 22 A. Correct.
 23 **Q. And if you look on the right-hand**
 24 **side of this chart, you'll see Aetna at 47.56 and**
 25 **Humana at 2.37. That's what you talked about on**

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1 **direct, correct?**
 2 A. Correct.
 3 **Q. Now, you just explained for us, with**
 4 **respect to comprehensive group, the analysis you**
 5 **went through, which is you look at the two numbers**
 6 **and you decided whether they exceeded the statutory**
 7 **threshold, correct?**
 8 A. Correct.
 9 **Q. Did you do the same kind of analysis**
 10 **here?**
 11 A. Yes.
 12 **Q. You'd agree with me that you didn't**
 13 **do anything beyond just looking at the numbers and**
 14 **deciding whether they had exceeded the statutory**
 15 **thresholds?**
 16 A. One of the things we did do that I
 17 failed to mention, we did ask in our response or
 18 our comments to the company for some additional
 19 information.
 20 **Q. You did, and Aetna and Humana**
 21 **provided additional information to the Division?**
 22 A. Right.
 23 **Q. So let's take a look at these**
 24 **numbers. As you considered these numbers and**
 25 **you're looking at them, did you have any**

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1 **consideration about the volatility of the exchanges**
 2 **over the last few years, the public exchanges?**
 3 A. No.
 4 **Q. That didn't factor into the analysis**
 5 **at all?**
 6 A. No.
 7 **Q. Did you consider at all which**
 8 **companies are making money in the exchanges and**
 9 **which ones aren't?**
 10 A. No.
 11 **Q. Did you consider at all any**
 12 **marketplace changes that have been occurring over**
 13 **the last few years in the exchanges in your state?**
 14 A. No.
 15 **Q. Did you ask anyone to do that?**
 16 A. Me personally, no.
 17 **Q. But I mean, again, you are the**
 18 **director of the Division?**
 19 A. Correct.
 20 **Q. So everyone in the Division reports**
 21 **up to you, correct?**
 22 A. Right.
 23 **Q. Now, let's take a look at the number,**
 24 **2.37. Sir, you confirmed for us you're not an**
 25 **economist. What I'm trying to figure out is, as**

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1 **you sit here today, have you personally**
 2 **investigated whether 2.37 percent is material,**
 3 **given the context of this transaction and all the**
 4 **volatility in the marketplace? Have you considered**
 5 **that at all?**
 6 A. No.
 7 **Q. Let's move forward. Let's take a**
 8 **look at the next slide. Here you go. This is**
 9 **Exhibit 16 at pages 9 through 30 on the right-hand**
 10 **side. You'll see those market share numbers 32.11**
 11 **and 22.27. Do you see that?**
 12 A. Yes.
 13 **Q. What line are we talking about here?**
 14 A. That's the Title XVIII Medicare.
 15 **Q. The third of the three lines --**
 16 **A. Correct.**
 17 **Q. -- that are up on the board?**
 18 **Okay. So before you looked at**
 19 **those -- well, let's confirm. Was the approach you**
 20 **did here the same as what was conducted for the**
 21 **first two lines, which is you looked to see if the**
 22 **numbers exceeded the thresholds and you determined**
 23 **they did and then you stopped?**
 24 A. That was our first step, right.
 25 **Q. And then now, as you were looking at**

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1 this, these numbers up here, do they include
 2 numbers for traditional Medicare?
 3 A. No, it wouldn't be. That's a
 4 different line. It's a different line, yeah.
 5 Q. So did you consider the question --
 6 did you consider the question of whether
 7 traditional Medicare and Medicare Advantage are
 8 competitors?
 9 A. No.
 10 Q. Did that even come up at all in the
 11 discussions?
 12 A. With division staff, no.
 13 Q. Just off the radar. So at any point
 14 prior to today, before getting up on the stand, had
 15 you considered whether traditional Medicare ought
 16 to be considered when looking at this Medicare
 17 Title XVIII line as part of the analysis?
 18 A. I don't understand the question.
 19 Q. Sure. At any point in time did you
 20 personally or anyone that you're aware of in your
 21 division consider the question of, when we're
 22 looking at shares, should we also consider the
 23 impact of traditional Medicare on the process?
 24 A. On that line or -- I'm still trying
 25 to -- I don't -- because it's not -- it's separate.

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1 It's different than Medicare Advantage.
 2 Q. So there was a consent order that was
 3 issued by the Florida Office of Insurance
 4 Regulation with respect to this transaction?
 5 A. Okay.
 6 Q. Have you had -- this has happened in
 7 the last few months. Have you had the opportunity
 8 to review that consent order?
 9 A. I haven't reviewed the consent order,
 10 no.
 11 Q. So you're not aware of the approach
 12 then that the Florida Office of Insurance
 13 Regulation took with respect to this same issue; is
 14 that fair?
 15 A. I believe I heard of it at a high
 16 level, but I don't know the details of the order.
 17 Q. Well, are you aware, sir, that the
 18 Florida Office of Insurance Regulation said that
 19 you do need to take into account traditional
 20 Medicare when you're doing the math and comparing
 21 the market shares when considering this line?
 22 A. No. Like I say, I didn't read the
 23 details of the order.
 24 Q. Have you considered how the numbers
 25 would change if that type of analysis were, in

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1 fact, done as, for example, the Florida OIR said
 2 you should?
 3 A. No.
 4 Q. Have you seen anything at all that
 5 would reflect numbers adjusting the share numbers
 6 based on factoring in traditional Medicare?
 7 A. No.
 8 Q. Let's take a look at the Form E and
 9 see if we can refresh your recollection at all.
 10 This is Exhibit 11.
 11 A. Okay.
 12 Q. And if you could, take a look at the
 13 bottom of page 16.
 14 A. Okay.
 15 Q. You see at the bottom of page 16
 16 there's a discussion of traditional Medicare and
 17 the fact that it accounts for roughly 74 percent of
 18 the enrollees in Medicare. Do you see that, bottom
 19 of the page?
 20 A. Yes, I do see that.
 21 Q. And right below that statement is a
 22 chart which sets out shares for Aetna, Humana and
 23 others juxtaposed side by side with traditional
 24 Medicare. Do you see that?
 25 A. Yes.

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1 Q. Now that you've seen that, does that
 2 refresh your recollection that, in fact, you were
 3 presented with data and information that
 4 demonstrates what the shares would be if
 5 traditional Medicare is, in fact, incorporated or
 6 included in the analysis like the Florida Office of
 7 Insurance Regulation has said is the approach to
 8 take?
 9 A. Yes, I do remember seeing that now.
 10 Q. Okay. Good. So having seen that,
 11 did you have the opportunity to investigate it
 12 further and decide whether that's the approach that
 13 we ought to be taking here today?
 14 A. No, we didn't -- we didn't do that.
 15 Q. You didn't do it, and when did you
 16 decide to not do that?
 17 A. Well, we based our analysis on the
 18 fault lines in the annual statement.
 19 Q. So as we talked about earlier, you
 20 looked at the exemptions and the fault lines and
 21 then looked no further beyond that, correct?
 22 A. Right.
 23 Q. Did you have the opportunity to call
 24 anyone at Florida OIR and ask them about why they
 25 had made the conclusions they had on this issue?

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1 A. I didn't call anyone in Florida.

2 **Q. Have you had the opportunity to**

3 **consider the differences or similarities between**

4 **traditional Medicare and Medicare Advantage?**

5 A. I believe we heard testimony today

6 from Ms. Nelson.

7 **Q. Have you had the opportunity to**

8 **consider whether the competition between Medicare**

9 **Advantage and traditional Medicare is sufficient to**

10 **allay any concerns the Division may have with**

11 **respect to this line?**

12 A. We haven't done any analysis on that,

13 no.

14 MR. WHITMER: Thank you. I have no

15 further questions.

16 HEARING OFFICER ERICKSON:

17 Mr. Hopper, redirect?

18 REDIRECT EXAMINATION BY MR. HOPPER:

19 **Q. I will attempt not to disclose any**

20 **confidential information from Exhibit 11 that**

21 **Mr. Whitmer has already disclosed. Turning to**

22 **page 8, Bates stamped page 8 of Exhibit 11,**

23 **Mr. Whitmer took you through a list of lines of**

24 **business underneath the heading exempt lines of**

25 **business, correct?**

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1 A. Correct.

2 **Q. Do you see the heading A, life and**

3 **A&H reporters?**

4 A. Correct.

5 **Q. Do the seven lines underneath that**

6 **heading relate only to life and A&H reporters?**

7 A. Yes.

8 **Q. Does the line Medicare Title XVIII**

9 **exempt from state fees or taxes relate only to life**

10 **and A&H reporters under that heading?**

11 A. Yes.

12 **Q. Does the line all other A&H relate**

13 **only to life and A&H reporters under that heading?**

14 A. Yes.

15 **Q. Are those lines from the life and A&H**

16 **annual statement?**

17 A. Yes.

18 **Q. Mr. Whitmer pulled out this flip**

19 **chart, and he has three lines of insurance at issue**

20 **listed here: Comprehensive group, comprehensive**

21 **individual and Title XVIII Medicare. Do you see**

22 **that?**

23 A. Yes.

24 **Q. I believe he said that these were the**

25 **only three lines of business under review at this**

Page 199

1 **hearing.**

2 A. Yes.

3 **Q. Did the Division consider lines of**

4 **business outside of these three?**

5 A. We looked at all these lines.

6 **Q. Did the Division consider alternate**

7 **market definitions based on different data than is**

8 **presented in only the state page of the health**

9 **annual statement?**

10 A. Yes, we did.

11 **Q. Have you gone through the analysis on**

12 **your direct testimony of lines of business from the**

13 **supplemental health care exhibit, Part 2?**

14 A. Yes.

15 **Q. Are those lines of business the same**

16 **as the lines of business that are listed on this**

17 **flowchart?**

18 A. No. They're broken out differently.

19 **Q. In going through the analysis of the**

20 **lines of business from the supplemental health care**

21 **exhibit, Part 2, which is separate, these three**

22 **lines as you've just said, did the Division**

23 **consider any additional factors from**

24 **Section 382.095, such as market shares, volatility**

25 **of ranking of market leaders, number of**

Page 200

1 **competitors, concentration, trend of concentration**

2 **in the market and ease of entry and exit into the**

3 **market?**

4 A. Yes, we did consider those.

5 **Q. Do a large number of the exhibits**

6 **that you identified on your direct testimony relate**

7 **to those factors?**

8 A. Yes.

9 **Q. For example, we admitted financial**

10 **statements relating to seven different groups,**

11 **correct?**

12 A. Correct.

13 **Q. Are those financial statements**

14 **relevant to some of the factors I just listed off?**

15 A. Yes. They're very large.

16 **Q. For example, we looked at the**

17 **identities of the top five insurance groups in**

18 **multiple lines of business based on the**

19 **supplemental health care exhibit, Part 2. Was that**

20 **analysis relevant to the factors that I just listed**

21 **such as volatility of ranking of market leaders?**

22 A. Yes.

23 **Q. We went through concentration numbers**

24 **on your direct in many of these exhibits, and --**

25 **I'm sorry. Did we go through concentration numbers**

Page 201

1 in several of your exhibits on direct?

2 A. Yes, we did.

3 Q. Did several of the exhibits that were

4 admitted on your direct relate to the trend of

5 concentration in the industry?

6 A. Yes.

7 Q. Did several of the exhibits admitted

8 on direct relate to the ease of entry and exit into

9 the market?

10 A. Yes.

11 Q. Did we look at the lists of groups

12 active in multiple lines of insurance between 2010

13 and 2015 and analyze the number of competitors in

14 those lines of business between 2010 and 2015?

15 A. Yes.

16 MR. WHITMER: Objection, leading.

17 MR. HOPPER: I'll try to rephrase.

18 BY MR. HOPPER:

19 Q. Do you recall looking at 2010 and

20 2015 market share information --

21 A. Yes, I do.

22 Q. -- on direct?

23 Do you recall giving testimony as to

24 the number of competitors?

25 A. Yes. There were more competitors in

Page 202

1 2010 than 2015.

2 Q. Did Aetna control Coventry in 2007?

3 A. No.

4 Q. Did Aetna compete with Coventry in

5 2007?

6 A. Yes.

7 Q. Does Aetna compete with Coventry

8 today?

9 A. No.

10 Q. All else being equal, is competition

11 greater or lesser today than in 2007 due to that

12 fact?

13 A. Lesser.

14 Q. Mr. Whitmer asked during

15 cross-examination if the Division looked at market

16 share numbers and applied exemption thresholds,

17 correct?

18 A. Yes.

19 Q. Are there also additional thresholds

20 in the statute for prima facie violations of the

21 competitive standard?

22 A. Yes, there are.

23 Q. Did the Division review whether

24 market share figures violated those standards?

25 A. Yes.

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1 Q. Does the market share information you

2 have testified to today violate those prima facie

3 standards for any lines of business?

4 A. Well, I'm not a lawyer, but the

5 numbers are the numbers, and they exceed the

6 thresholds.

7 Q. Mr. Whitmer referenced the Florida

8 consent order, and I believe you said you had not

9 read that consent order. Does the Florida consent

10 order apply in Missouri law -- excuse me. I'll

11 rephrase.

12 Is Missouri law applicable to the

13 Florida insurance markets?

14 A. No.

15 Q. Was the Florida -- is it possible

16 that the Florida consent order is based on Missouri

17 state law?

18 A. I'm not sure why it would be.

19 Q. Is the Florida consent order binding

20 on the Missouri Department in any way?

21 A. No, I wouldn't think so.

22 Q. I believe you testified you're not an

23 economist and, therefore, you weren't giving

24 evidence on economic issues here today?

25 A. Correct.

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1 Q. Did the Division retain an economist

2 to analyze those issues?

3 A. Yes.

4 Q. Will that economist be presenting his

5 report at this hearing?

6 A. Yes, that's my understanding.

7 MR. HOPPER: I have nothing further.

8 HEARING OFFICER ERICKSON: Recross?

9 RECROSS-EXAMINATION BY MR. WHITMER:

10 Q. Mr. Rehagen, so I would be correct,

11 then, that the economic issues that are going to be

12 presented are all going to be presented by

13 Dr. Gruber, the Division's expert for this matter,

14 correct?

15 A. I believe he's after me.

16 Q. And he's the only witness who's going

17 to be presented by the Division in this proceeding

18 to speak to the economic issues, correct?

19 A. Yes.

20 Q. And you'd agree that the Division

21 specifically asked Dr. Gruber to analyze only two

22 issues with respect to this transaction, correct?

23 A. Two issues? I'm not certain exactly.

24 Q. Have you had the opportunity to

25 review Dr. Gruber's report?

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1 A. I have not.
 2 MR. WHITMER: I have no further
 3 questions.
 4 MR. HOPPER: If I may, just one.
 5 FURTHER REDIRECT EXAMINATION BY MR. HOPPER:
 6 **Q. Has the Division presented market**
 7 **share information?**
 8 A. Yes.
 9 **Q. Do you consider market share**
 10 **information to be part of the economic issues that**
 11 **will be left to Dr. Gruber?**
 12 MR. WHITMER: Objection, leading.
 13 HEARING OFFICER ERICKSON: I'll allow
 14 it. Please answer.
 15 THE WITNESS: Yes, I would think that
 16 would be important as part of its review.
 17 BY MR. HOPPER:
 18 **Q. Did the Division present -- present**
 19 **market share information independent of Dr. Gruber?**
 20 A. Yes.
 21 **Q. Is that market share information**
 22 **sufficient for the director of the Department to**
 23 **make a determination under the statute as to this**
 24 **transaction?**
 25 MR. WHITMER: Objection. Calls for a

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1 legal conclusion.
 2 HEARING OFFICER ERICKSON:
 3 Mr. Hopper, what's your response?
 4 MR. HOPPER: I'll try to rephrase.
 5 HEARING OFFICER ERICKSON: Thank you.
 6 BY MR. HOPPER:
 7 **Q. Can the market share information**
 8 **presented by the Division be evaluated independent**
 9 **of any opinion from Dr. Gruber as to that market**
 10 **share?**
 11 A. Yes, it could be.
 12 MR. HOPPER: Nothing further.
 13 MR. WHITMER: I have no further
 14 questions.
 15 HEARING OFFICER ERICKSON: Thank you,
 16 Mr. Rehagen, for your time. You may step down.
 17 MR. ANGOFF: The division calls
 18 Jonathan Gruber.
 19 HEARING OFFICER ERICKSON:
 20 Mr. Angoff, if you'd be so kind as to use the
 21 microphone. Thank you.
 22 JONATHAN GRUBER, being sworn, testified as follows:
 23 DIRECT EXAMINATION BY MR. ANGOFF:
 24 **Q. Good afternoon, Professor Gruber.**
 25 A. Good afternoon.

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1 **Q. Would you please state your full**
 2 **name.**
 3 A. Jonathan Gruber.
 4 **Q. And what is your occupation?**
 5 A. I am a professor of economics at MIT.
 6 **Q. And how long have you taught**
 7 **economics at MIT?**
 8 A. Since 1992.
 9 **Q. Are you a full professor?**
 10 A. Yes, I am.
 11 **Q. Do you have an endowed chair?**
 12 A. Yes, I'm the Ford professor of
 13 economics.
 14 **Q. What is an endowed chair?**
 15 A. It's -- it's a promotion. It's
 16 basically kind of the highest accomplishment you
 17 can get as a tenured academic. It comes with some
 18 research funds.
 19 **Q. And where did you get your**
 20 **undergraduate degree?**
 21 A. From MIT.
 22 **Q. And what was that in?**
 23 A. Economics.
 24 **Q. And where did you get your graduate**
 25 **degree?**

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1 A. From Harvard University.
 2 **Q. And what was that in?**
 3 A. Economics.
 4 **Q. Have you written any articles in the**
 5 **field of health economics?**
 6 A. Yes, I've written a number of
 7 articles in health economics.
 8 **Q. About how many have you written?**
 9 A. I'm not sure. More than 100.
 10 **Q. And have you -- have you received any**
 11 **awards in the field of health economics?**
 12 A. Yes.
 13 **Q. And could you name one or two of**
 14 **those?**
 15 A. In two different years I received the
 16 Kenneth Arrow Award for the best paper published in
 17 health economics in the US. In 2006 I received the
 18 award for best health economist in the US age 40
 19 and under.
 20 **Q. And what did do you do to receive**
 21 **that award?**
 22 A. Be 40 and under, first of all. And
 23 second of all, it was just -- it was a recognition
 24 from the American Society of Health Economists for
 25 my achievement in the field of health economics.

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1 **Q. And are you a member of any**
 2 **professional organizations or associations in the**
 3 **field of health economics?**
 4 A. Yes, a number of them.
 5 **Q. Okay. Could you just name a few of**
 6 **them?**
 7 A. Sure. I'm a member of the Institute
 8 of Medicine.
 9 **Q. What is that?**
 10 A. That's an organization which
 11 recognizes leaders in the field of medicine
 12 broadly, including health economics. The National
 13 Academy of Social Insurance.
 14 **Q. And what is that?**
 15 A. That's an organization which
 16 recognizes leaders in the field of social
 17 insurance, which includes health care programs. I
 18 am the associate editor of Journal of Health
 19 Economics, which is the leading field journal in
 20 the study of health economics, and other
 21 organizations as well.
 22 **Q. And are you familiar with the**
 23 **National Bureau of Economic Research?**
 24 A. Yes, I am.
 25 **Q. What is that?**

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1 A. The NBER is really sort of the most
 2 prominent nonpartisan economic think tank in the
 3 US.
 4 **Q. And are you affiliated with them in**
 5 **any way?**
 6 A. Yes. I'm a long-time affiliate. I'm
 7 currently a research associate, and I direct their
 8 program on health care.
 9 **Q. Are you familiar with the American**
 10 **Society of Health Economists?**
 11 A. Yes, I am.
 12 **Q. Okay. Are you affiliated with that**
 13 **in any way?**
 14 A. Yes. I've been a member since the
 15 inception, and I'm the incoming president of
 16 American Society of Health Economists.
 17 MR. ANGOFF: Your Honor, at this time
 18 the Division tenders Jonathan Gruber as a qualified
 19 expert witness in the field of health economics.
 20 MR. WHITMER: No objection.
 21 HEARING OFFICER ERICKSON: I'm not
 22 sure Missouri law requires us to any more formally
 23 recognize qualifications of an expert, but he does
 24 sound duly qualified and it is noted that he is
 25 qualified to testify today as an expert. Please

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1 proceed.
 2 MR. ANGOFF: Thank you, your Honor.
 3 BY MR. ANGOFF:
 4 **Q. Professor Gruber, I hand you what's**
 5 **been marked as and what is, in fact, Exhibit 34.**
 6 **Could you please identify that?**
 7 A. Yeah. This is a report I recently
 8 wrote to the Department of Insurance regarding
 9 competition in the Medicare Advantage and
 10 individual exchange markets.
 11 **Q. So what did the Department ask you to**
 12 **do a report on?**
 13 A. The Department asked me specifically
 14 to do a report on the extent of competition between
 15 traditional Medicare and Medicare Advantage, as
 16 well as to discuss competition in the individual
 17 insurance exchanges.
 18 **Q. Okay. Well, let's take those two**
 19 **topics separately. In connection with the first,**
 20 **the issue of competition between Medicare Advantage**
 21 **and traditional Medicare, just in brief, what did**
 22 **you find?**
 23 A. I found, based on review of the
 24 economic literature in the area, that there is
 25 really incomplete competition between traditional

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1 Medicare and Medicare Advantage.
 2 **Q. And when you use the term "incomplete**
 3 **competition," what do you mean?**
 4 A. Yeah. That's -- that's my shorthand
 5 term that I'm using to mean there exists a
 6 situation where a price increase in one segment of
 7 a market is not fully constrained by the existence
 8 of another segment of the market. They're not
 9 competitive enough, the cross-segment that one
 10 segment couldn't increase prices.
 11 **Q. And what evidence did you find to**
 12 **support your conclusion that there is incomplete**
 13 **competition between Medicare Advantage and**
 14 **traditional Medicare?**
 15 A. In the report I lay out four
 16 different kinds of evidence.
 17 **Q. Could you start with the first one?**
 18 A. Sure. The first one really is two
 19 parts. The first is just the nature, the
 20 differentiated nature of these products that
 21 traditional Medicare and Medicare Advantage are
 22 pretty different products.
 23 **Q. And how do they differ?**
 24 A. They differ a number of ways. I
 25 think probably the two most important ways is

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1 traditional Medicare has an extensive amount of
 2 cost sharing on Medicare recipients that's not
 3 present in most Medicare Advantage plans. On the
 4 other hand, Medicare Advantage plans have a much
 5 more restrictive network of providers than
 6 traditional Medicare, which allows patients to
 7 essentially go wherever they want.

8 **Q. And are there other differences**
 9 **between traditional Medicare and Medicare**
 10 **Advantage?**

11 A. Yeah, there are a number of other
 12 differences. Another important difference is how
 13 doctors are reimbursed under traditional Medicare.
 14 They're reimbursed according to a reimbursement
 15 schedule. Whereas Medicare Advantage, it's more
 16 negotiated and often what's called capitated rates,
 17 where providers are paid not just based on what
 18 they do, but based on other -- based on other
 19 factors.

20 **Q. And is there a difference regarding**
 21 **choice of provider as between TM -- can we use for**
 22 **short TM for traditional Medicare and MA for**
 23 **Medicare Advantage?**

24 A. That would save time.

25 **Q. With respect to choice of provider,**

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1 **is there a difference between TM and MA?**

2 A. Yes, I think that's the second
 3 fundamental choice I laid out, that essentially
 4 under TM, you can go to any doctors that accept
 5 Medicare, and under MA, there's typically a
 6 restricted network of doctors that you're allowed
 7 to go to.

8 **Q. Okay. And how do those differences**
 9 **that you just laid out, how do they support your**
 10 **conclusion that the -- that TM does not fully**
 11 **constrain MA?**

12 A. It supports it because essentially
 13 people are shopping over somewhat differentiated
 14 products.

15 **Q. Okay. And we're still within your**
 16 **first piece of evidence, right?**

17 A. Right.

18 **Q. There was a second half of that.**
 19 **What's the second half?**

20 A. The second half is just the large
 21 body of economic evidence that suggests that
 22 there's differentiated populations to some extent
 23 shopping across these products.

24 **Q. And how do those populations differ?**

25 A. Well, there is a large body of

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1 research which shows that the people on Medicare
 2 Advantage are much healthier on average than those
 3 who enroll in traditional Medicare.

4 **Q. Okay. And the fact that the people**
 5 **who are on MA are healthier than the people who are**
 6 **on TM, how does that support the conclusion that TM**
 7 **has not fully constrained the price of Medicare**
 8 **Advantage?**

9 A. Well, it just suggests that there's
 10 some segment of individuals who aren't really -- or
 11 it suggests there are some individuals at least who
 12 aren't considering these fully comparable products,
 13 because they're either very healthy people who are
 14 happier with MA or they could be very sick people
 15 who aren't willing to consider the restricted
 16 networks that are in MA.

17 **Q. Now, there as a second -- you said**
 18 **there are four pieces of evidence --**

19 A. Yes.

20 **Q. -- that support the conclusion that**
 21 **there's incomplete competition between the two.**
 22 **What is the -- and you've just gone through two**
 23 **halves of the first piece of evidence, correct?**

24 A. Yes.

25 **Q. Okay. So then what is your second**

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1 **piece of evidence?**

2 A. The second piece of evidence is a
 3 couple of recent articles which show that there's
 4 very incomplete pass-through of the money the
 5 government pays Medicare Advantage plans to
 6 enrollees in those plans.

7 **Q. And when you say there's incomplete**
 8 **pass-through, what does that mean, of the money**
 9 **that --**

10 A. Yeah

11 **Q. -- the government pays MA plans, what**
 12 **does that mean? What happens to that money?**

13 A. Well, we don't know for sure. What
 14 the evidence says is that when the government pays
 15 Medicare managed plans another dollar, half or less
 16 of that is passed on to consumers in the form of
 17 either lower prices or higher benefits. What
 18 happens to the other half is not fully accounted
 19 for. There's some evidence some of it is used for
 20 increased advertising expenditures. There's some
 21 evidence that some of it shows up in higher
 22 profits.

23 **Q. Okay. And why does the fact that**
 24 **more or less half of the -- the payment from the**
 25 **government is not passed through to consumers, how**

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1 **does that support the conclusion that TM does not**
 2 **fully constrain the price of MA?**
 3 A. Well, in a perfectly competitive
 4 market, what you'd expect is these articles really
 5 lay out a much more theoretical detail than I can
 6 today. They both lay out clearly a model which,
 7 under a perfectly competitive market, you would
 8 expect a full pass-through of such an increase in
 9 compensation to some participants in the market.
 10 **Q. And why is that?**
 11 A. Well, that's because in a competitive
 12 market, if some competitors are paid more, they're
 13 going to then be trying to compete with each other
 14 to gain business to make money on that higher
 15 payment. They will compete with each other by
 16 lowering prices, and they'll do so until they've
 17 essentially dissipated all the extra money they
 18 could make. If there's money to be made, then they
 19 would lower prices. If they're not lowering
 20 prices, then it's not perfectly competitive.
 21 **Q. So how did the situation you just**
 22 **laid out, how does that differ from the situation**
 23 **in this case with Medicare Advantage?**
 24 A. That difference in this case because
 25 the higher reimbursements to some extent were

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1 passed on, but as I said, between -- by the
 2 estimate of these papers, between zero and
 3 50 percent only is passed. And that is different
 4 than what you'd expect as these papers lay out --
 5 this is not my own research -- but as these papers
 6 lay out, that's different than you would expect
 7 under a perfectly competitive situation.
 8 **Q. Did you say that one of the papers**
 9 **found zero percent?**
 10 A. One of the papers found less -- found
 11 basically zero percent. There's obviously some
 12 range, but essentially found zero. One found about
 13 50 percent.
 14 **Q. Now, you've -- there was a third --**
 15 **did you find a third piece of evidence that**
 16 **supports the conclusion that there is incomplete**
 17 **competition between MA and TM?**
 18 A. Yeah. The third piece of evidence is
 19 from a really interesting piece of research done
 20 about actually a third competitor in this market.
 21 It was private fee for service plans, which were
 22 plans introduced in 2003 that essentially were
 23 plans where consumers had a free choice of provider
 24 but those plans got reimbursed at Medicare
 25 Advantage rates.

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1 And what was interesting with this
 2 paper is in 2008 the Federal Government decided
 3 they were over-reimbursing these plans and
 4 constrained them, essentially killing this market.
 5 About 75 percent of the market went away. When it
 6 did go away, you saw a very large response by the
 7 Medicare Advantage plans. When this piece -- when
 8 these PFFS, these private fee for service plans
 9 went away, Medicare Advantage plans cut their
 10 benefits about 20 percent.
 11 **Q. And why does that show that Medicare,**
 12 **traditional Medicare does not fully restrain the**
 13 **price of MA?**
 14 A. Well, because this was a small third
 15 competitor in the market. If there is really such
 16 intense competition between TM and MA, there is no
 17 reason why this small third competitor in the
 18 market should have a significant effect on MA's
 19 behavior. They were still able to compete with
 20 each other within TM.
 21 **Q. And I guess now we're up to the**
 22 **fourth piece of evidence. What was the fourth**
 23 **piece of evidence you found to support your**
 24 **conclusion?**
 25 A. The fourth piece of evidence is

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1 really sort of related to the previous two but
 2 expanding on them, which is that these articles
 3 I've been discussing, as well as another article
 4 I discussed in the report, all find that when
 5 market -- when MA markets are more concentrated,
 6 that is when we think about the Herfindahl index.
 7 When the Herfindahl index is higher
 8 in MA markets, that has dramatic effects on the
 9 extent to which, for example, MA plans pass on
 10 savings to consumers or the extent traditional
 11 responds to existence of a fee for service plan or,
 12 as the third study shows, really the extent to
 13 which consumers gain surplus from the existence of
 14 the MA plan.
 15 **Q. And when you said consumers gain**
 16 **surplus, what does that mean?**
 17 A. Sure. So consumer surplus is a
 18 really important fact in economics. It's basically
 19 the difference between the price you pay for the
 20 good and the utility and the -- your willingness to
 21 pay for the good. We think new markets often
 22 choose consumer surplus because there's some
 23 consumers who benefit who will value them more than
 24 what they cost.
 25 MA is no exception. When a new

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1 market comes in, it adds some surplus, but what the
 2 study found was that that surplus varied enormously
 3 with the extent of competition in MA markets.
 4 Varied about twelve-fold between markets -- varied
 5 about twelve-fold across markets with different
 6 levels of MA competition. Once again, if MA was to
 7 compete with traditional Medicare, it shouldn't
 8 matter that much.
 9 **Q. Why is that?**
 10 A. Well, because -- think of it this
 11 way. In the typical market in the US, traditional
 12 Medicare is 70 percent plus in the market. So if
 13 you have a change in Medicare Advantage HHI, that
 14 can be pretty big within Medicare Advantage, but
 15 it's pretty small relative to the total market.
 16 It's really one integrated market. A change in
 17 Medicare Advantage HHI could be pretty small
 18 relative to that total. The fact that that change
 19 has such a big effect on consumer welfare suggests
 20 it's not a completely integrated market.
 21 **Q. Now, you also in your report reviewed**
 22 **a second issue, correct, and what was that issue?**
 23 A. That issue was the extent to which
 24 insurer competition on the ACA, the Affordable Care
 25 Act exchange, seems to affect premiums.

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1 **Q. And have there been other studies**
 2 **done on the extent, if any, to which concentration**
 3 **on the individual health insurance exchanges**
 4 **affects prices?**
 5 A. Yes. There have been -- there have
 6 been several studies that have done that.
 7 **Q. And what have those studies found?**
 8 A. Studies have uniformly found that
 9 where these markets are more concentrated, exchange
 10 prices are higher.
 11 **Q. And have there been studies done on**
 12 **the effect of concentration on prices in other**
 13 **segments of the health insurance market?**
 14 A. Yes, there have been.
 15 **Q. Okay. And what -- what markets did**
 16 **they concern?**
 17 A. There's been studies in a variety of
 18 markets. I'm not familiar with all of them.
 19 Probably the most important study, the best known
 20 is the study by the Leemore Dafny colleagues where
 21 they looked at what happened in the group health
 22 insurance market when there was a health insurance
 23 merger.
 24 **Q. And what happened then?**
 25 A. So they studied a previous health

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1 insurance merger and they found that that health
 2 insurance merger which increased concentration in
 3 the market led to higher prices being paid by
 4 employer insured individuals.
 5 **Q. And do you know, have there been any**
 6 **studies done on the effect of concentration in the**
 7 **group market?**
 8 A. That was the group market.
 9 **Q. Well, what did your study find?**
 10 A. So our study really was just trying
 11 to take one additional step. As I said, there were
 12 a number of correlational studies which showed that
 13 in markets with more concentrated exchange markets,
 14 premiums were higher.
 15 The problem with those correlational
 16 studies is you don't really know if there is some
 17 other third factor that might be correlated with
 18 both concentration and premiums. So Leemore Dafny,
 19 Chris Ody and I in our article tried to get around
 20 this by using the experience in 2014 of United
 21 Health Care.
 22 **Q. And what experience was that?**
 23 A. Well, when these exchanges were set
 24 up, the initial assumption was the insurers who had
 25 been in the individual market before the ACA would

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1 come on the exchanges. Shortly before the
 2 exchanges were finalized, United Health Care
 3 announced that they would not be participating in
 4 any of the federal exchanges, which are 34 states.
 5 They en blanc announced that they would not -- I
 6 shouldn't use legal terms. They announced they
 7 would not participate in any of these markets.
 8 What that meant was, essentially that
 9 was a very different shock to competition,
 10 different markets. In markets where United was a
 11 big player, that was -- United was a big player,
 12 them dropping out suddenly made the market a lot
 13 less competitive. In markets where United was a
 14 small player, it didn't much affect the market.
 15 So essentially we looked at what
 16 happened in markets based on how a big a player was
 17 United before, before the ACA.
 18 **Q. And you quantified the extent to**
 19 **which United not being in the market affected**
 20 **prices?**
 21 A. Yes, we did.
 22 **Q. Okay. And what was that**
 23 **quantification?**
 24 A. We found if United had participated
 25 in all the federal exchanges, premiums would have

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1 been 5.4 percent lower.
 2 **Q. And did you make any finding as to**
 3 **what would happen had additional carriers**
 4 **participated in the exchanges?**
 5 A. Yeah. Our estimates -- now, this is
 6 a projection, but suggests that if all the carriers
 7 who had been in the individual market before the
 8 ACA had stayed on the exchanges, premiums would
 9 have been about 11 percent lower.
 10 MR. ANGOFF: Thank you, Professor
 11 Gruber. I have no additional questions.
 12 HEARING OFFICER ERICKSON:
 13 Mr. Whitmer?
 14 CROSS-EXAMINATION BY MR. WHITMER:
 15 **Q. Good afternoon, Dr. Gruber. So as**
 16 **you arrived today, did you see anyone in the crowd**
 17 **that you knew?**
 18 A. Yeah, John Orszag.
 19 **Q. How is that you know Mr. Orszag?**
 20 A. John and I worked together in the
 21 Clinton administration and became good friends as a
 22 result.
 23 **Q. And he's an economist, you're an**
 24 **economist, you run in the same circles?**
 25 A. Yeah. I mean, I'm more ivory

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1 towerish. He's more working on mergers and things
 2 like that. But we both know a lot of the same
 3 people.
 4 **Q. So you've known him, what, a few**
 5 **decades maybe?**
 6 A. Yeah.
 7 **Q. What is your understanding of what**
 8 **Mr. Orszag focuses on?**
 9 A. My understanding is Mr. Orszag's firm
 10 focuses on merger analysis.
 11 **Q. What types of mergers?**
 12 A. I don't really know a lot.
 13 **Q. But that's your understanding of his**
 14 **bread and butter is mergers?**
 15 A. Yeah.
 16 **Q. So I've had the opportunity to look**
 17 **at your CV. It's Exhibit 34. It's part of**
 18 **Exhibit 34. And I didn't see any references to any**
 19 **experience with health care mergers; is that**
 20 **correct?**
 21 A. I have not testified before on health
 22 care mergers.
 23 **Q. Okay. And as I reviewed your CV, I**
 24 **didn't see any references to any experience on the**
 25 **impact that mergers would have on competition. Did**

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1 **I miss anything?**
 2 A. No.
 3 **Q. And you'd also agree that there's no**
 4 **reference in your CV to anything about the impact**
 5 **of mergers on competition in the state of Missouri?**
 6 A. No, nothing on that.
 7 **Q. When were you hired for this matter?**
 8 A. When was I hired?
 9 **Q. See if I can help. Was it April**
 10 **22nd, perhaps?**
 11 A. That -- yeah, around then.
 12 **Q. And the report that we're looking at,**
 13 **which is Exhibit 34, that was submitted on -- when**
 14 **did you prepare that report?**
 15 A. I mean, I started shortly thereafter
 16 and I finished, I think, about a week ago, maybe
 17 eight or nine days ago.
 18 **Q. Take a look at Exhibit 34, see if it**
 19 **helps refresh your recollection.**
 20 A. Yeah.
 21 **Q. When did you finish the report, sir?**
 22 A. 5/6.
 23 **Q. May 6, right?**
 24 A. Yeah.
 25 **Q. So I guess that would be 14 days from**

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1 **the day that you were hired to the day that you**
 2 **completed your report?**
 3 A. Yeah.
 4 **Q. And I'll just represent to you that**
 5 **the report was submitted to Aetna's counsel on**
 6 **May 10th.**
 7 A. Okay.
 8 **Q. Do you know why it was submitted on**
 9 **May 10th and not May 6th?**
 10 A. No, I have no idea.
 11 **Q. Let's talk about your report. You'd**
 12 **agree that you were asked by the Division to**
 13 **analyze two issues in connection with this**
 14 **transaction; is that right?**
 15 A. That's right.
 16 **Q. And the first issue is the extent of**
 17 **competition between what we've been calling TM and**
 18 **MA?**
 19 A. That's right.
 20 **Q. Second issue is the role of the**
 21 **insurance market concentration on the public health**
 22 **insurance exchanges established by the ACA?**
 23 A. That's right.
 24 **Q. And you have some experience with the**
 25 **ACA?**

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1 A. Yes, I do.
 2 **Q. You'd agree these were the only two**
 3 **issues that the Division asked you to analyze?**
 4 A. Yes.
 5 **Q. And you'd also agree that you did not**
 6 **intend -- you did not intend for your report to**
 7 **provide a full determination of the competitive**
 8 **affect of MA mergers, correct?**
 9 A. Yes, I agree.
 10 **Q. You'd also agree, sir, that such a**
 11 **determination was just beyond of scope of your**
 12 **analysis?**
 13 A. Beyond the scope of what I was asked
 14 to do, yes.
 15 **Q. And beyond the scope of what you**
 16 **actually did, correct?**
 17 A. Yes.
 18 **Q. You'd agree that your report does not**
 19 **purport to analyze any competition specific to the**
 20 **state of Missouri?**
 21 A. Yes.
 22 **Q. And in fact, I've reviewed it**
 23 **carefully. There's no data set forth in your**
 24 **report that's specific to Missouri as well,**
 25 **correct?**

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1 A. I mean, obviously a lot of the
 2 studies involved -- they're usually cross-state
 3 studies that involve Missouri as part of the data
 4 set, but there's no Missouri-specific analysis, no.
 5 **Q. We'll get to the studies in a minute,**
 6 **but if I were to comb your report, I'm not going to**
 7 **find data in there anywhere specific to Missouri,**
 8 **right?**
 9 A. Right.
 10 **Q. And your report also does not provide**
 11 **any empirical data specific to this proposed**
 12 **transaction, correct?**
 13 A. Correct.
 14 **Q. And, in fact, more broadly, there's**
 15 **no data at all in your report that directly**
 16 **concerns this transaction?**
 17 A. My report is -- no. No data directly
 18 concerns this transaction, no.
 19 **Q. You'd agree, sir -- we heard your**
 20 **word incomplete competition. We'll come back to**
 21 **that. But I'd like to just start, you'll agree,**
 22 **sir, that MA competes against TM?**
 23 A. To some extent, they complete with
 24 each other, yes.
 25 **Q. In fact, that's something you've**

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1 **written about in previous articles, correct?**
 2 A. I don't recall.
 3 **Q. Let me see if I can help refresh your**
 4 **recollection. One of those articles is actually**
 5 **attached to your report, so we don't have to look**
 6 **for it.**
 7 A. Okay.
 8 **Q. Exhibit 34. And let's go ahead and**
 9 **turn to that article. The article is titled, More**
 10 **Insurers, Lower Premiums, correct?**
 11 A. Uh-huh.
 12 **Q. Let's go ahead and take a look at**
 13 **page 62, the bottom of the page, sir. I'm going to**
 14 **read to you the last paragra--**
 15 HEARING OFFICER ERICKSON: I'm sorry.
 16 Are you referring to the Bates numbered page 62 or
 17 the article page 62?
 18 MR. WHITMER: Thank you, Hearing
 19 Officer. It's the article page 62, not the Bates
 20 label.
 21 HEARING OFFICER ERICKSON: Thank you.
 22 MR. WHITMER: Thank you for the
 23 clarification.
 24 BY MR. WHITMER:
 25 **Q. Dr. Gruber, are we together at the**

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1 **bottom of your page 62?**
 2 A. Yeah.
 3 **Q. And I'm going to read, if you will,**
 4 **that last paragraph. Another predecessor of HIMs**
 5 **is the market for privately provided Medicare plans**
 6 **known today as Medicare Advantage. That's what**
 7 **we've been calling MA. Like HIMs, competition**
 8 **among plans can affect prices and subsidies.**
 9 **Unlike HIMs, market participants compete against**
 10 **traditional Medicare and often use the same**
 11 **provider reimbursement rates as traditional**
 12 **Medicare. Do you agree with that statement?**
 13 A. Yes.
 14 **Q. And when you say market participants**
 15 **in that paragraph, you're talking about Medicare**
 16 **Advantage participants, correct?**
 17 A. Yes.
 18 **Q. So, now, does that refresh your**
 19 **recollection that this was one of the issues that**
 20 **you've written about before, the competition**
 21 **between MA and TM?**
 22 A. Yes.
 23 **Q. Now, I looked here. I didn't see at**
 24 **the bottom of page 62 anything about incomplete**
 25 **competition. I just saw competition. Is that**

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1 fair?
 2 A. Yes.
 3 Q. And this article doesn't qualify,
 4 doesn't drop a footnote some cross-references
 5 saying they compete but not actually completely,
 6 right?
 7 A. It really was just a literature
 8 viewpoint. It really wasn't worth getting into the
 9 details there.
 10 Q. Okay. Let's talk economics.
 11 A. Okay.
 12 Q. Dangerous thing for me to do, but I
 13 think we should try.
 14 A. Okay.
 15 Q. Competition, you'd agree, does not
 16 have to be perfect to provide a competitive
 17 constraint?
 18 A. The term competitive constraint is
 19 not a precise term. So I don't quite know what you
 20 mean by that statement.
 21 Q. Well, let's talk about what you're
 22 here to talk about today.
 23 A. Okay.
 24 Q. The question that we're looking at is
 25 whether MA and TM compete with each other enough,

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1 such that post merger the Division should be okay
 2 with the Medicare Advantage line of insurance. You
 3 understand that, right?
 4 A. Yes.
 5 Q. Okay. And so you'd agree that
 6 products can differ substantially even in a highly
 7 competitive market?
 8 A. They can -- once again, using the
 9 word like substantially and highly. I absolutely
 10 agree that products can differ in a competitive
 11 market, for sure.
 12 Q. Those actually aren't my words.
 13 Those are yours. But let's go ahead and take a
 14 look at page 6 of your report, see if this helps at
 15 all. If you look at the bottom of page 6 under
 16 Factor 1.
 17 A. Uh-huh.
 18 Q. First full paragraph, second
 19 sentence, these are your words, sir. This is not
 20 dispositive as products can differ substantially
 21 even in highly competitive markets.
 22 A. Okay.
 23 Q. So you agree with that statement,
 24 right?
 25 A. Right. Yes.

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1 Q. We can use that as a baseline here?
 2 A. Okay.
 3 Q. You're aware, sir, that the DOJ, the
 4 FTC merger guidelines are replete with discussions
 5 about differentiated products, right?
 6 A. No, I'm not.
 7 Q. Is that because you just don't focus
 8 on mergers?
 9 A. Yeah. I don't know the specifics of
 10 the -- I'm not familiar with the specifics of the
 11 guidelines.
 12 Q. But more just generally in
 13 preparation for your report that you submitted,
 14 that you did not have the opportunity to review the
 15 DOJ or FTC guidelines, right?
 16 A. No, I did not.
 17 Q. And to the best of your knowledge,
 18 probably haven't reviewed them before today?
 19 A. Not that I would remember.
 20 Q. So isn't -- okay. Let's go back to
 21 my question. Isn't the relevant question here
 22 whether there is enough competition between TM and
 23 MA to constrain price and quality?
 24 A. Once again, the word constrain is a
 25 hard word to use. I mean, the question I

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1 understand is largely a legal question of whether
 2 it meets the conditions. It's largely a legal
 3 question that I'm not really here to pontificate on
 4 that.
 5 Q. What did you review before you
 6 prepared your report? What did you have the
 7 opportunity to review?
 8 A. I reviewed the Florida ruling that
 9 you mentioned.
 10 Q. The OIR consent order?
 11 A. Yeah. Yeah. I reviewed -- I don't
 12 recall exactly, but there were a couple of opinions
 13 that I reviewed -- I don't recall if they were
 14 federal or state -- which expressed the idea that
 15 these weren't perfect competitors.
 16 Q. Court rulings, you're talking about?
 17 A. Yeah.
 18 Q. What else?
 19 A. And then I reviewed briefly McCarthy,
 20 Mr. McCarthy's testimony, and I reviewed all the
 21 articles that I referenced here in this paper.
 22 Q. Anything else?
 23 A. Not that I can recall.
 24 Q. When you say McCarthy, you're
 25 referring to Dr. McCarthy?

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1 A. Dr. McCarthy, yeah.
 2 **Q. The expert for --**
 3 A. Yes.
 4 **Q. Did you have the opportunity to**
 5 **review the white paper that was submitted by Mr. --**
 6 **by your friend John?**
 7 A. I just glanced through it while I was
 8 sitting here.
 9 **Q. For the first time?**
 10 A. Yeah.
 11 **Q. So you're not here to discuss the**
 12 **findings that you read just while you were sitting**
 13 **in the room then?**
 14 A. Right. I'm not -- right. That's
 15 correct.
 16 **Q. And as you sit here, you have nothing**
 17 **to say about Mr. Orszag's report? That's not what**
 18 **you're here to talk about?**
 19 A. That's right.
 20 **Q. Now, you, sir, have not done any**
 21 **independent empirical analysis to test how much of**
 22 **a constraint TM is on MA, right?**
 23 A. No, I have not.
 24 **Q. And in fairness to you, you haven't**
 25 **done that because that's not what the Division**

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1 **asked you to do?**
 2 A. That's correct.
 3 **Q. But you're aware because you sat in**
 4 **the room and you had a few moments this morning,**
 5 **you're aware that John did actually have the**
 6 **opportunity to do that very analysis?**
 7 A. I saw there was some analysis in his
 8 testimony. I didn't have a chance to read it
 9 carefully.
 10 **Q. Did you read it carefully enough to**
 11 **know that is exactly what he's talking about is**
 12 **this specific transaction and the competitive**
 13 **constraint between -- the competition between TM**
 14 **and MA?**
 15 A. No, I did not.
 16 **Q. I know you said you just had the**
 17 **chance to read Mr. Orszag's report while you were**
 18 **sitting in the room here today. Did anyone at the**
 19 **Division tell you how long they've had that report?**
 20 A. No.
 21 **Q. Did anyone at the Division explain to**
 22 **you why they didn't provide that to you perhaps**
 23 **some time ago?**
 24 A. No.
 25 **Q. You gave us a list of things you**

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1 **reviewed. One of the things I didn't hear, and**
 2 **maybe you'd forgotten, is the Form E that we're**
 3 **talking about here today. Do you know what a**
 4 **Form E is?**
 5 A. No, I don't.
 6 **Q. Have you heard the phrase Form E**
 7 **before, the term?**
 8 A. Not that I can recall.
 9 **Q. Now, in your report, you relied on**
 10 **several studies. I'd like to talk briefly about**
 11 **them. We don't need to spend a lot of time. You**
 12 **didn't talk a lot about them on direct. But I'd**
 13 **just like to get some context for those studies.**
 14 A. Okay.
 15 **Q. The first one would be Abaluck and**
 16 **Gruber. It's from 2011.**
 17 A. Okay.
 18 **Q. It's Choice and Consistencies Among**
 19 **the Elderly. Do you recall that?**
 20 A. Uh-huh.
 21 **Q. You'd agree that the date range for**
 22 **the data you considered in that report was 2005 to**
 23 **2006?**
 24 A. That's right.
 25 **Q. And that none of the analysis in that**

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1 **paper was specific to Missouri?**
 2 A. That's right.
 3 **Q. And, of course, you'd agree that**
 4 **nothing in that paper analyzed this transaction?**
 5 A. That's right.
 6 **Q. Second paper you looked was another**
 7 **Abaluck and Gruber. That's you, right?**
 8 A. Yeah.
 9 **Q. That was a 2015 paper called Evolving**
 10 **Choice Inconsistencies in Choice Prescription Drug**
 11 **Insurance. Do you recall that?**
 12 A. Yes.
 13 **Q. Now, the data to that report was 2006**
 14 **to 2009. Does that sound right?**
 15 A. That's right.
 16 **Q. And nothing in that report mentions**
 17 **the word Missouri. You can agree with that as**
 18 **well?**
 19 A. There may be a table which says
 20 Missouri, but I can't recall. It's certainly not
 21 focused on Missouri.
 22 **Q. Okay. I didn't see it in there, but**
 23 **as you sit here today, you don't recall the word**
 24 **Missouri?**
 25 A. I don't recall.

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1 **Q. And obviously that report didn't**
2 **analyze this transaction either, right?**
3 A. No.
4 **Q. The third one, Batata and Amber, 2004**
5 **piece titled The Effect of HMOs on Fee for Service**
6 **Health Care Expenditures. That's another report**
7 **that you rely on in your report?**
8 A. Yes. Amber was her first name. It's
9 Batata and first name Amber. But that was another.
10 **Q. And Ms. Batata considered data that**
11 **ranged from 1990 to 1994?**
12 A. I don't recall what year she --
13 **Q. Sound about right?**
14 A. Sounds about right.
15 **Q. And again, that report had nothing to**
16 **do with Missouri, right?**
17 A. Yes.
18 **Q. You did review these reports as**
19 **you --**
20 A. No. I read the reports. I don't
21 remember. Once again, it may have said Missouri in
22 there somewhere, but it certainly wasn't focused on
23 Missouri.
24 **Q. And certainly that article also had**
25 **nothing to do with this transaction?**

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1 A. That's correct.
2 **Q. Moving forward now, there's the**
3 **Brown, Jason, Duggan, and a lot of others were**
4 **involved in that one. How Does Risk Selection**
5 **Respond to Risk Adjustment?**
6 A. That's right.
7 **Q. That's one of the reports you relied**
8 **on, right?**
9 A. Yeah.
10 **Q. That report relies primarily on data**
11 **from 1994 to 2006, correct?**
12 A. That's about right.
13 **Q. Again, nothing to do with Missouri?**
14 A. Not that I know of.
15 **Q. Again, nothing to do with this**
16 **transaction?**
17 A. No.
18 **Q. Number 5, the fifth report was**
19 **Cabral, Marika, and I'm sure I'm mispronouncing it,**
20 **but it had to do -- there was others, but it had to**
21 **do with this privatized health insurance benefits**
22 **for patients or producers?**
23 A. Correct.
24 **Q. That report focuses on data from 1997**
25 **to 2003?**

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1 A. I think that's right.
2 **Q. Nothing about Missouri?**
3 A. No.
4 **Q. And nothing about this transaction?**
5 A. No.
6 **Q. All right. The six article set forth**
7 **in Exhibit 34, which is your report, is the Dafny,**
8 **Leemore, Gruber, and that's one of the ones you**
9 **were involved in, More Insurers, Lower Premiums.**
10 **That's the one we just went through together on**
11 **page 62, right?**
12 A. (Witness nodded.)
13 **Q. You'd agree that the study had some**
14 **limitations?**
15 A. Any study has limitations.
16 **Q. And, in fact, as you set forth in**
17 **that study itself, you acknowledge it has**
18 **limitations?**
19 A. As I think any study should.
20 **Q. And one limitation, for example, the**
21 **article just focused on the first year of the**
22 **exchange operation?**
23 A. That's correct.
24 **Q. And another limitation is the article**
25 **focused only on one particular insured?**

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1 A. Well, we looked at data for the
2 entire insurance market. Our variation came from
3 the actions of one insurer.
4 **Q. Right. But actually what you say in**
5 **the report is you identify a limitation, and the**
6 **limitation you identified is that the article**
7 **focused only on one particular insurer, right?**
8 A. We may have said that in the
9 report -- may have said that in the article. The
10 bottom line is what I'm explaining to you, which is
11 that the article analyzing exchange markets, a
12 limitation that we highlight in the article is that
13 we're looking at the action of one insurer and how
14 it affects the insurance markets. And we focused
15 on the entire market.
16 **Q. Let's take a look, because I don't**
17 **want to misquote you. Page 14.**
18 A. Uh-huh.
19 MR. WHITMER: Again, this is -- your
20 Honor, this is page 14 in the report itself.
21 BY MR. WHITMER:
22 **Q. You're with me, right?**
23 A. Yep.
24 **Q. Page 14, at the very bottom. You're**
25 **talking about that study and you say, the study has**

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1 some limitations. Tell me if I read it wrong. The
 2 study has some limitations. For example, it just
 3 focused on the first year of exchange operation,
 4 and focused on a particular insurer. Those were
 5 the limitations you identified in your report
 6 submitted in this matter?
 7 A. And all it's saying is I'm making the
 8 point that that doesn't mean that the study was
 9 only about one insurer. The study was about
 10 exchange markets, but the event we're studying
 11 involved one insurer.
 12 Q. Now, this report actually does
 13 reference some 2014 data points, but you'd agree it
 14 primarily focuses on 2011 data?
 15 A. Well, no. The prices come from 2014.
 16 The market share data comes from 2011.
 17 Q. All the market share data is actually
 18 from 2011?
 19 A. That's correct.
 20 Q. Okay. And this report, again, does
 21 not provide any analysis of Missouri-specific data?
 22 A. No.
 23 Q. And certainly doesn't concern this
 24 transaction?
 25 A. Not directly, no.

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1 Q. Duggan, Mark, a 2014 piece titled Who
 2 Benefits When the Government Pays More? That's
 3 another article you relied on in your submission
 4 here?
 5 A. That's right.
 6 Q. That report used data from 2007 to
 7 2011, correct?
 8 A. That sounds about right.
 9 Q. And again, nothing about Missouri in
 10 that report?
 11 A. Not that I remember.
 12 Q. And nothing about this transaction,
 13 of course?
 14 A. No.
 15 Q. We're getting there. Article 8, this
 16 is the Daria and is it Pelech?
 17 A. Yes.
 18 Q. Paying More For Less? Insurer
 19 Competition and Health Plan Generosity. That
 20 report concerned data spanning from 2007 to 2012?
 21 A. Correct.
 22 Q. Nothing about Missouri?
 23 A. Not that I can recall.
 24 Q. And nothing about this transaction?
 25 A. No.

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1 Q. The ninth piece is Town -- Robert
 2 Town and is another -- it's about the welfare
 3 impact of Medicare HMOs. That's one of the
 4 articles you relied on?
 5 A. Yes.
 6 Q. That concerns data from 1993 to 2000.
 7 Sound right?
 8 A. Yes. That's about right.
 9 Q. Nothing about Missouri?
 10 A. Not that I can recall.
 11 Q. Nothing about this transaction?
 12 A. No.
 13 Q. And I think we're at the last one,
 14 which is Kaiser Family Foundation. That's one of
 15 the articles you relied on?
 16 A. Yes.
 17 Q. I think I've covered all ten of them,
 18 but this is the tenth one and this concerns data,
 19 spans a long way, all the way from '99, I think all
 20 the way up to the present?
 21 A. That's right.
 22 Q. And again, that wasn't written to
 23 focus on Missouri or this transaction?
 24 A. That's right.
 25 Q. Okay. When you were hired on

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1 April 22nd, 2016, just a few weeks ago, the
 2 Division just did not ask you to conduct an
 3 independent empirical analysis regarding the impact
 4 of this transaction on the state of Missouri?
 5 A. No, they did not.
 6 Q. And even though Mr. Orszag has, in
 7 fact, conducted an independent empirical analysis
 8 regarding the impact of this transaction on the
 9 state of Missouri, that was not shared with you at
 10 all until today?
 11 A. That's correct.
 12 MR. WHITMER: I have no further
 13 questions. Thank you.
 14 HEARING OFFICER ERICKSON:
 15 Mr. Angoff?
 16 REDIRECT EXAMINATION BY MR. ANGOFF:
 17 Q. Professor Gruber, do you have any
 18 reason to believe that any of your conclusions with
 19 respect to the evidence as to incomplete
 20 competition between Medicare Advantage and
 21 traditional Medicare, do you have any reason to
 22 believe that those conclusions do not apply in
 23 Missouri?
 24 A. I have no reason to believe that.
 25 Q. And do you believe -- do you have any

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1 **reason to believe that of all the studies -- that**
 2 **any of the studies that you relied on, that their**
 3 **conclusions also would apply in other states but**
 4 **not in Missouri?**
 5 A. I see no reason why the studies I
 6 relied on wouldn't be national representative,
 7 meaning they would apply to Missouri as well as
 8 elsewhere.
 9 **Q. And do you see any reason why your**
 10 **conclusion that concentration has the effect of**
 11 **raising prices on the insurance exchange, do you**
 12 **see any reason why that would apply in other states**
 13 **but not in Missouri?**
 14 A. No, I don't.
 15 MR. ANGOFF: No additional question.
 16 HEARING OFFICER ERICKSON: Recross?
 17 MR. WHITMER: None, thank you.
 18 HEARING OFFICER ERICKSON:
 19 Dr. Gruber, thank you for your time and your
 20 travels. You are excused.
 21 MR. WHITMER: Your Honor, if we could
 22 take a five-minute break, it would be much
 23 appreciated so we can get organized.
 24 HEARING OFFICER ERICKSON: It is
 25 about three 'til three o'clock. Let's assume it's

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1 three o'clock and come back at 3:15.
 2 MR. WHITMER: That would be fine. I
 3 guess just as a formality, it would probably be
 4 helpful to know if Mr. Angoff and Mr. Hopper are
 5 resting their case.
 6 MR. ANGOFF: Yes.
 7 HEARING OFFICER ERICKSON: I want to
 8 just confirm the exchange that has occurred. The
 9 Division at this time has no further evidence for
 10 its case in chief; is that correct, Counsel?
 11 MR. ANGOFF: Yes, it is, your Honor.
 12 HEARING OFFICER ERICKSON: Thank you
 13 very much. We will break till 3:15, and then Aetna
 14 and Humana may present their evidence. We're off
 15 the record.
 16 (A BREAK WAS TAKEN.)
 17 (THE REMAINDER OF THE TRANSCRIPT IS
 18 CONTAINED IN VOLUME 2.)
 19
 20
 21
 22
 23
 24
 25

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C E R T I F I C A T E

1
 2
 3 STATE OF MISSOURI)
 4) ss.
 5 COUNTY OF COLE)
 6
 7 I, Kellene K. Feddersen, Certified
 8 Shorthand Reporter with the firm of Midwest
 9 Litigation Services, do hereby certify that I was
 10 personally present at the proceedings had in the
 11 above-entitled cause at the time and place set
 12 forth in the caption sheet thereof; that I then and
 13 there took down in Stenotype the proceedings had;
 14 and that the foregoing is a full, true and correct
 15 transcript of such Stenotype notes so made at such
 16 time and place.
 17 Given at my office in the City of
 18 Jefferson, County of Cole, State of Missouri.
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 22 _____
 23 Kellene K. Feddersen, RPR, CSR, CCR
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