

EXHIBIT E

**Excerpts from the Deposition
Transcript of Gregory Russo
(November 28, 2023)**

1 A Not the scope of work that I was asked to
2 opine on.

3	Q	Correct.
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4 There was no government investigation in
5 this case in your scope of work for Blue Cross, is
6 there?

7 A Not that I understand.

8 Q There's no internal investigation, is
9 there?

10	A	Not that I understand.
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11 Q There was no business planning or aspect
12 of your scope of environment here, was it?

13	A	Not that I understand.
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14 Q Okay. And what element of provider
15 reimbursement, if any, was involved?

16 A The element of provider reimbursement that
17 was involved relates to the repricing of the claims
18 data.

19 Q Okay. It says in the third paragraph that
20 you're a member of the American Health Law Lawyers
21 Association, right?

22 A Yes, that is correct.

23 Q Even though you're not an attorney by your
24 own testimony, correct?

25 A Yes, that is correct.

1 Q And that you're also a member of the
2 Healthcare Financial Management Association,
3 correct?

4 A Yes, that's correct.

5 Q But you are not an actuary and don't hold
6 an actuarial certification, correct?

7 A Yes, that's correct.

8 Q All right. And so let's look at the
9 professional experience aspect of your CV,
10 Mr. Russo. There's 13 different entries here for
11 litigation support, are there not?

12 A I haven't counted them.

13 Q Okay. Well, they're not numbered. I
14 counted them.

15 To your knowledge, Mr. Russo, not a single
16 one of these 13 entries involves whether a state
17 agency properly reviewed, evaluated, or scored cost
18 proposals received in response to an RFP for a state
19 health plan, do they?

20 MS. JOSEPH: Objection to form.

21 A That's correct.

22 BY MR. WHITMAN:

23 Q All right. And not a single one of the 13
24 entries listed under your professional experience or
25 litigation support involve a case where you were

1 required or requested to do a claims repricing
2 exercise, do they?

3 A They do.

4 Q Which ones?

5 A The very first bullet does.

6 Q The personal injury case?

7 A Yes, yep.

8 Q Okay.

9 A The second one does.

10 Q Where you assisted a large health insurer
11 with rates that the insurer reimbursed hospitals in
12 an antitrust case?

13 A Yes.

14 Q Okay.

15 A The third one does.

16 Q Where you assisted a large health insurer
17 in defending against a class action relating to
18 out-of-network reimbursement?

19 A Yes.

20 Q Okay.

21 A The fourth one does.

22 Q That's where you assisted health insurers
23 with issues involving out-of-network reimbursement?

24 A Yes, that's correct.

25 Q Okay. Anything else?

1 A I'm just reading down the list.

2 Q All right.

3 A I believe that is the extent. But I would
4 like to clarify that the bullet point which is
5 "Assisted several health insurers with respect to
6 challenges involving out-of-network reimbursement"
7 relates to many cases on which I've been hired, it's
8 not just a single case.

9 Q I see. Okay.

10 And would that be more fully fleshed out
11 in the section where you list the 33 cases which
12 you've been retained on in the last couple of years?

13 A If I provided deposition or trial
14 testimony, then yes.

15 Q Okay.

16 A But I have done that work in a privileged
17 capacity, as well as in instances in which I did not
18 end up authoring an expert report.

19 Q Okay. But as we discussed just a few
20 minutes ago, nothing within those first four bullet
21 points that you've identified for me involved the
22 assessment of whether the state -- a state agency
23 had properly reviewed, evaluated, or scored a cost
24 proposal received in response to an RFP for a state
25 health plan; is that right?

1 plans?

2 MS. JOSEPH: Objection.

3 A So I define Medicare and Medicaid as --
4 sorry. I define Medicaid as a state government
5 health plan. There is work involving Medicaid.

6 BY MR. WHITMAN:

7 Q Where specifically are you pointing to in
8 your CV for that?

9 A Page A-3, "I assisted a large provider of
10 inpatient psych services with an investigation of
11 the care provided to Medicare and Medicaid
12 patients."

13 Q Right. And you're saying that involved
14 some aspect of a state government health plan?

15 A Well, I see Medicaid as a state government
16 health plan as well.

17 Q You see Medicaid as a state government
18 health plan?

19 A It's operated jointly by the state and the
20 federal government.

21 Q Okay. Anything else?

22 A The 1915(c) waiver that I mentioned in New
23 York State also involved Medicaid.

24 Q Right. Anything else?

25 A I don't believe so.

1 Q Okay. Do you agree with me that there's
2 no reference in the first five pages of your CV to
3 any experience with third-party administrative
4 service contracts?

5 A Yes. I don't reference work with
6 third-party administrative services contracts.

7 Q Right.

8 A It is something that is involved in the
9 work that I have done, particularly with respect to
10 the reimbursement work.

11 Q Right. But there's no reference in your
12 CV to any experience with third-party administrative
13 service contracts offered by a state government or
14 otherwise, right? That term is not used in your CV,
15 right?

16 A I don't use the term. But the concept is
17 included. When I've assisted health insurers with
18 respect to reimbursement, there are aspects of that
19 work that involve contracts that are TPA contracts
20 and ensuring that the reimbursement terms conform
21 with the TPA contracts that may be in place. And in
22 some instances, those TPA contracts are with health
23 plans that are for state government employees.

24 Q Right. But that would not be abundantly
25 obvious to a reader because you don't make a

1 reference to third-party administrative service
2 contracts with state governments in your CV, right?

3 A I don't specifically reference that. I
4 think if one is versed in the healthcare
5 marketplace, that you would understand that those
6 are included within this experience.

7 Q There's no reference to experience in your
8 CV with scoring responses to RFPs, correct?

9 A That is correct.

10 Q To evaluating responses received by state
11 agencies from RFPs, correct?

12 MS. JOSEPH: Objection to form.

13 A Yes, that's correct.

14 BY MR. WHITMAN:

15 Q All right. Drafting responses to RFPs
16 from state governments, correct?

17 MS. JOSEPH: Objection to form.

18 A I -- so your question was whether there's
19 any experience with respect to drafting responses to
20 RFPs?

21 BY MR. WHITMAN:

22 Q Uh-huh.

23 A And I did participate and have
24 participated in my career in preparing responses to
25 RFPs, and that is evidenced by the work that is

1 2018.

2 A Okay.

3 Q Is that consistent with your recollection,
4 though, just timeline-wise?

5 A I do not recollect when it was filed.

6 Q Okay. Do you remember who you were
7 retained by in that case?

8 A I do not recollect which of the defendants
9 I was retained by, whether it was David Berry, the
10 physician; whether it was Neonatal [sic] and
11 Pediatric Acute Care Specialists; and/or whether it
12 was Catawba Valley Medical Center.

13 Q Okay. Okay. But I take it, just from the
14 description of the case there, that this case did
15 not involve any aspect of a -- responses or cost
16 proposal submitted in response to a state government
17 RFP; is that accurate?

18 A It did not involve an RFP.

19 Q Okay. Okay. To your knowledge -- I see
20 the descriptions you've included in the 33 cases
21 here, Mr. Russo. I can read them. But to your
22 knowledge, did any of those 33 cases involve the
23 issue of whether a state agency properly awarded a
24 contract under a public procurement process
25 involving an RFP?

1 A No, I don't believe that they -- that the
2 33 cases did involve RFPs.

3 Q In how many of these 33 cases, if any, did
4 you analyze or compare third-party administrative
5 services' pricing guarantees like the analysis
6 contained in reference to Opinion 1 in your expert
7 reports in this case?

8 A Well, not evaluating -- well, these cases
9 do not evaluate the pricing guarantees. There are
10 several of them that have involved the cost to a
11 health plan and the value that a health plan
12 assesses.

13 Q Which cases, can you identify, that do
14 that?

15 A The Crescent City matter.

16	Q	Number 2?
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17 A Yes. Would you like me to just give you
18 the numbers?

19 Q Yeah, the numbers might be easier. Sure.

20 A Number 3. Number 12. Number 17.

21 Number 26. I believe that's the extent.

22 Q Okay. Now, you said that the ones you
23 just identified -- 2, 3, 12, 17, and 26 -- involve
24 some aspect of cost to a health plan, correct?

25 A Yes, that's correct.

1 Q Did they specifically involve, to your
2 knowledge, the analysis or comparison of pricing
3 guarantees?

4 A I don't believe that there were pricing
5 guarantees that were included within the matters.

6 Q Okay.

7 A What was included within the matters was
8 the evaluation of costs for the plan, and what is
9 represented in those cases is a determination of the
10 reasonable value of the services.

11 Q "The reasonable value of the services" is
12 a different concept in substance and form than a
13 pricing guarantee offered by an insurance company to
14 a state government health plan, is it not?

15 A It is a different concept, but it still
16 relates to the ultimate medical expenses of the
17 plan.

18 Q And how many of these 33 cases, Mr. Russo,
19 if any, did you perform a claims repricing exercise
20 like the one referenced in Opinion 2 in your expert
21 report in this case?

22 A A number of them.

23 Q Okay.

24 A Number 1 --

25 Q Okay.

1 A -- 2, 4, 6, 7, 9, 11, 12, 13, 16, 17, 19,
2 20, 22, 23, 24, 25, 26, 27 -- no, sorry, not 27.
3 28, 29, 30, 31, 32, and 33.

4 Q Okay. Now, did -- were any of the claims
5 repricing exercises you just referenced related to
6 cost proposals submitted in response to a state
7 government RFP for a health plan?

8 A No. They weren't related to a response to
9 an RFP, but they were still repricing exercises.

10 Q Okay. In any of these 33 cases,
11 Mr. Russo, did you analyze or compare network access
12 and disruption like the analysis contained in
13 Opinion 5 of your reports in this case?

14 A No. I don't believe that any of these 33
15 cases have involved an analysis of network access.
16 The network access work that I've done has been on
17 cases that are not listed here, because I wasn't a
18 testifying witness in those cases.

19 Q Is there anything in the 9 pages of the CV
20 that references the concept of the network access
21 and disruption? First of all, does it contain those
22 words anywhere?

23 A I don't believe that it contains those
24 words. My CV is not a full recitation of every
25 single project I've worked on. It's a select --

1 it's a selection of the projects I've done and a
2 description of my overall experience. I don't
3 believe that those words that you mentioned are
4 included here.

5 Q Okay. Would you agree, Mr. Russo, that
6 based on the experience that you do have, that an
7 agency, a state agency, has wide latitude and
8 discretion to determine the evaluation and criteria
9 that will be contained in its own request for
10 proposals?

11 A I don't know what you mean by "wide
12 latitude."

13 Q Do you understand what "discretion" means?

14 A I do. But I don't understand what "wide
15 latitude" means in your context.

16 Q Okay. Well, would you agree an agency has
17 discretion to determine the evaluation criteria that
18 it will include in its own request for proposal?

19 A My understanding is that they -- the
20 agency has the ability to design the request for
21 proposal and outline the criteria.

22 Q Okay.

23 A I don't know that they have wide latitude.
24 I'm not sure what that means.

25 Q Do you agree and understand that an agency

1 it with both the billed charges and then run it with
2 the eligible charges to confirm what you just said,
3 that you felt that they were so close as to be
4 congruent?

5 A They were within \$1,000 of each other, so
6 it wasn't necessary to rerun it, because what we
7 were talking about with respect to these three
8 providers is as detailed in my report, 496,
9 '7 million dollars of charges. So \$1,000 isn't
10 going to have a material impact.

11 MR. WHITMAN: So, okay. Let me mark and
12 ask you to look at Mr. Vieira's report. We're
13 going to mark that as Exhibit 419, Mr. Russo.
14 (Exhibit Number 419 marked for
15 identification.)

16 BY MR. WHITMAN:

17 Q Just let me know if you recognize this.
18 And then the amended report -- whoops,
19 that's your rebuttal report.

20 Do you recognize that as the amended
21 report of Mr. Vieira that was issued in this case?

22 A It appears to be. It doesn't look like
23 it's signed, but it appears to be.

24 Q Okay. And I take it you've reviewed this
25 amended report before today?

1 A Yes, I have.

2 Q This is one of the reports you reviewed in
3 connection with preparing your rebuttal report,
4 correct?

5 A Yes. I reviewed this, as well as the
6 prior report that Mr. Vieira had produced.

7 Q Okay. What differences in the reports did
8 you notice, if any?

9 A There were wording changes that were made
10 to several sections of the report. I don't remember
11 what those were, though.

12 Q Okay. Let me ask you to turn to page 30
13 of Mr. Vieira's amended report, 30 of 38.

14 A Yes.

15 Q And on page 30 of that report, Mr. Vieira
16 included a table in which he showed your alleged
17 difference in Aetna's claims cost over the
18 three-year base years of the contract being
19 30 million, correct?

20 A Yes.

21 Q Three years would be 90 million, right?

22 A That is what Mr. Vieira assumed for
23 purposes of this table. I disagree with that,
24 though.

25 Q All right. And over the three-year base

1 period of the contract, then, under what Mr. Vieira
2 has presented here, \$90 million would represent less
3 than 1 percent difference in Aetna's claims cost.

4 Would you agree?

5 A While I agree with his calculation, I
6 disagree with his addition of \$90 million.

7 Q Okay. Why do you disagree with that?

8 A As I have identified in Opinion 2 of my
9 initial report, I identified a
10 \$30 million difference in one year.

11 As Mr. Vieira has identified on page 24 of
12 his report, he indicates that the medical costs
13 increase over time, and he relied on data from both
14 the State Health Plan and also The Segal trend
15 survey. He found that there is roughly about a
16 6 percent increase in medical costs year over year.

17 So if you take \$30 million and increase it
18 by 6 percent each year, you get \$95 million. If you
19 were to add \$95 million to Aetna's overall claims
20 cost, the present difference from the lowest claims
21 cost is not .46, but .51 and, therefore, would
22 generate different scores.

23 Q So you're referring to the portion of the
24 relationship which indicates that if Blue Cross Blue
25 Shield or Aetna were within .5 percent of each other

1 on claims cost, each company would receive the same
2 number of points, correct?

3 A Yes. That was one of the things that was
4 referenced in my answer.

5 Q And under Mr. Vieira's analysis he
6 concludes that it would have made no difference to
7 either of your opinions in which you indicated in
8 your initial report -- would have made no difference
9 to the overall scoring because under Mr. Vieira's
10 calculations it's less than .5 percent, right?

11 MS. JOSEPH: Objection to form.

12 BY MR. WHITMAN:

13 Q Is that what you understood him to be
14 saying?

15 A That's what I understand him to be saying.
16 As I mentioned, I disagree with that because we know
17 that medical costs trend, as Mr. Vieira himself
18 provided in his report.

19 MR. WHITMAN: Okay. Let's look -- let's
20 go ahead and mark your rebuttal report as well.

21 This is going to be 420.

22 (Exhibit Number 420 marked for
23 identification.)

24 BY MR. WHITMAN:

25 Q And do you recognize and can you identify

1 that as your rebuttal report, Mr. Russo?

2 A Yes, it appears to be my rebuttal report.

3 Q Okay. Let me ask you to turn to page 16
4 of your rebuttal report, Mr. Russo.

5 A Yes.

6 Q And at the top of page 16 of your rebuttal
7 report, you make the point that Mr. Vieira ignores
8 discrepancies that you found and identified in your
9 initial report could be the tip of the iceberg,
10 right?

11 A I believe that it reads "Mr. Vieira
12 ignores the possibility" --

13 Q Right.

14 A -- "that the discrepancies identified may
15 be the tip of the iceberg."

16 I don't remember if you said -- whether
17 you said possibilities or not.

18 Q Okay. But it's equally possible that
19 those discrepancies are not the tip of the iceberg,
20 correct?

21 A I think that it is both possible that they
22 are the tip of the iceberg and possible that they
23 are not the tip of the iceberg. What I have
24 reviewed is -- I have reviewed the contracts for
25 three providers, and I found nearly \$30 million in

1 ahead and take a break.

2 THE VIDEOGRAPHER: The time is 2:18 p.m.

3 We're off the record.

4 (A recess was taken from 2:18 p.m. to
5 2:29 p.m.)

6 THE VIDEOGRAPHER: The time is 1:02.

7 We're on the record.

8 EXAMINATION

9 BY MR. HEWITT:

10 Q Good afternoon, Mr. Russo. We met very
11 quickly. I'm Marc Hewitt, counsel for the North
12 Carolina State Health Plan. I want to direct your
13 attention to your Opinion 1 from your rebuttal
14 report and your -- excuse me -- your initial expert
15 report and your rebuttal report. So let's start
16 with 4 -- I believe -- 17 which was your initial
17 report.

18 And that opinion, generally speaking,
19 relates to your opinion about the State Health
20 Plan's scoring of Blue Cross' pricing guarantees,
21 correct?

22 A Yes, that is correct.

23 Q Okay. Do you have Exhibit 5, the RFP
24 where you can reach it? I think you may be touching
25 it right now.

1 A Yes.

2 Q If you would turn to page, I believe it's
3 24 and 25, which is where Section 3.4 is.

4 A Yes. I have turned to page 24 and 25.

5 Q Thank you. So you've seen that section of
6 the RFP before, I know, but would you agree that the
7 RFP said that the vendors' pricing guarantees would
8 be compared based on their value to the State Health
9 Plan, and that the value would be based on a
10 combination of competitiveness of the guaranteed
11 targets and the amount placed at risk.

12 A Yes, it does say that.

13 Q Okay. I'm going to get back into that,
14 but I want to back up for a minute and talk about
15 your experience, specifically with respect to
16 pricing guarantees.

17 Do you have any prior -- I know we talked
18 about your experience in general, but do you have
19 any prior experience drafting or evaluating or
20 analyzing pricing guarantees?

21 A I have experience with respect to the
22 medical cost that would be incurred by a health plan
23 and by a Plan sponsor. And so to the extent that
24 guarantees are related to that, then, yes, I do have
25 the experience. But I have not drafted a pricing

1 guarantee.

2 Q Okay. Or have you evaluated or analyzed
3 pricing guarantees before this engagement?

4 A I have not evaluated pricing guarantees
5 for the purposes of an RFP response. I have
6 evaluated, though, the cost -- the medical cost that
7 would -- that would be incurred by a plan and by a
8 plan sponsor.

9 Q And who were you working for when you did
10 that type of evaluation of the medical cost?

11 A So that has been involved in a number of
12 engagements where I have been working on
13 reimbursement-related issues for insurance
14 companies.

15 Q Have you had a lot of engagements in the
16 past where you were analyzing those in the context
17 of a pricing guarantee?

18 A Analyzing medical costs?

19 Q In terms of pricing guarantees, yes.

20 A Not in the context of pricing guarantees.
21 In the context of the medical costs that would be
22 incurred by a health plan and how a health plan
23 would value its operations.

24 Q Okay. My question was specific to your
25 experience with analyzing or evaluating pricing

1 A No, I have not.

2 Q Do you have any specific education or
3 training about how to value a pricing guarantee?

4 A Yes. I believe that I have because of --
5 or based on the experience that I have discussed
6 thus far today. I did my graduate work at the Johns
7 Hopkins Bloomberg School of Public Health and
8 Healthcare Finance. In that program I studied the
9 healthcare marketplace and the costs that exists in
10 the Marketplace. I have subsequently worked for a
11 number of health insurance companies throughout the
12 United States on costs and medical expenses.

13 Q My question was about training and
14 education, and how many -- and in that context, how
15 many of -- or what coursework have you done in which
16 you were taught how to design or evaluate a pricing
17 guarantee?

18 MS. JOSEPH: Objection.

19 A I don't recollect that there was a course
20 of pricing guarantees. It sounds like it would be a
21 really bland course. But I don't recollect there
22 being a specific course on pricing guarantees. The
23 evaluation of medical expenses is something that was
24 involved in many of the courses that I took in
25 graduate school.

1 BY MR. HEWITT:

2 Q Okay. But just to be clear, my questions
3 are all specific to pricing guarantees, and so I
4 don't hear you identifying any particular coursework
5 or training or education that was specific to how to
6 either design or evaluate a pricing guarantee in
7 particular.

8 MS. JOSEPH: Objection to form.

9 A And as I have testified, the work -- the
10 graduate work that I did at the Johns Hopkins
11 Bloomberg School of Public Health is a basis of
12 knowledge in terms of the manner in which the
13 healthcare marketplace works, and the manner in
14 which medical expenses are identified and valued.

15 And that work, as well as my almost 20
16 years of experience working with healthcare payors
17 and providers, has provided me with information that
18 is useful in evaluating the pricing guarantees.

19 BY MR. HEWITT:

20 Q While you may consider it useful, does any
21 of the training or experience in, as you said, "the
22 manner in which the healthcare marketplace works and
23 the manner in which medical expenses are identified
24 and valued," does any of that training or experience
25 have to do specifically with pricing guarantees?

1 MS. JOSEPH: Objection.

2 A It does, as the pricing guarantees relate
3 to the medical expenses of the plan and the plan
4 sponsors.

5 BY MR. HEWITT:

6 Q I think we're talking past each other.
7 I'm not talking about how medical costs might be one
8 factor that may go into a pricing guarantee. I'm
9 talking about what training or experience you might
10 have in how to design or evaluate a pricing
11 guarantee.

12 A And as I've testified before, I did not --
13 I have not in my career designed pricing guarantees.

14 Q How about --

15 A I have evaluated pricing guarantees. As I
16 indicated, I worked with an insurance company that
17 had pricing guarantees and I helped evaluate those
18 pricing guarantees, and I also have training and
19 experience as it relates to the evaluation of
20 medical expenses which are integral in the
21 evaluation of a pricing guarantee.

22 Q And the insurance company work that you
23 just touched on, again, that was in the context of
24 pricing guarantees between an insurance company and
25 providers, correct?

1 A I -- I'm not going to opine on someone's
2 intent. They made the decision.

3 Q Okay. And the reasoning that was stated,
4 at least in her email that I just showed you, is
5 that disruption and geographic access would show up
6 in pricing; is that fair?

7 A That was what she indicated in her email.

8 Q In your report, page 51, you talk about
9 what Segal did. And I'm looking at page 51, second
10 paragraph starts with the words "Segal's corporate
11 representative testified."

12 A Yes.

13 Q Okay. And his testimony was about how
14 Segal compared the percentages of in-network claims
15 using data in the repricing exercise.

16 Is that fair?

17 A Yes, that was the indication.

18 Q Okay. And then you say right after that,
19 "For several reasons, however, those percentages
20 were not a meaningful comparison of the vendors'
21 provider networks and the real level of access those
22 networks provide to members."

23 A Yes, that's correct.

24 Q So you don't cite to any authority for the
25 proposition that those percentages aren't a

1 meaningful comparison of vendors' provider networks.
2 So is that just your opinion?

3 A No, it's not just my opinion. It's the
4 manner in which the healthcare marketplace works in
5 evaluating networks. It needs to be done with
6 respect to the geographies that are smaller than an
7 overall state. So the evaluation that's being done
8 here is being done at such a high level that it's
9 masking what may exist as network issues in some
10 areas of the state.

11 Q Okay. So you think the comparison of
12 in-network/out-of-network claims percentages was an
13 inadequate measure of network access or disruption?

14 A It was an inadequate measure when
15 performed at the overall level and when not taking
16 into account smaller geographic areas.

17 Q Okay. Well, you don't cite to any
18 particular authority other than just making that
19 statement. And so what are you relying on when you
20 say that?

21 A I'm relying on the manner in which
22 networks are assessed, and that is something that is
23 done in the marketplace. There are a number of
24 companies that assess markets. I've interacted with
25 some of those companies. Clients of mine have hired

1 some of those companies. I have assessed markets as
2 well for clients and determined network adequacy and
3 whether the -- whether the standards were met.

4 And then furthermore, as I had indicated,
5 the network adequacy standards that exist in the
6 market for Medicare Advantage plans and Medicaid
7 managed care plans are not done at the overall
8 level. They're done with respect to smaller
9 geographic regions and typically a mileage distance
10 between a member or a beneficiary and a provider.

11 Q Do any of those standards you're talking
12 about apply to the North Carolina State Health Plan?

13 A I don't know if they apply to the State
14 Health Plan specifically, but I do know that the
15 State Health Plan has indicated in the RFP that they
16 intend to have a broad provider network with the
17 least disruption and with competitive pricing, as
18 well as indicating that the Plan intends to provide
19 a cost-effective quality healthcare program for its
20 membership. And to provide a quality cost-effective
21 healthcare program, a vendor needs to have a network
22 that can adequately serve its membership.

23 Q Is there anything more specific in the
24 language of the RFP than what you just pointed out
25 that supports the idea that the Plan had to compare

1 network access or disruption on a smaller geographic
2 level?

3 A No, I don't believe that there is, other
4 language in the RFP that identifies the evaluation
5 should have been at a smaller geographic level than
6 the entire state.

7 Q And have you ever done a comparison of
8 provider networks like you did in this report? And
9 I'm talking about Figures 23 through 27 other than
10 in this engagement.

11 A Yes, I have.

12 Q For what purpose?

13 A I evaluated networks for insurance
14 companies as it related to their determination of
15 contracting. And I have also evaluated networks in
16 the context of litigation matters that have related
17 to antitrust violations.

18 Q But not in connection with comparing one
19 bidder's network against another bidder in the
20 context of an RFP, correct?

21 A That is correct. Not in the context of
22 the RFP -- not in the context of a RFP. In the
23 context of just assessing the adequacy of a network.

24 Q Okay. And some of those situations were
25 those some that you have done this type of analysis,

1 was that in situations where there were network
2 adequacy standards that plans were required to meet?

3 A In some cases, yes, there were. And in
4 other cases there was just the decision that was
5 being made as to the availability of providers to
6 serve the members of a Plan.

7 Q So what level of disruption is typical
8 when a State Health Plan changes TPAs?

9 A I don't have an opinion on that.

10 Q And let me show you Exhibit 413 again.
11 That was the Segal presentation that we've looked at
12 several times already in connection with other
13 opinions. Looks like this.

14 A Yes.

15 Q Let's turn to the pricing page, which is
16 page 5, Bates page 85916. Just let me know when
17 you're there.

18 A Yes, I'm there.

19 Q Okay. You're aware, aren't you, that --
20 well, let me direct your attention in the top table
21 there, Non-Medicare Network Discounts and Relative
22 Values, second column from the right. The heading
23 the Assumed Network Utilization.

24 That's the comparison that Segal's
25 representative pointed to when talking about what

1 the Plan did to compare disruption, correct?

2 A Yes.

3 Q Do you recall that in his deposition he
4 testified that providers had to respond to a claims
5 repricing file for the network pricing part of the
6 cost proposal and they had to indicate line by line
7 whether a certain claim was in network or out of
8 network and that using that data, that it could be
9 determined what percentage of claims was in network
10 or out of network for each bidder?

11 A I'm going to ask that you read your
12 question back because I think you've misstated
13 something.

14 Q Well, let me just have you look at his
15 deposition transcript so I don't mess up the
16 transcript. And this is Deposition Exhibit
17 Number 424 starting on page 119. Should be toward
18 the front.

19 Starting on Bates page 119, line 13, he
20 testified:

21 "I believe the experience period was
22 2021" -- and I'm skipping down a line or two --
23 "Calendar Year 2021. And that would have all
24 providers used by the state membership during that
25 period.

1 As I mentioned earlier in my deposition, I have
2 criticisms of the work that Mr. Vieira and
3 Mr. Coccia have done, and I have discussed those
4 today.

5 Q Have you been asked to form any additional
6 opinions?

7 A No, I have not.

8 MR. HEWITT: Okay. Then subject to follow
9 up, I don't have any further questions.

10 THE WITNESS: Thank you.

11 MS. JOSEPH: I need about five minutes to
12 think about whether or not I have any
13 questions.

14 THE VIDEOGRAPHER: We're off the record at
15 8:07 p.m.

16 (A recess was taken from 8:07 p.m. to 8:14
17 p.m.)

18 THE VIDEOGRAPHER: The time is 8:14.
19 We're on the record.

20 EXAMINATION

21 BY MS. JOSEPH:

22 Q I have a few questions.

23 A Okay.

24 Q Are the key aspects of any health
25 insurance plan, whether it's public or private,

1 basically the network and contracted reimbursement
2 rates?

3 A Yes.

4 MR. WHITMAN: Objection to the form.

5 BY MS. JOSEPH:

6 Q All right. We'll do it this way to
7 address the objection.

8 Are the needs of a self-insured State
9 Health Plan similar to those of other self-insured
10 employers.

11 A Yes, they are. The State Health Plan is
12 operating just as a large employer in the --
13 anywhere in the country would be operating. It's
14 operating essentially the same as Target or Walmart
15 or the large hospital system that is going out and
16 identifying a TPA that can provide health insurance
17 to the employees of that entity.

18 Q In what ways are they similar?

19 A They're similar in that their primary
20 concern is what is the medical expense and the cost
21 that they will incur, as well as ensuring that their
22 employees are receiving quality healthcare through a
23 broad network and that the services are being
24 reimbursed appropriately.

25 Q Is there any reason to think that the

1 public nature versus the private nature of the
2 Health Plan would effect those concerns that you've
3 just outlined?

4 A No.

5 MS. JOSEPH: I don't have any further
6 questions.

7 MR. WHITMAN: No questions.

8 MR. HEWITT: No further questions.

9 THE VIDEOGRAPHER: We are off the record
10 at 8:16 p.m. And this concludes today's
11 testimony. The master video files will be
12 retained by Veritext Legal Solutions.

13 (The deposition concluded at 8:16 p.m.)

14 (Reserved signature.)
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EXHIBIT F

**Excerpts from the Deposition
Transcript of Kenneth Vieira
(November 30, 2023)**

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF DURHAM

23 INS 738

BLUE CROSS AND BLUE SHIELD
OF NORTH CAROLINA,

Petitioner,

v.

NORTH CAROLINA STATE HEALTH
PLAN FOR TEACHERS AND STATE
EMPLOYEES,

Respondent,

and

AETNA LIFE INSURANCE COMPANY,

Respondent-Intervenor.

** CONFIDENTIAL **

PORTIONS CONTAIN ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF

KENNETH C. VIEIRA

NOVEMBER 30, 2023

9:11 a.m.

Raleigh, North Carolina

Reported by: Audra M. Smith, FCRR

Video by: John Roberts

1 mean, Blue Cross has increased their network
2 penetration from 99 to 99.4. Aetna is at 99.

3 As a 1:1 when it comes to January, we
4 will have a broader network and would fill all those
5 holes. So there may be no disruption at that point
6 in time. There likely would be some.

7 Blue Cross has -- we're talking about
8 1,000 for Aetna. Blue Cross has thousands, too, in
9 the same analysis.

10 I mean, it's like you're talking about
11 600,000 people. So 1 percent is 6,000, and
12 1 percent is a small amount of disruption.

13 So, yes, you're going to have, in any
14 scenario when you change a vendor, you're going to
15 have a little bit of disruption. You're going to
16 have it with the same vendor who has network changes
17 during the year.

18 Q So based on what you just said, I
19 understand you're saying it is likely that if you
20 change vendors you're going to have disruption?

21 A It may be likely. And you have
22 disruptions with both vendors. And typically, you
23 start with more disruption, typically, from the
24 nonincumbent, but they have two years to fill the
25 holes, and that's what they do. And we see that in

1 numerous cases.

2 Q When we produced, when we -- when Blue
3 Cross produced Mr. Russo's report, are you aware
4 that we provided what I think they call Scripts
5 that go with those reports that included the -- kind
6 of like number crunching part of how his analyses
7 were conducted?

8 A I'm aware you provided them, yeah.

9 Q Did you look at those?

10 A I did not.

11 Q Why not?

12 A Because we didn't. I mean, I didn't
13 have time to go through and do it. He had five
14 months to write scripts and do all his work. It's
15 like in three-week time frame, for one, I didn't
16 think it was important to go through it because I
17 don't see any validity in his whole opinion. It's
18 like it's -- I mean, there's nothing to this whole
19 opinion.

20 Q You don't think that the relative
21 provider access is important?

22 A You didn't say "provider access." It's
23 not provider access. Provider access had Blue Cross
24 better than -- or had Aetna better than Blue Cross.
25 That was the A-2 exhibit. This is a count of

1 providers, which doesn't mean anything.

2 And then you go to out of network, and
3 they both have out-of-network amounts. Both. ".4"
4 between them is tiny. And even when you go through
5 and look at these things, everything is in the
6 1 percent range, which ask anybody who works in our
7 business, 1 percent is nothing. I mean, we do these
8 scenarios, a lot of times you're getting 5, 6,
9 7 percent disruption. You go in the private sector
10 you're going to get 20 percent disruption.

11 So, yes, I think it's a broad network.
12 I think this whole opinion has nothing to it, it has
13 no merit, and it's a complete waste of time and
14 effort going through it with this whole opinion.
15 That's my opinion on it.

16 Q On page 37 --

17 A Okay.

18 Q -- you state --

19 I'm looking for it on my page.

20 A Okay.

21 Q In the middle, starting with
22 "Additionally."

23 "Additionally, all the vendors have
24 very broad networks covering all the North Carolina
25 counties as required by the RFP."