U.S. & Plaintiff States

v.

Aetna Inc. & Humana Inc.

MEDICARE ADVANTAGE

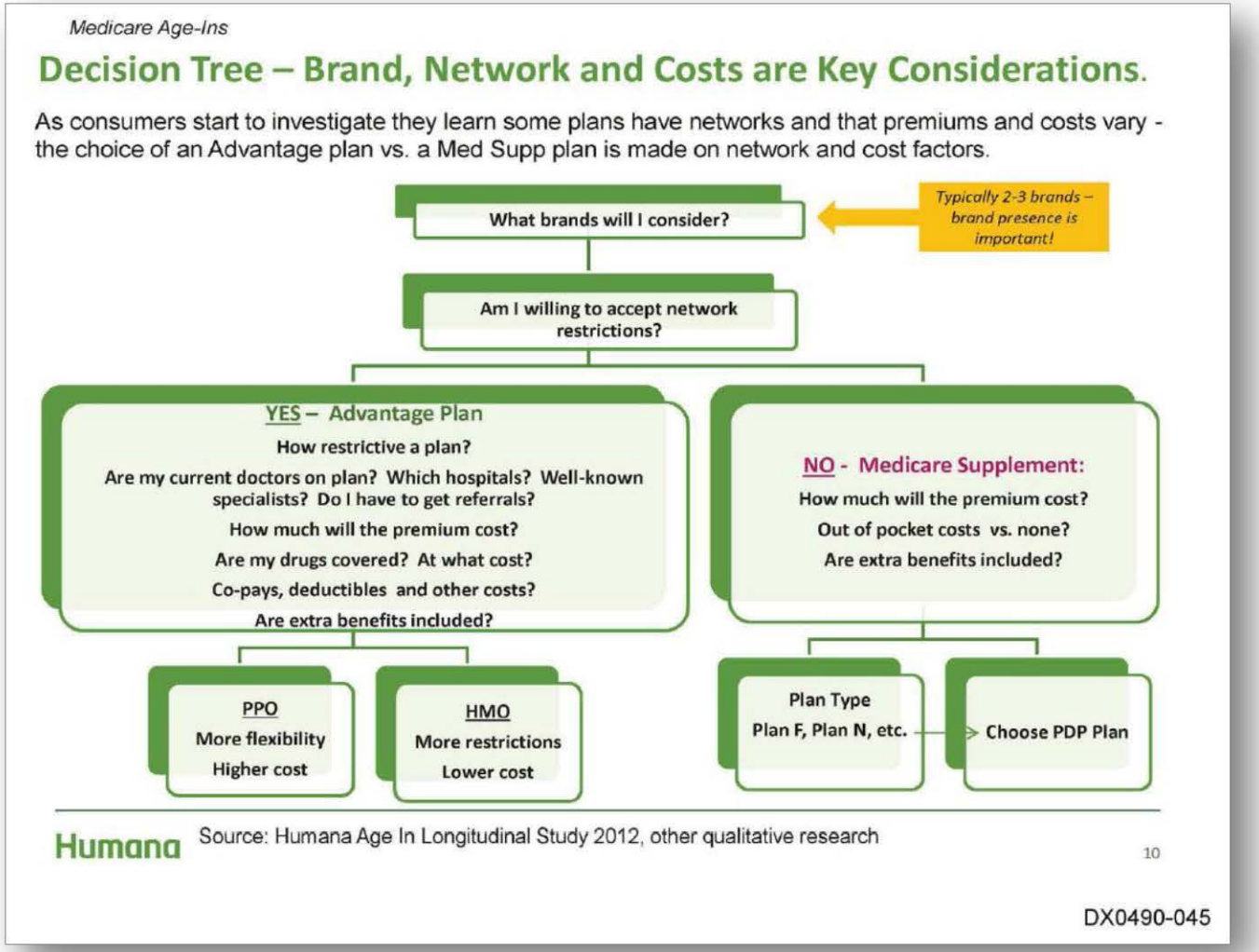
Market Definition

Market definition is about *reasonable* interchangeability

"The outer boundaries of a product market are determined by the **reasonable interchangeability** of use or the cross-elasticity of demand between the product itself and substitutes for it/"

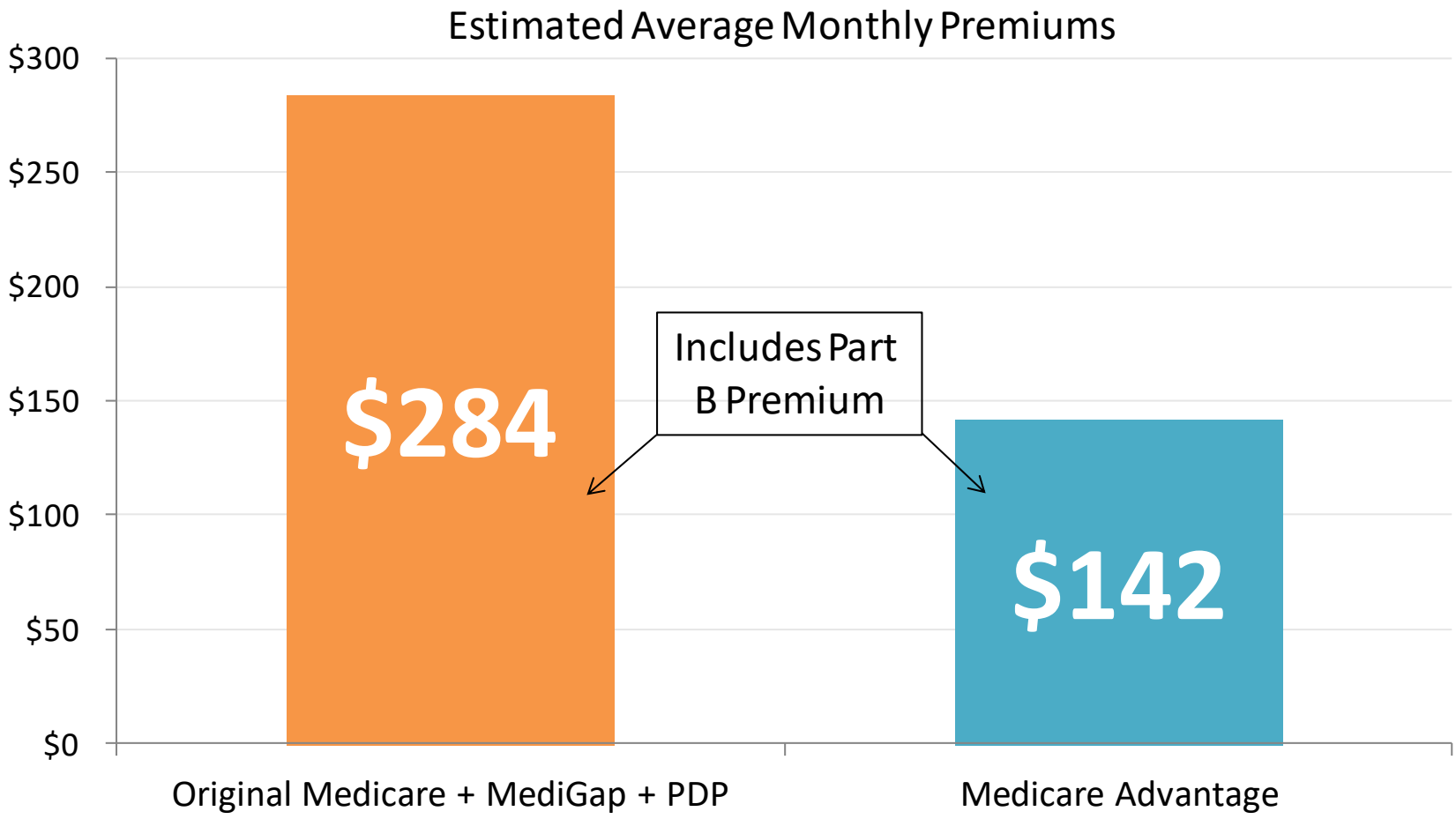
Brown Shoe Co. v. United States,
370 U.S. 294, 325 (1962)

Medicare Advantage has distinct characteristics and uses



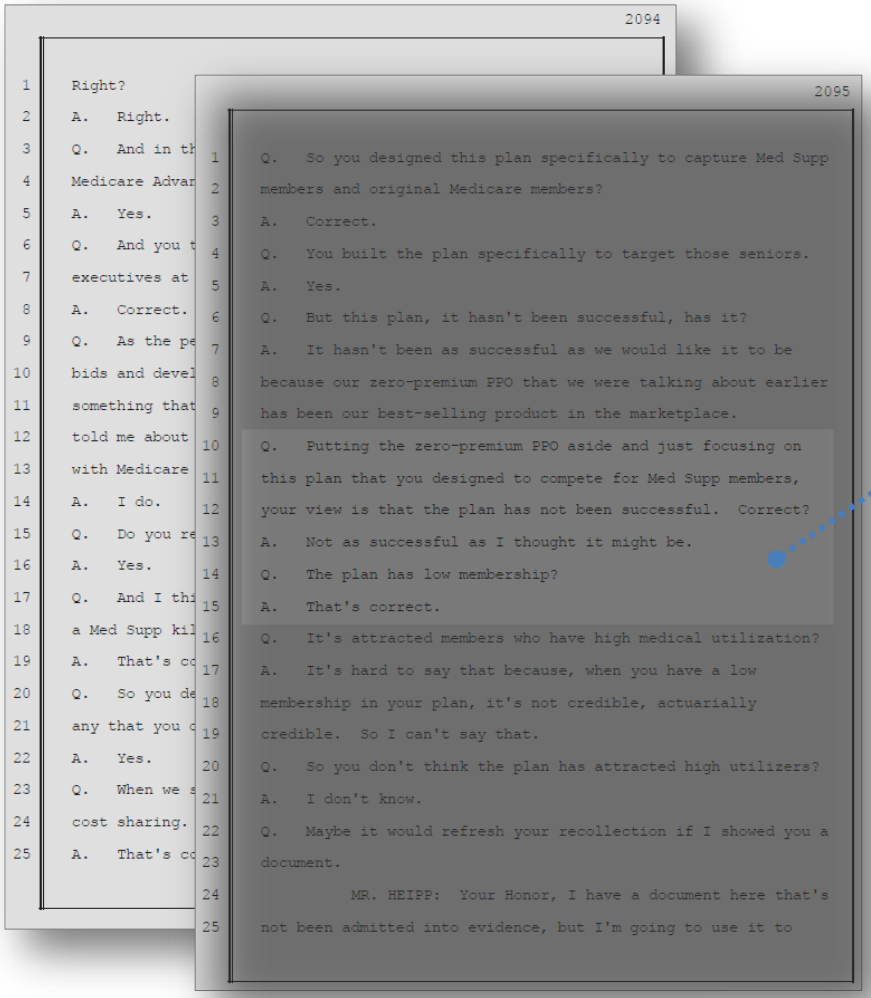
DX0490, at 45 (June 26, 2015)

Medicare Advantage plans have lower premiums



PX0554, at Ex. 4

Aetna couldn't attract MedSupp customers to MA when it tried



2094

Right?
A. Right.
Q. And in th
Medicare Advar
A. Yes.
Q. And you t
executives at
A. Correct.
Q. As the pe
bids and devel
something that
told me about
with Medicare
A. I do.
Q. Do you re
A. Yes.
Q. And I thi
a Med Supp kil
A. That's co
Q. So you de
any that you c
A. Yes.
Q. When we s
cost sharing.
A. That's co

2095

Q. So you designed this plan specifically to capture Med Supp members and original Medicare members?
A. Correct.
Q. You built the plan specifically to target those seniors.
A. Yes.
Q. But this plan, it hasn't been successful, has it?
A. It hasn't been as successful as we would like it to be because our zero-premium PPO that we were talking about earlier has been our best-selling product in the marketplace.
Q. Putting the zero-premium PPO aside and just focusing on this plan that you designed to compete for Med Supp members, your view is that the plan has not been successful. Correct?
A. Not as successful as I thought it might be.
Q. The plan has low membership?
A. That's correct.
Q. It's attracted members who have high medical utilization?
A. It's hard to say that because, when you have a low membership in your plan, it's not credible, actuarially credible. So I can't say that.
Q. So you don't think the plan has attracted high utilizers?
A. I don't know.
Q. Maybe it would refresh your recollection if I showed you a document.
MR. HEIPP: Your Honor, I have a document here that's not been admitted into evidence, but I'm going to use it to

Tr. 2094-95

Q. [J]ust focusing on this plan that you designed to compete for Med Supp members, your view is that the plan has not been successful. Correct?

A. Not as successful as I thought it might be.

Q. The plan has low membership?

A. That's correct.

- Cynthia Follmer,
Deep South General Manager
at Aetna

Economic evidence shows that Medicare Advantage is a relevant product market

Academic Literature

- Low pass-through rates imply market power
- Demand estimates show preference for MA

Empirical Analysis of Demand

- All estimates agree that many seniors have a distinct preference for MA
- Analyzes real-world choices made by both new and existing consumers

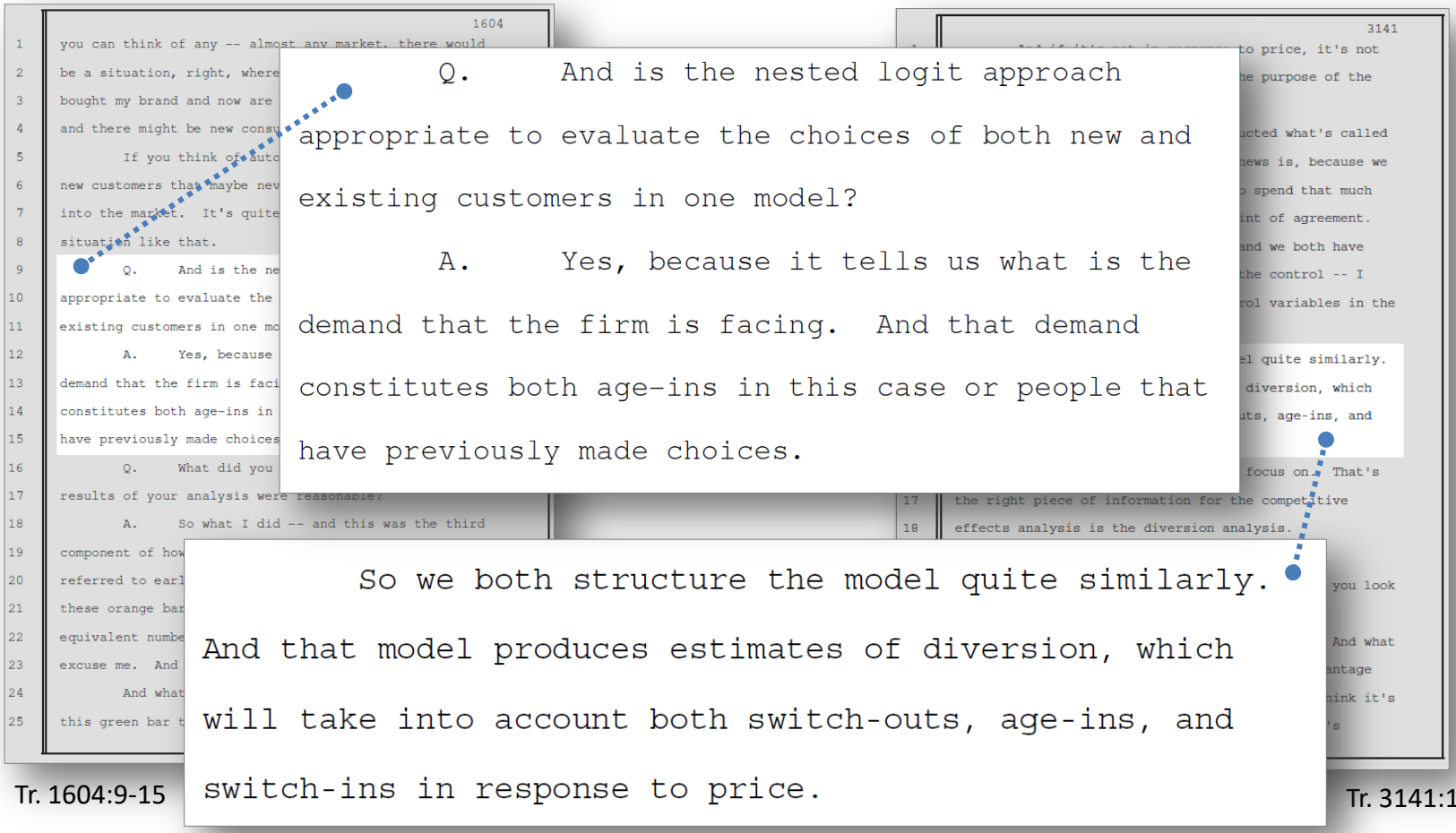
Hypothetical Monopolist Tests

- Test #1: Critical loss using Nevo and Orszag nesting parameters
- Test #2: Critical loss using nesting parameter from literature
- Test #3: Merger simulation using both Nevo and Orszag demand estimates

Both economists use a model that accounts for "age-ins"

Prof. Nevo

Mr. Orszag



Q. And is the nested logit approach appropriate to evaluate the choices of both new and existing customers in one model?

A. Yes, because it tells us what is the demand that the firm is facing. And that demand constitutes both age-ins in this case or people that have previously made choices.

So we both structure the model quite similarly. And that model produces estimates of diversion, which will take into account both switch-outs, age-ins, and switch-ins in response to price.

Tr. 1604:9-15

Tr. 3141:12-15

MA overwhelmingly passes the hypothetical monopolist test regardless of the margin level

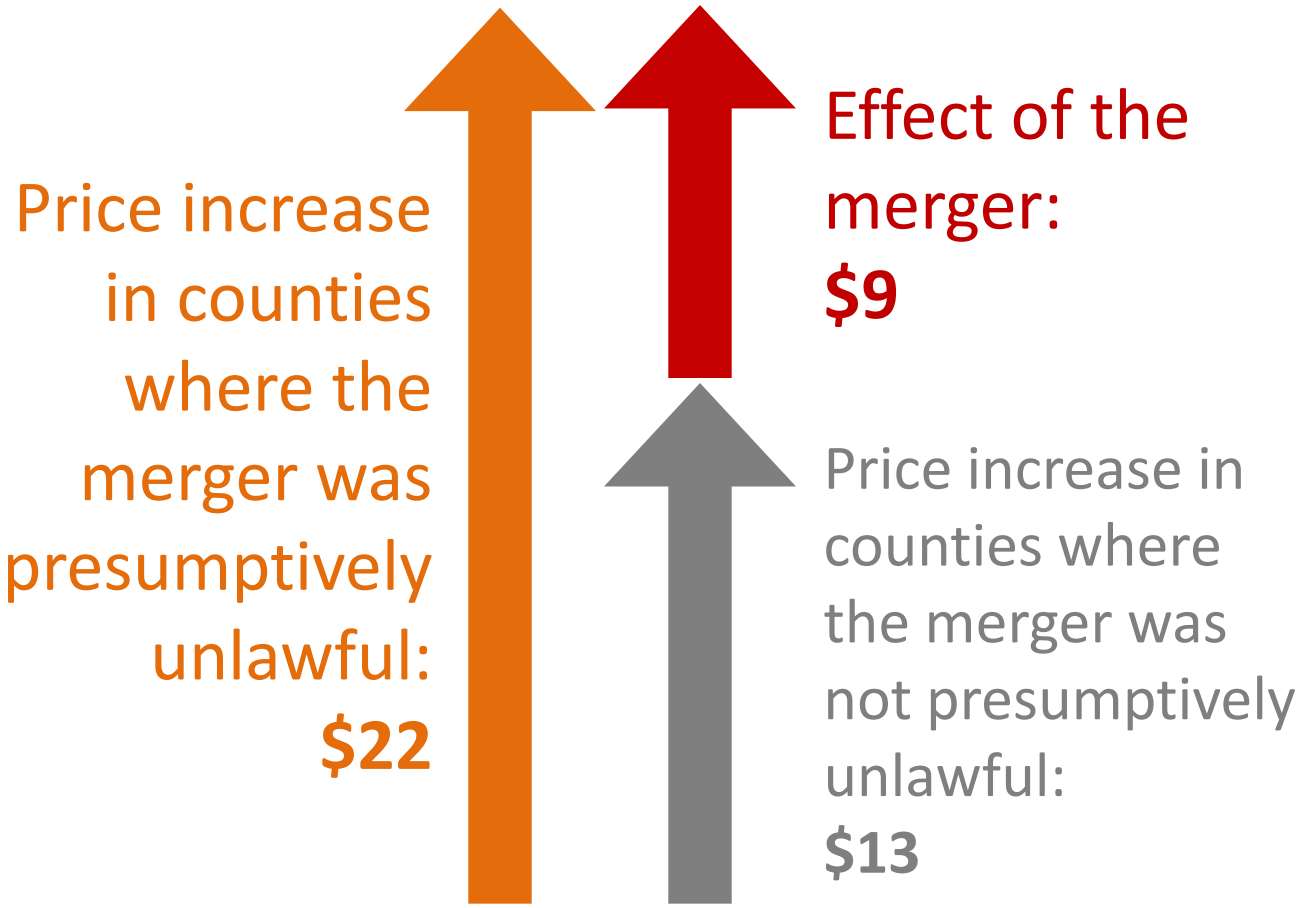
Hypothetical Monopolist Tests Using Mr. Orszag's Nesting Parameters

MA passes even with very low implied margins

Implied Economic Margin	Enrollment in Counties that Pass the Single-Product Test	Enrollment in Counties that Pass the Multi-Product Test
[redacted]	**99%**	**99%**
[redacted]	**99%**	**99%**
[redacted]	**99%**	**99%**
[redacted]	**99%**	**99%**
[redacted]	99%	99%
[redacted]	99%	99%
[redacted]	99%	99%
[redacted]	99%	99%

PX0552, at Ex. 2, 3 & 12 (Supplemental and Rebuttal Report of Aviv Nevo, Ph.D.)

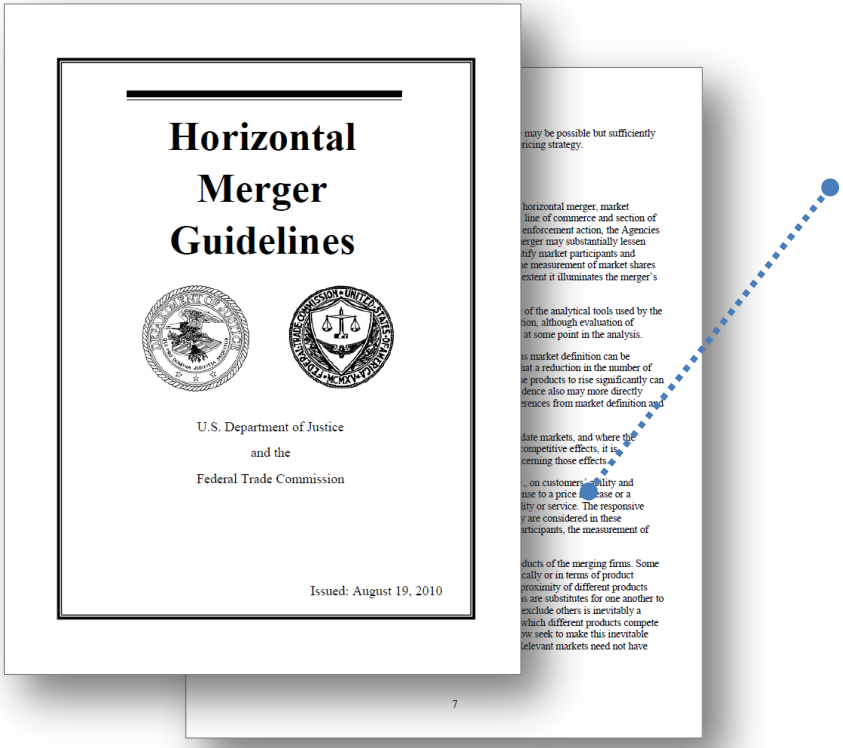
After Humana-Arcadian, prices went up despite the presence of Original Medicare, potential entry, CMS regulation, any efficiencies, "age-ins," and divestitures



PX0551, at Ex. 23 (Expert Report of Aviv Nevo, Ph.D.)

Mr. Orszag's Error #1: No standard application of the hypothetical monopolist test

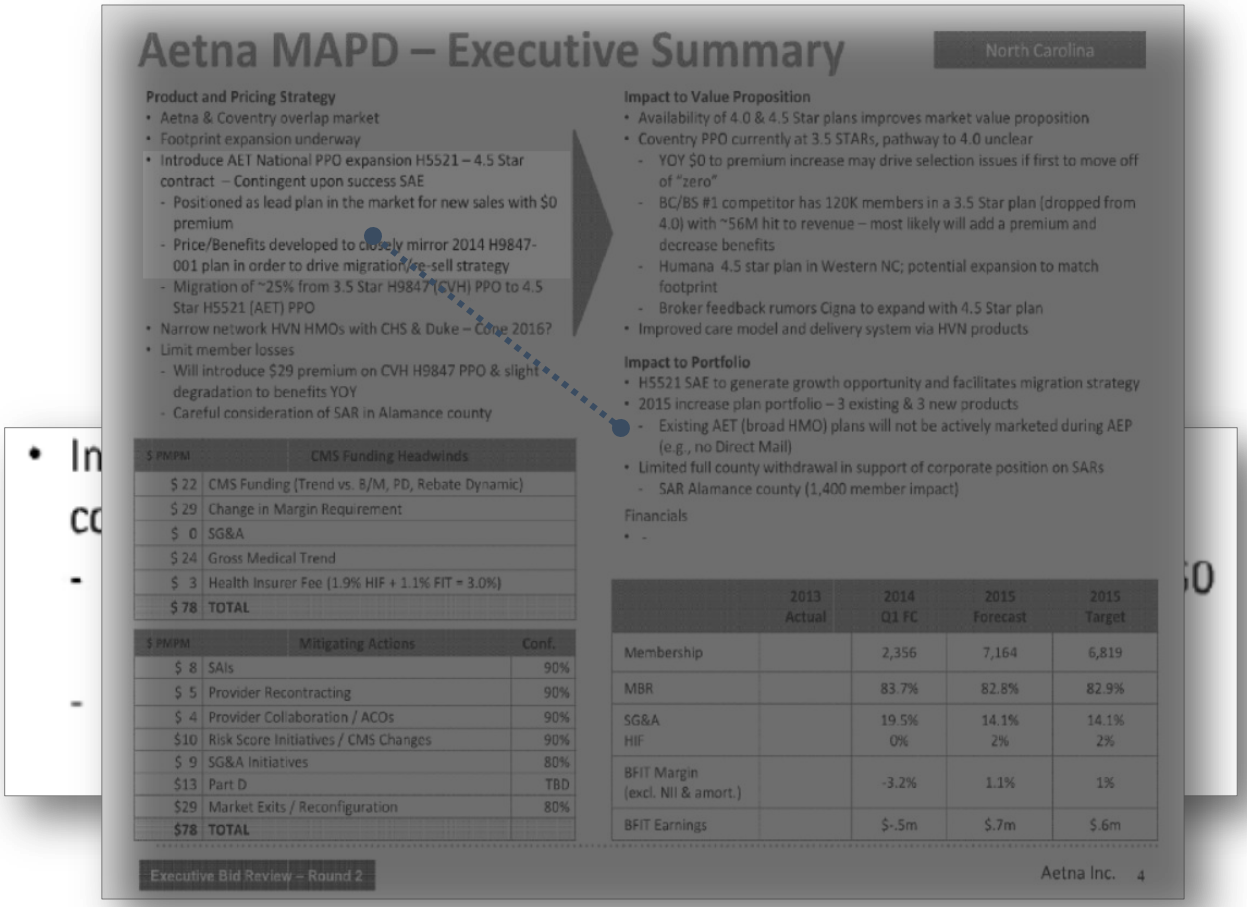
Instead of looking at demand substitution as the Guidelines instruct, Mr. Orszag conducted supply-side regressions.



"Market definition focuses solely on demand substitution factors, i.e., on customers' ability and willingness to substitute away from one product to another in response to a price increase or a corresponding non-price change such as a reduction in product quality or service."

Horizontal Merger Guidelines § 4

Mr. Orszag's Error #2: His regressions miss important competition



Aetna MAPD – Executive Summary

North Carolina

Product and Pricing Strategy
- Aetna & Coventry overlap market
- Footprint expansion underway
- Introduce AET National PPO expansion H5521 – 4.5 Star contract – Contingent upon success SAE
  - Positioned as lead plan in the market for new sales with $0 premium
  - Price/Benefits developed to closely mirror 2014 H9847-001 plan in order to drive migration/re-sell strategy
  - Migration of ~25% from 3.5 Star H9847 (CVH) PPO to 4.5 Star H5521 (AET) PPO
- Narrow network HVN HMOs with CHS & Duke – Core 2016?
- Limit member losses
  - Will introduce $29 premium on CVH H9847 PPO & slight degradation to benefits YOY
  - Careful consideration of SAR in Alamance county

Impact to Value Proposition
- Availability of 4.0 & 4.5 Star plans improves market value proposition
- Coventry PPO currently at 3.5 STARs, pathway to 4.0 unclear
  - YOY $0 to premium increase may drive selection issues if first to move off of "zero"
  - BC/BS #1 competitor has 120K members in a 3.5 Star plan (dropped from 4.0) with ~56M hit to revenue – most likely will add a premium and decrease benefits
  - Humana 4.5 star plan in Western NC; potential expansion to match footprint
  - Broker feedback rumors Cigna to expand with 4.5 Star plan
- Improved care model and delivery system via HVN products

Impact to Portfolio
- H5521 SAE to generate growth opportunity and facilitates migration strategy
- 2015 increase plan portfolio – 3 existing & 3 new products
  - Existing AET (broad HMO) plans will not be actively marketed during AEP (e.g., no Direct Mail)
- Limited full county withdrawal in support of corporate position on SARs
  - SAR Alamance county (1,400 member impact)

Financials
- -

$ PMPM	CMS Funding Headwinds
$ 22	CMS Funding (Trend vs. B/M, PD, Rebate Dynamic)
$ 29	Change in Margin Requirement
$ 0	SG&A
$ 24	Gross Medical Trend
$ 3	Health Insurer Fee (1.9% HIF + 1.1% FIT = 3.0%)
$ 78	TOTAL

$ PMPM	Mitigating Actions	Conf.
$ 8	SAIs	90%
$ 5	Provider Recontracting	90%
$ 4	Provider Collaboration / ACOs	90%
$10	Risk Score Initiatives / CMS Changes	90%
$ 9	SG&A Initiatives	80%
$13	Part D	TBD
$29	Market Exits / Reconfiguration	80%
$78	TOTAL	

	2013 Actual	2014 Q1 FC	2015 Forecast	2015 Target
Membership		2,356	7,164	6,819
MBR		83.7%	82.8%	82.9%
SG&A		19.5%	14.1%	14.1%
HIF		0%	2%	2%
BFIT Margin (excl. NII & amort.)		-3.2%	1.1%	1%
BFIT Earnings		$-.5m	$.7m	$.6m

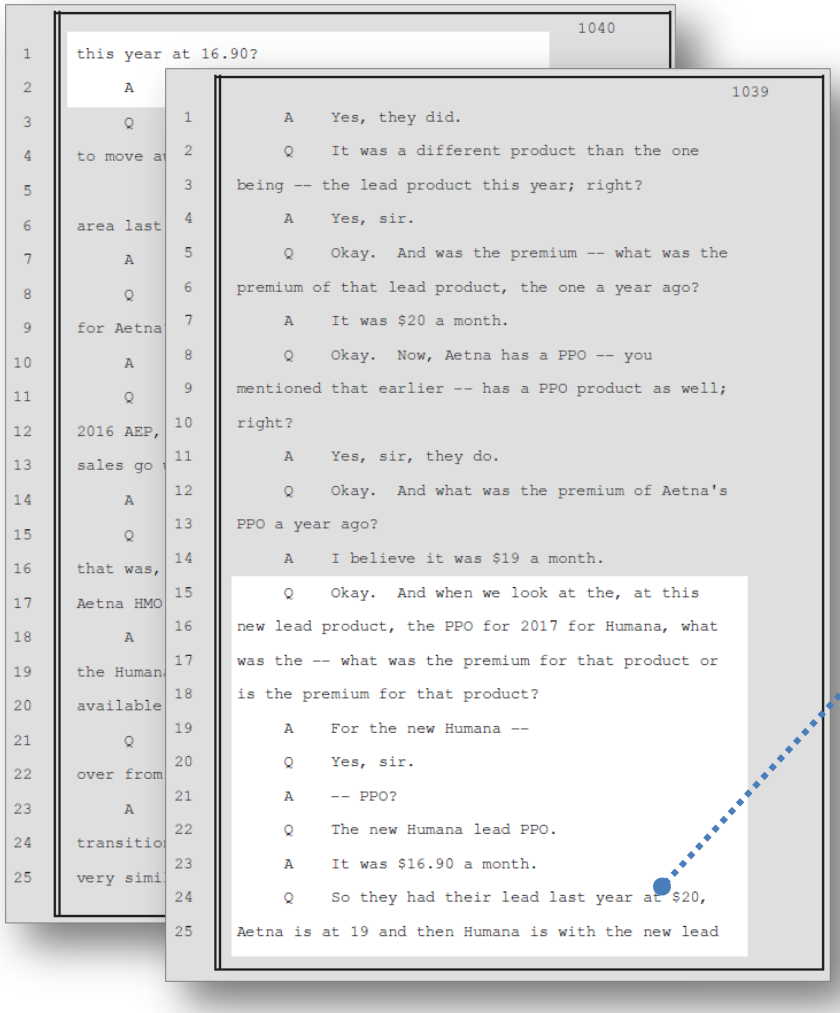
Executive Bid Review – Round 2

Aetna Inc. 4

PX0497, at 4

- Mr. Orszag uses plan fixed effects in his price-regression model, ignoring the reality that Medicare Advantage insurers compete in part by introducing new plans into counties.
- For example, Aetna has aggressively competed in recent years by introducing a $0 premium PPO plan.

Humana competed in San Antonio by offering a new plan



1040

this year at 16.90?
A
Q
to move a
area last
A
Q
for Aetna
A
Q
2016 AEP,
sales go
A
Q
that was,
Aetna HMO
A
the Human
available
Q
over from
A
transitio
very simi

1039

A Yes, they did.
Q It was a different product than the one being -- the lead product this year; right?
A Yes, sir.
Q Okay. And was the premium -- what was the premium of that lead product, the one a year ago?
A It was $20 a month.
Q Okay. Now, Aetna has a PPO -- you mentioned that earlier -- has a PPO product as well; right?
A Yes, sir, they do.
Q Okay. And what was the premium of Aetna's PPO a year ago?
A I believe it was $19 a month.
Q Okay. And when we look at the, at this new lead product, the PPO for 2017 for Humana, what was the -- what was the premium for that product or is the premium for that product?
A For the new Humana --
Q Yes, sir.
A -- PPO?
Q The new Humana lead PPO.
A It was $16.90 a month.
Q So they had their lead last year at $20, Aetna is at 19 and then Humana is with the new lead

Q. Now, did Humana introduce a new PPO in the 2017 AEP?

A. Yes, they did.

* * *

Q. So [Humana] had their lead [plan] last year at $20, Aetna is at [$]19 and then Humana is with the new lead this year at [$]16.90?

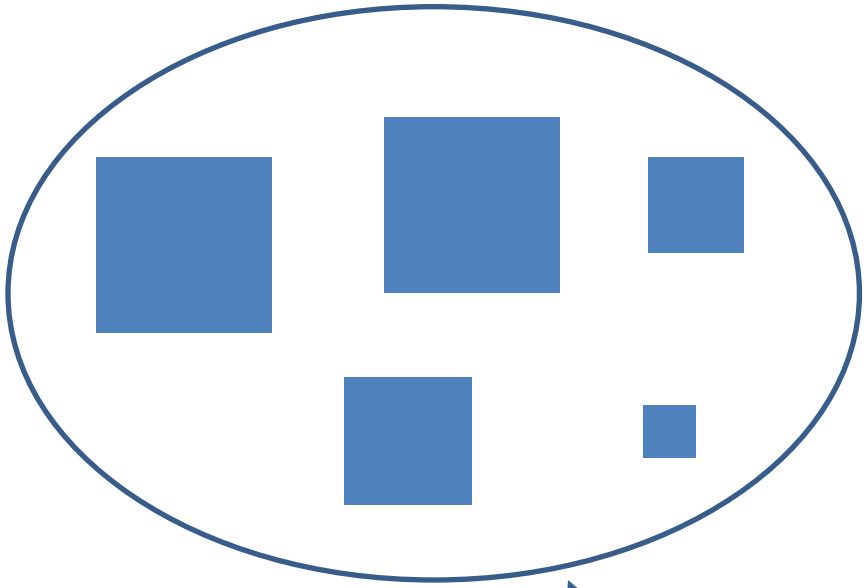
A. Correct.

- Raul Gonzalez,
President of Texas Medicare Solutions

Tr. 1038:1-1040:2

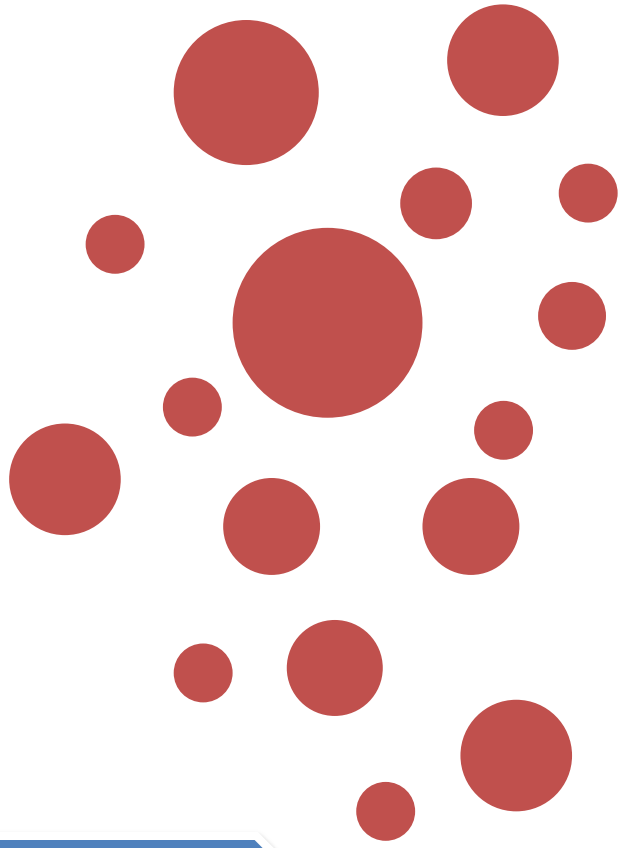
Mr. Orszag's Error #3: Mistaken reliance on Example 6

Medicare Advantage Plans

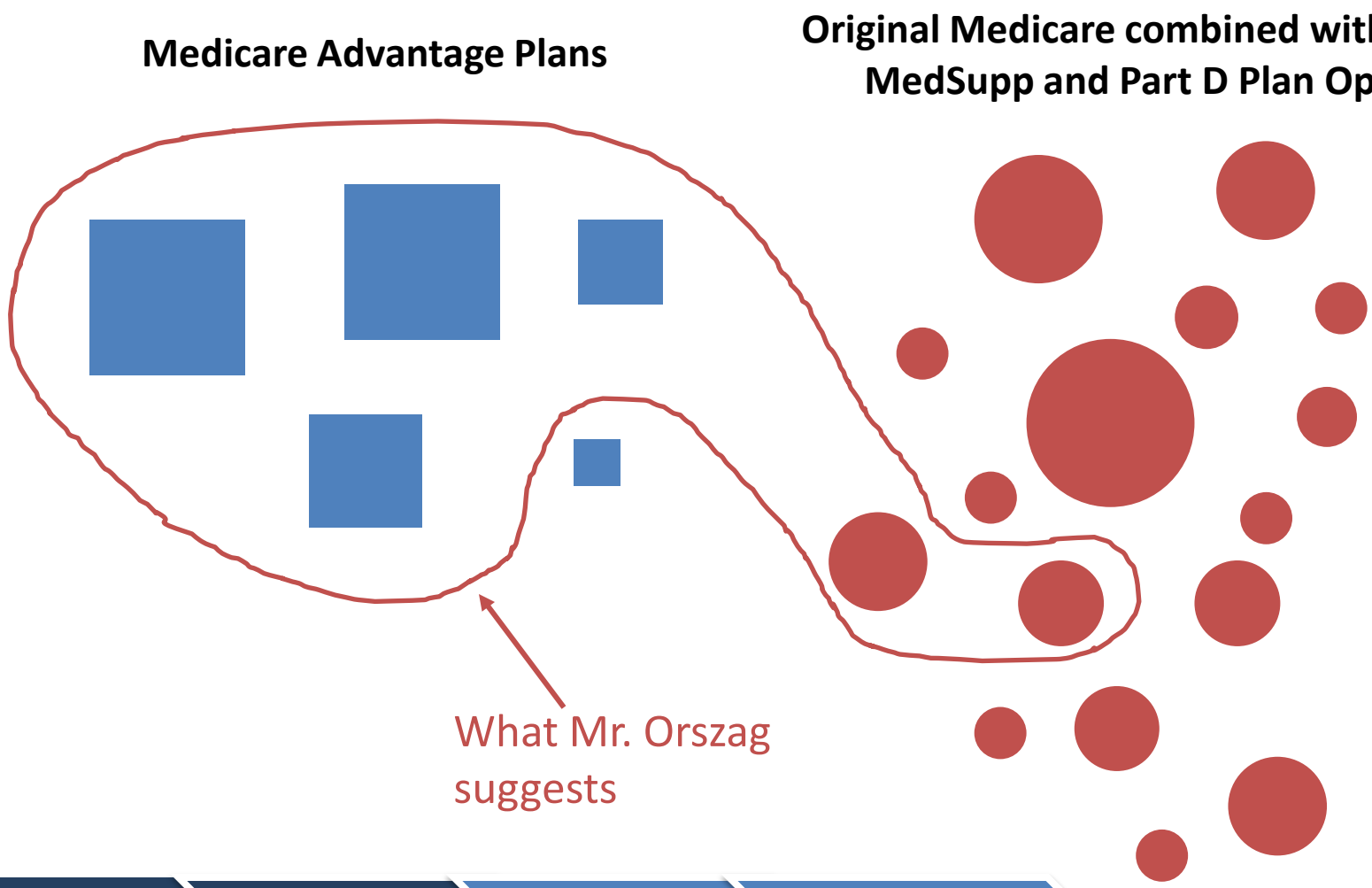


Prof. Nevo's product market definition

Original Medicare combined with various MedSupp and Part D Plan Options



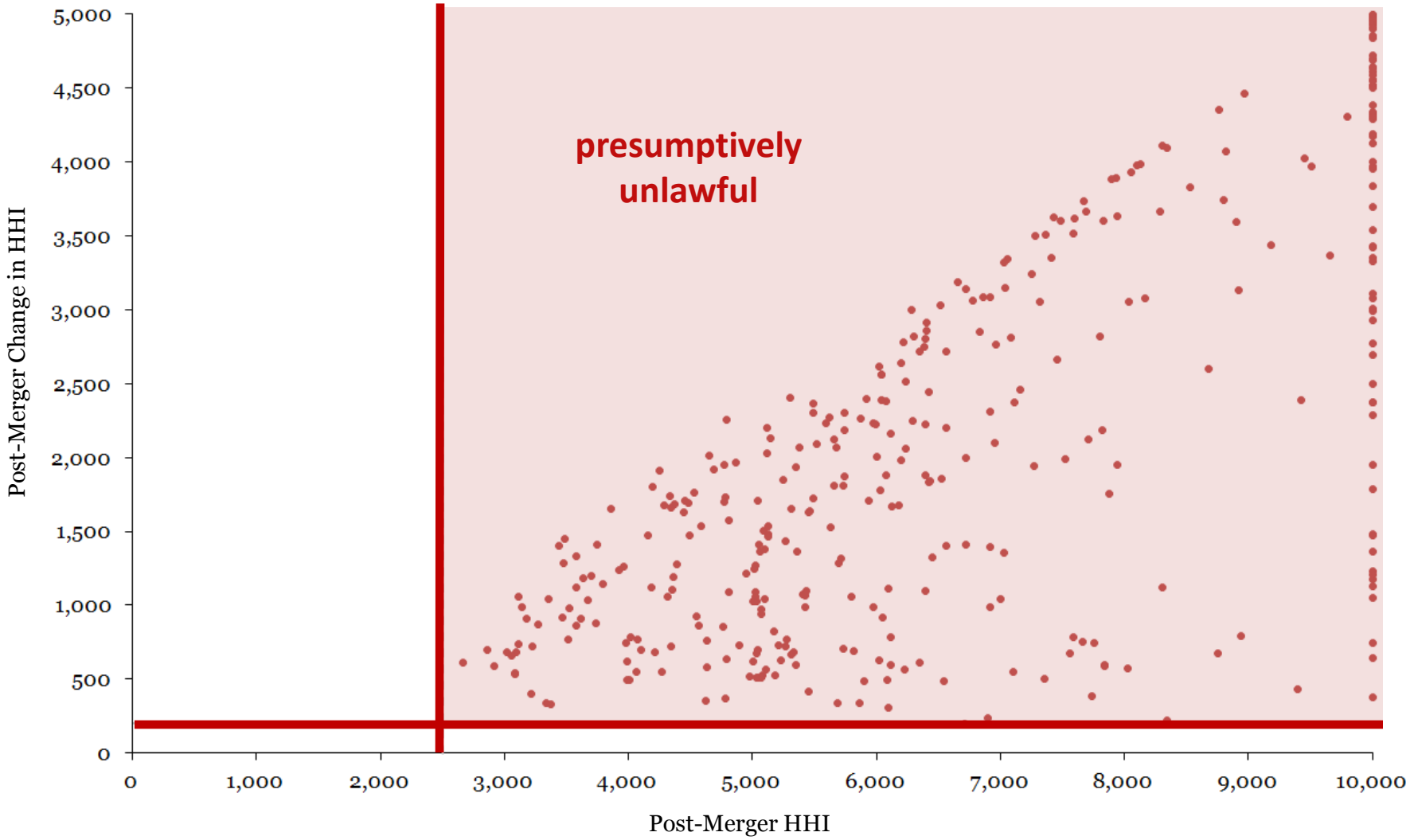
Mr. Orszag's Error #3: Mistaken reliance on Example 6



MEDICARE ADVANTAGE

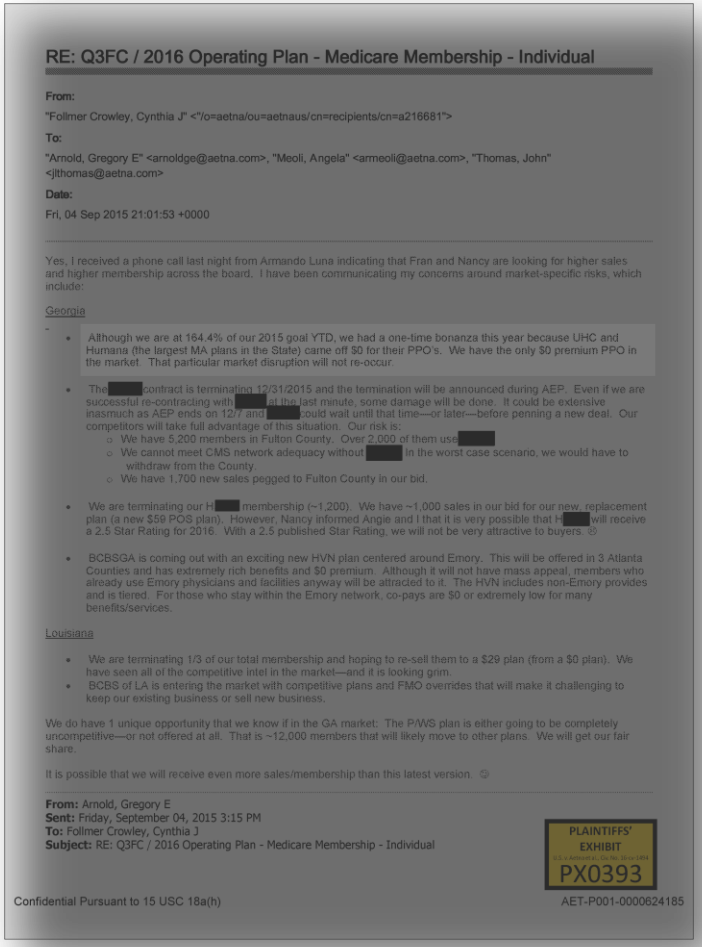
Competitive Effects

The merger is presumptively unlawful in all 364 counties



PX0551, at Ex. 16 (Expert Report of Aviv Nevo, Ph.D.)

Aetna and Humana compete to win each other's customers



RE: Q3FC / 2016 Operating Plan - Medicare Membership - Individual

From:
"Follmer Crowley, Cynthia J" <"/o=aetna/ou=aetnaus/cn=recipients/cn=a216681">

To:
"Arnold, Gregory E" <arnoldge@aetna.com>, "Meoli, Angela" <armeoli@aetna.com>, "Thomas, John" <jthomas@aetna.com>

Date:
Fri, 04 Sep 2015 21:01:53 +0000

Yes, I received a phone call last night from Armando Luna indicating that Fran and Nancy are looking for higher sales and higher membership across the board. I have been communicating my concerns around market-specific risks, which include:

Georgia

- Although we are at 164.4% of our 2015 goal YTD, we had a one-time bonanza this year because UHC and Humana (the largest MA plans in the State) came off $0 for their PPO's. We have the only $0 premium PPO in the market. That particular market disruption will not re-occur.
- The [redacted] contract is terminating 12/31/2015 and the termination will be announced during AEP. Even if we are successful re-contracting with [redacted] at the last minute, some damage will be done. It could be extensive inasmuch as AEP ends on 12/7 and [redacted] could wait until that time---or later---before penning a new deal. Our competitors will take full advantage of this situation. Our risk is:
  - We have 5,200 members in Fulton County. Over 2,000 of them use [redacted]
  - We cannot meet CMS network adequacy without [redacted] in the worst case scenario, we would have to withdraw from the County.
  - We have 1,700 new sales pegged to Fulton County in our bid.
- We are terminating our H[redacted] membership (~1,200). We have ~1,000 sales in our bid for our new, replacement plan (a new $59 POS plan). However, Nancy informed Angie and I that it is very possible that H[redacted] will receive a 2.5 Star Rating for 2016. With a 2.5 published Star Rating, we will not be very attractive to buyers. ☹
- BCBSGA is coming out with an exciting new HVN plan centered around Emory. This will be offered in 3 Atlanta Counties and has extremely rich benefits and $0 premium. Although it will not have mass appeal, members who already use Emory physicians and facilities anyway will be attracted to it. The HVN includes non-Emory provides and is tiered. For those who stay within the Emory network, co-pays are $0 or extremely low for many benefits/services.

Louisiana

- We are terminating 1/3 of our total membership and hoping to re-sell them to a $29 plan (from a $0 plan). We have seen all of the competitive intel in the market---and it is looking grim.
- BCBS of LA is entering the market with competitive plans and FMO overrides that will make it challenging to keep our existing business or sell new business.

We do have 1 unique opportunity that we know if in the GA market: The P/WS plan is either going to be completely uncompetitive---or not offered at all. That is ~12,000 members that will likely move to other plans. We will get our fair share.

It is possible that we will receive even more sales/membership than this latest version. ☺

From: Arnold, Gregory E
Sent: Friday, September 04, 2015 3:15 PM
To: Follmer Crowley, Cynthia J
Subject: RE: Q3FC / 2016 Operating Plan - Medicare Membership - Individual

PLAINTIFFS' EXHIBIT
PX0393

Confidential Pursuant to 15 USC 18a(h)

AET-P001-0000624185

PX0393, at 1 (Sept. 4, 2015)

"[W\e had a one-time bonanza this year because UHC and Humana (the largest MA plans in the State) came off $0 for their PPO's/"

- Cynthia Follmer,
Deep South General Manager at Aetna

Lost competition will cause prices for seniors to rise

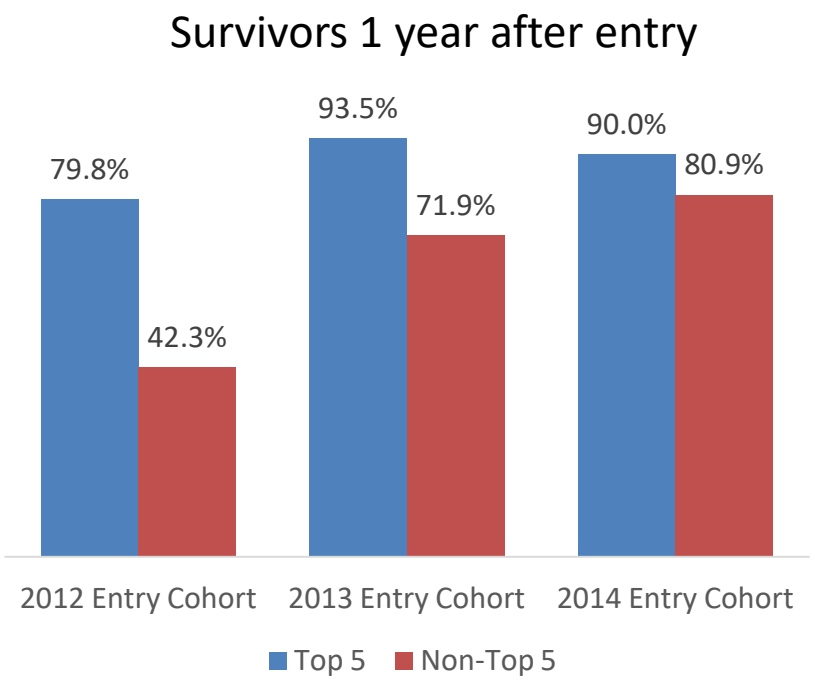
Simulated Changes in Rebate-Adjusted Premiums Using Mr. Orszag's Nesting Parameters

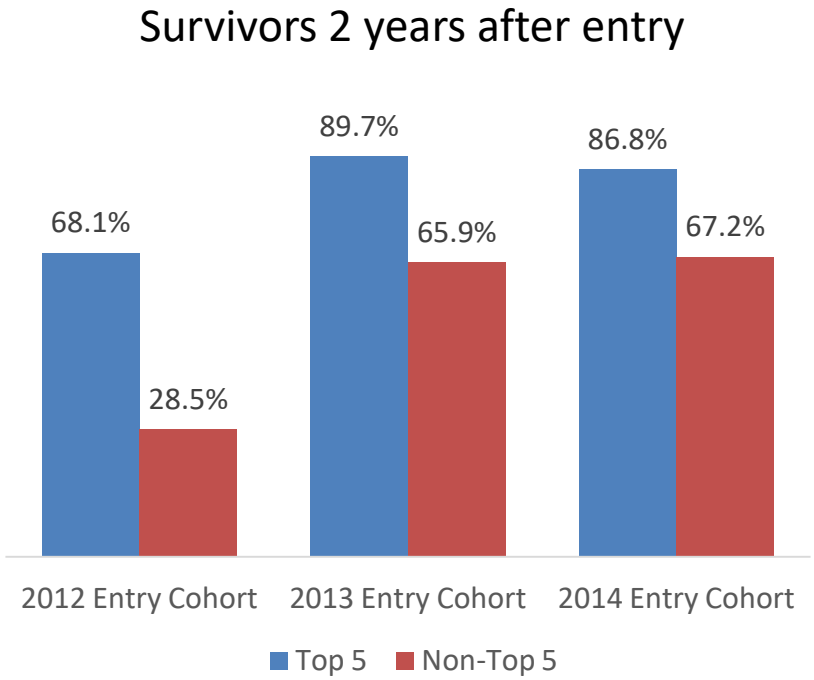
Observed Pre-Merger	Simulated Post-Merger	Difference - The Expected Effect of the Merger
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Even using Mr/ Orszag's nesting parameters, Prof. Nevo found that the merged company will have an incentive to increase prices, causing hundreds of millions of dollars of annual harm to consumers.

PX0552, at Ex. 12

Mr. Orszag's Entry Error #1: Ignoring unfavorable data



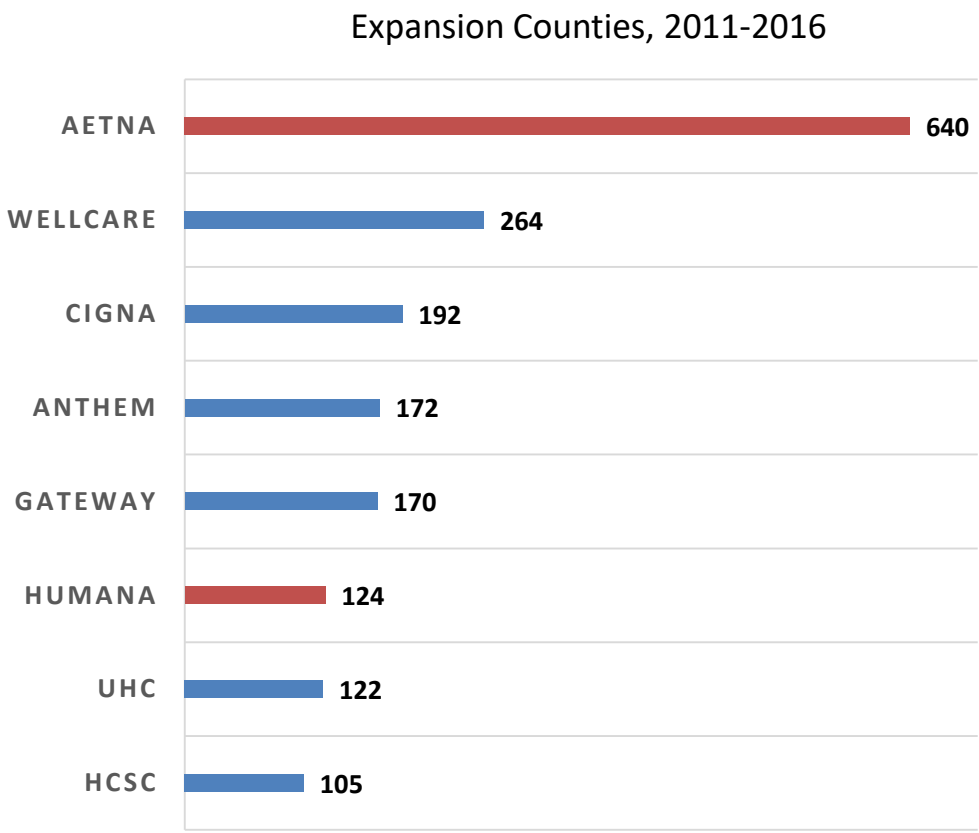


Mr. Orszag conveniently ignores entrants from 2012 (except when he is counting entrants) because the 2012 cohort has a relatively low rate of survival.

PX0552, at Ex. 18

Mr. Orszag's Entry Error #2: Counting Aetna and Humana

- Of the 398 entrants identified by Mr. Orszag, 191 of them (nearly 50%) are Aetna or Humana.
- Neither Aetna nor Humana will be available to enter in response to the anticompetitive effects of their own merger.
- By including Aetna and Humana, Mr. Orszag inflates his results.



CMS sets the "contours" and "framework" for competition

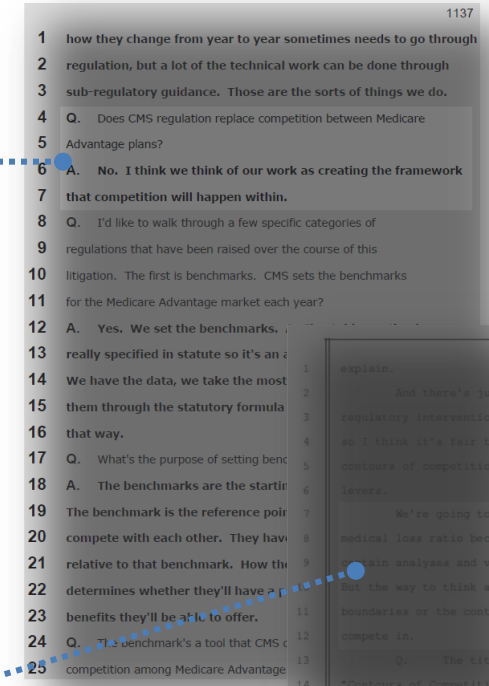
Q. Does CMS regulation replace competition between Medicare Advantage plans?

A. No. I think we think of our work as creating the framework that competition will happen within.

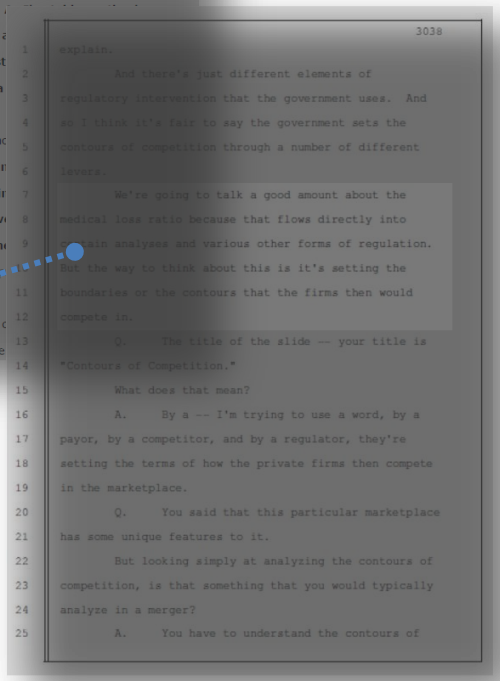
- Sean Cavanaugh,
Director of the Center for Medicare at CMS

But the way to think about [CMS regulation] is it's setting the boundaries or the contours that the firms then would compete in."

- Jonathan Orszag,
Defendants' economic expert



Tr. 1137:4-7



Tr. 3038:2-12

MEDICARE ADVANTAGE

Proposed Remedy

The proposed divestiture may never occur

Q. And it's also contingent upon Molina getting the novations that you talked about earlier. Right?

A. **Yes.**

Q. And on Molina getting the star scores transferred. Correct?

A. **Yes.**

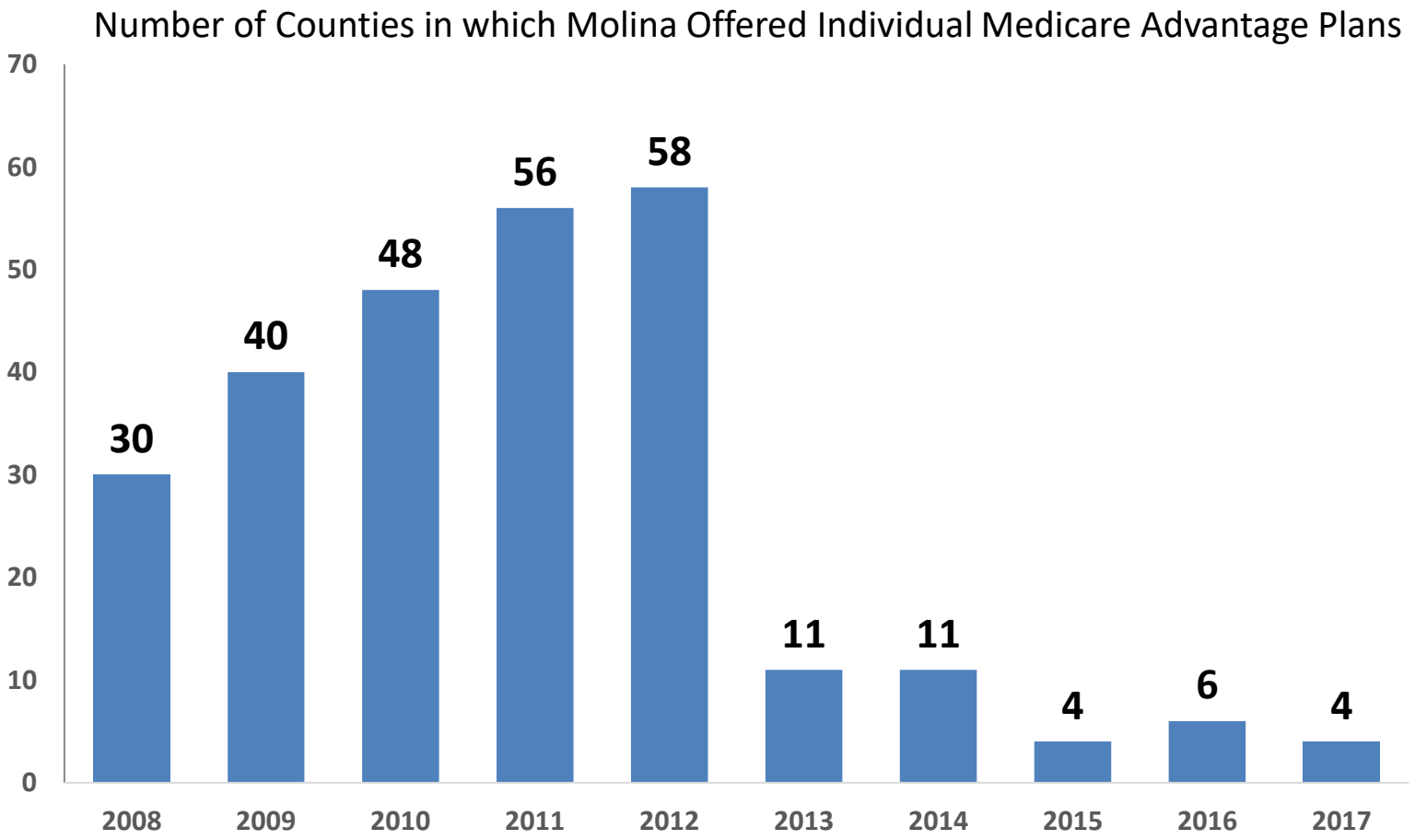
Q. So it's not a done deal. Right?

A. **No, it's not a done deal.**

Dr. Mario Molina,
CEO of Molina Healthcare

Tr. 2382:15-22

Molina has failed at individual Medicare Advantage in the past



PX0559, at ¶ 31 and Ex. 1 (Expert Report of Dr. Lawton R. Burns)

The Defendants' expert agrees that Molina is "not a significantly competitive market player" in Utah today.

19 years of Medicaid experience

8 years of D-SNP experience

Fewer than **400** members

Less than **1%** market share

Tr. 3348:22-23 (Orszag); Tr. 2376:22-24, 2377:1-2, 2381:23-24 (Dr. Mario Molina); 2482:6-21 (Lisa Rubino)

Molina's management recognizes its limitations in Medicare Advantage

Our name recognition is largely tied to a lower-income population and product, so it will take a good deal of time and money in order to build the same name recognition for the more affluent population. Plus we believe that AET/HUM may target these members, not sure if we will have the same relationship with all of the brokers and providers.

- **John Molina**, Chief Financial Officer

I might have to chase the Suburban but I would love to catch the Cooper.

- **Dr. Mario Molina**, Chief Executive Officer

Aetna and Humana have had many years to build up name recognition, provider and broker relationships, as well as efficient processes. While we have been in the Managed Medicare market for 10 years, we do not have the same level of administrative expertise.

- **John Molina**, Chief Financial Officer

I'm not sure we are ready to take on traditional MA business.

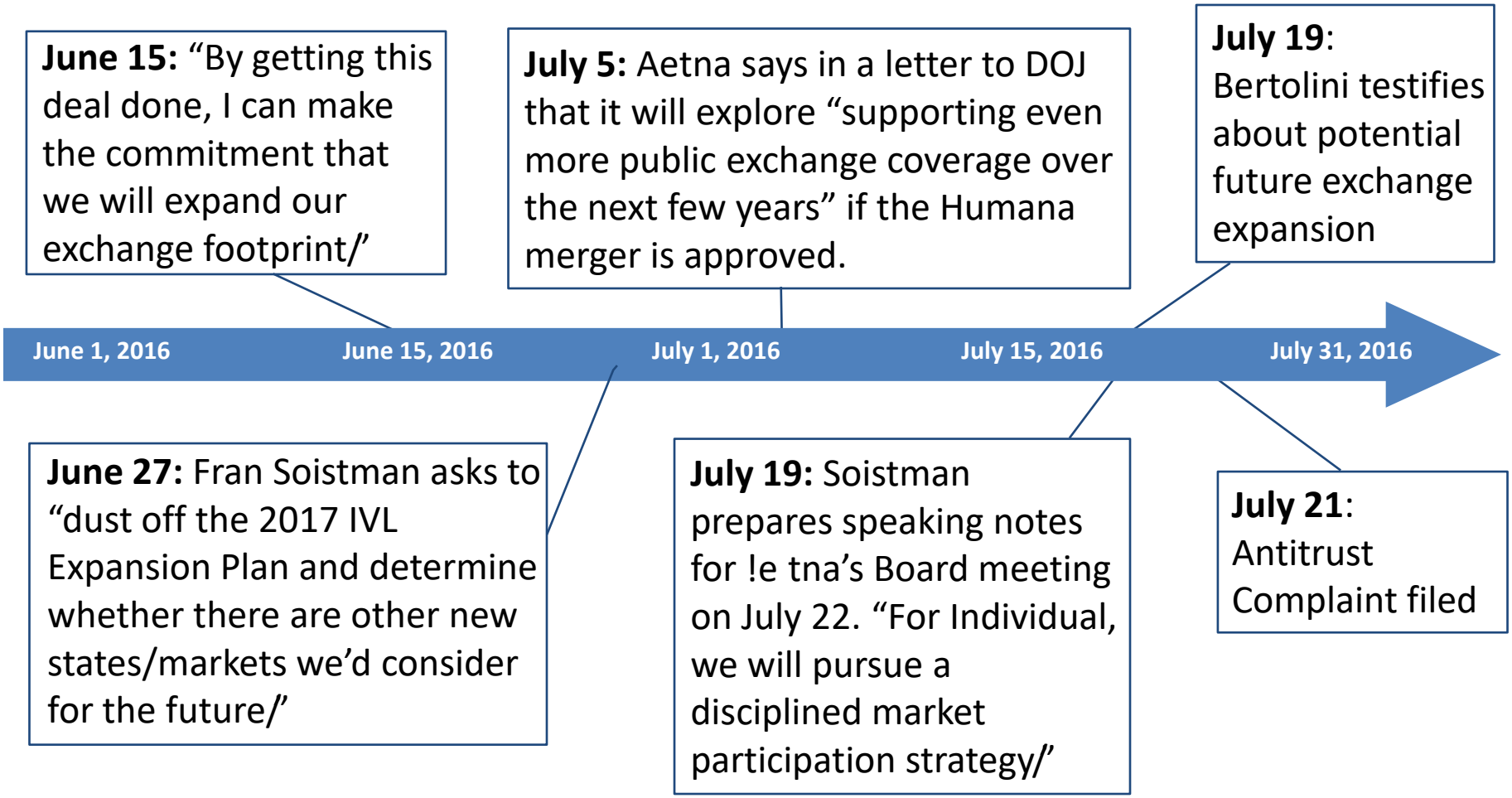
- **David Pollack**, President of Molina Healthcare of Florida

PX0082; PX0081; PX0086; PX0098

PUBLIC EXCHANGES

Evasion of Scrutiny

Aetna was ready to expand its exchange footprint



PX0113; PX0162, at 6; PX0115, at 1; PX0117, at 2; PX0120, at 5; Tr. 1437:21-24.

The evidence contradicts Aetna's story

July 2016

Sun	Mon	Tue	Wed	Thurs	Fri	Sat
10	**11**	**12**	**13**	**14**	**15**	**16**
After receiving financial information on July 9, Bertolini assembled a team including Fran Soistman, Karen Lynch, Steven Kelmar, and Jonathan Mayhew						
17	**18** Soistman prepares Board notes – no mention of withdrawal	**19**	**20** Lynch sends financial results to Bertolini	**21** **Complaint Filed**	**22** Soistman: "all bets are off"	**23** Kelmar: "we have no choice"
24 Lynch: "Does this include the 17 places in the DOJ complaint"	**25** Guertin gets involved	**26**	**27** Bertolini deposition	**28**	**29**	**30**

July 24: Mayhew added the 17 Complaint counties at Lynch's request

Sunday, 6:42 a.m.
Mayhew sends draft withdrawal options

2 - Remain Active in the Market; Optimize Product Mix

- Eliminate all gold metallic plans with the exception of one in the state as required to meet QHP certification req.
- Evaluate elimination of bronze metallic plans

Sunday, 7:35 a.m.
Lynch asks about Complaint counties

Does this include the 17 places in the DOJ complaint.

Sunday, 11:55 p.m
Mayhew responds with revisions

1 - Remain Active in the State – Optimize Product Mix; Exit Targeted Service Areas

- Eliminate all gold metallic plans with the exception of one in the state as required to meet QHP certification requirements
- Evaluate elimination of bronze metallic plans
- Exit targeted service areas (17 counties in total; 3 states)

PX0126, at 4; PX0127; PX0129, at 2

Financial results sent to Mr. Bertolini on July 20 projected on-exchange profits in Florida

Aetna Individual Business (Excluding Consumer)
Results / Forecast As of June YTD 2016

	On-Exchange								
	FY 2015 Actual			June YTD Actual			2016 Q2 Forecast		
Market	Members (in 000's)	BFIT $ (millions)	BFIT Margin %	Members (in 000's)	BFIT $ (millions)	BFIT Margin %	Members (in 000's)	BFIT $ (millions)	BFIT Margin %
North Carolina	82	(32)	(10.7%)	124	53	17.8%	112	27	5.9%
Florida	204	18	2.6%	235	36	8.4%	216	16	2.0%
South Carolina	23	(4)	(3.8%)	8	(9)	(41.9%)	8	11	7.9%
Arizona	3	(3)	(38.1%)	8	4	33.9%	7	3	13.8%
Delaware	2	(3)	(55.2%)	2	0	1.6%	2	(1)	(4.6%)
Illinois	1	2	21.3%	16	(4)	(12.8%)	15	(6)	(8.5%)
Iowa	39	(12)	(6.7%)	35	2	2.5%	32	(9)	(5.9%)
Kansas (W. MO)	98	(53)	(15.4%)	43	0	0.3%	39	(10)	(5.4%)
Virginia	81	6	2.1%	109	4	1.9%	98	(12)	(3.0%)
Ohio	17	2	4.1%	12	(4)	(16.2%)	11	(13)	(27.1%)
Nebraska	39	(14)	(10.6%)	38	(1)	(1.7%)	34	(18)	(11.2%)
Georgia	54	(14)	(9.2%)	75	4	3.1%	69	(20)	(7.8%)
Missouri (S. IL)	65	(8)	(3.3%)	60	(4)	(2.7%)	55	(32)	(12.8%)
Texas	17	(8)	(11.2%)	40	(17)	(18.1%)	37	(48)	(25.5%)
Pennsylvania	22	2	2.5%	32	(33)	(73.1%)	29	(49)	(45.8%)
All Other Markets	7	(4)	--	1,000	(47)	--	--	(38)	--
Total All Markets	**755**	**($125)**	**(4.7%)**	**838**	**($17)**	**(1.0%)**	**764**	**($195)**	**(6.0%)**

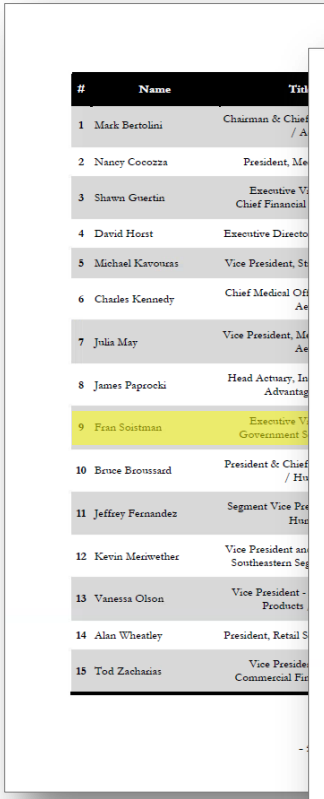
Aetna withdrew

Aetna remains

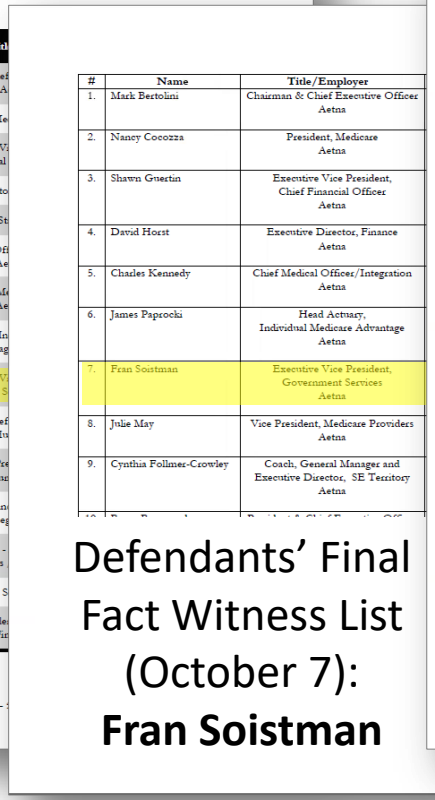
DX0009, at 2 (July 20, 2016)

Soistman did not testify to explain the recommendation that he authored

Defendants' Preliminary Fact Witness List (September 9):
Fran Soistman



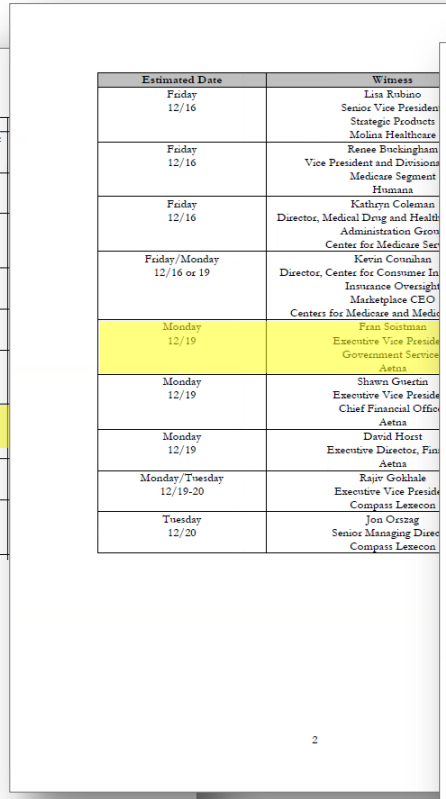
#	Name	Tit
1	Mark Bertolini	Chairman & Chief / A
2	Nancy Cocozza	President, Me
3	Shawn Guertin	Executive Vi Chief Financial
4	David Horst	Executive Directo
5	Michael Kavouras	Vice President, St
6	Charles Kennedy	Chief Medical Off Ae
7	Julia May	Vice President, M Ae
8	James Paprocki	Head Actuary, In Advantag
9	Fran Soistman	Executive V Government S
10	Bruce Broussard	President & Chief / Hu
11	Jeffrey Fernandez	Segment Vice Pre Hu
12	Kevin Meriwether	Vice President an Southeastern Seg
13	Vanessa Olson	Vice President - Products
14	Alan Wheatley	President, Retail S
15	Tod Zachacias	Vice Preside Commercial Fir



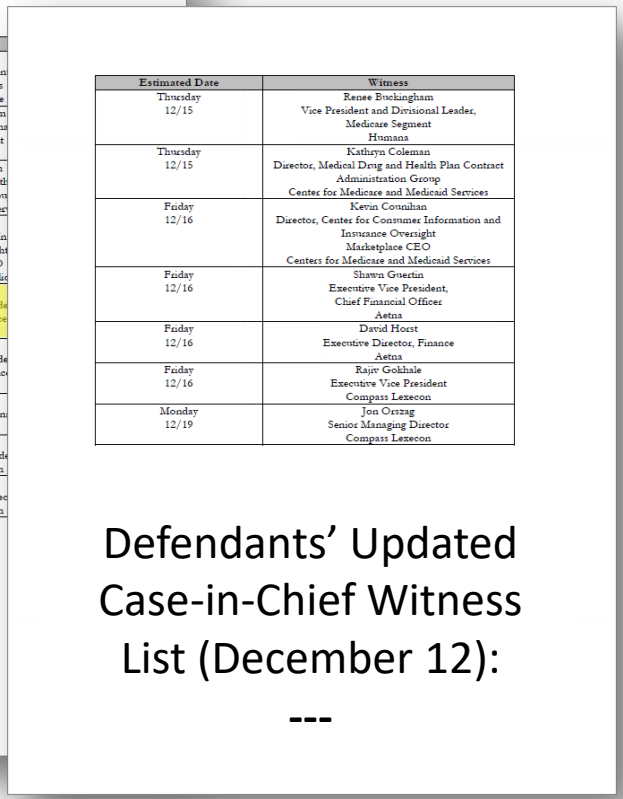
#	Name	Title/Employer
1.	Mark Bertolini	Chairman & Chief Executive Officer Aetna
2.	Nancy Cocozza	President, Medicare Aetna
3.	Shawn Guertin	Executive Vice President, Chief Financial Officer Aetna
4.	David Horst	Executive Director, Finance Aetna
5.	Charles Kennedy	Chief Medical Officer/Integration Aetna
6.	James Paprocki	Head Actuary, Individual Medicare Advantage Aetna
7.	Fran Soistman	Executive Vice President, Government Services Aetna
8.	Julie May	Vice President, Medicare Providers Aetna
9.	Cynthia Follmer-Crowley	Coach, General Manager and Executive Director, SE Territory Aetna

Defendants' Final Fact Witness List (October 7):
Fran Soistman

Defendants' Case-in-Chief Witness List (December 9):
Fran Soistman



Estimated Date	Witness
Friday 12/16	Lisa Robino Senior Vice Presiden Strategic Products Molina Healthcare
Friday 12/16	Renee Buckingham Vice President and Divisiona Medicare Segment Humana
Friday 12/16	Kathryn Coleman Director, Medical Drug and Health Administration Grou Center for Medicare Ser
Friday/Monday 12/16 or 19	Kevin Counihan Director, Center for Consumer In Insurance Oversight Marketplace CEO Centers for Medicare and Medic
Monday 12/19	Fran Soistman Executive Vice Preside Government Service Aetna
Monday 12/19	Shawn Guertin Executive Vice Preside Chief Financial Offic Aetna
Monday 12/19	David Horst Executive Director, Fin Aetna
Monday/Tuesday 12/19-20	Rajiv Gokhale Executive Vice Preside Compass Lexecon
Tuesday 12/20	Jon Orszag Senior Managing Direc Compass Lexecon



Estimated Date	Witness
Thursday 12/15	Renee Buckingham Vice President and Divisional Leader, Medicare Segment Humana
Thursday 12/15	Kathryn Coleman Director, Medical Drug and Health Plan Contract Administration Group Center for Medicare and Medicaid Services
Friday 12/16	Kevin Counihan Director, Center for Consumer Information and Insurance Oversight Marketplace CEO Centers for Medicare and Medicaid Services
Friday 12/16	Shawn Guertin Executive Vice President, Chief Financial Officer Aetna
Friday 12/16	David Horst Executive Director, Finance Aetna
Friday 12/16	Rajiv Gokhale Executive Vice President Compass Lexecon
Monday 12/19	Jon Orszag Senior Managing Director Compass Lexecon

Defendants' Updated Case-in-Chief Witness List (December 12):

PUBLIC EXCHANGES

Competitive Effects

Aetna retained the ability to re-enter the exchanges because it wants "to remain in the game"

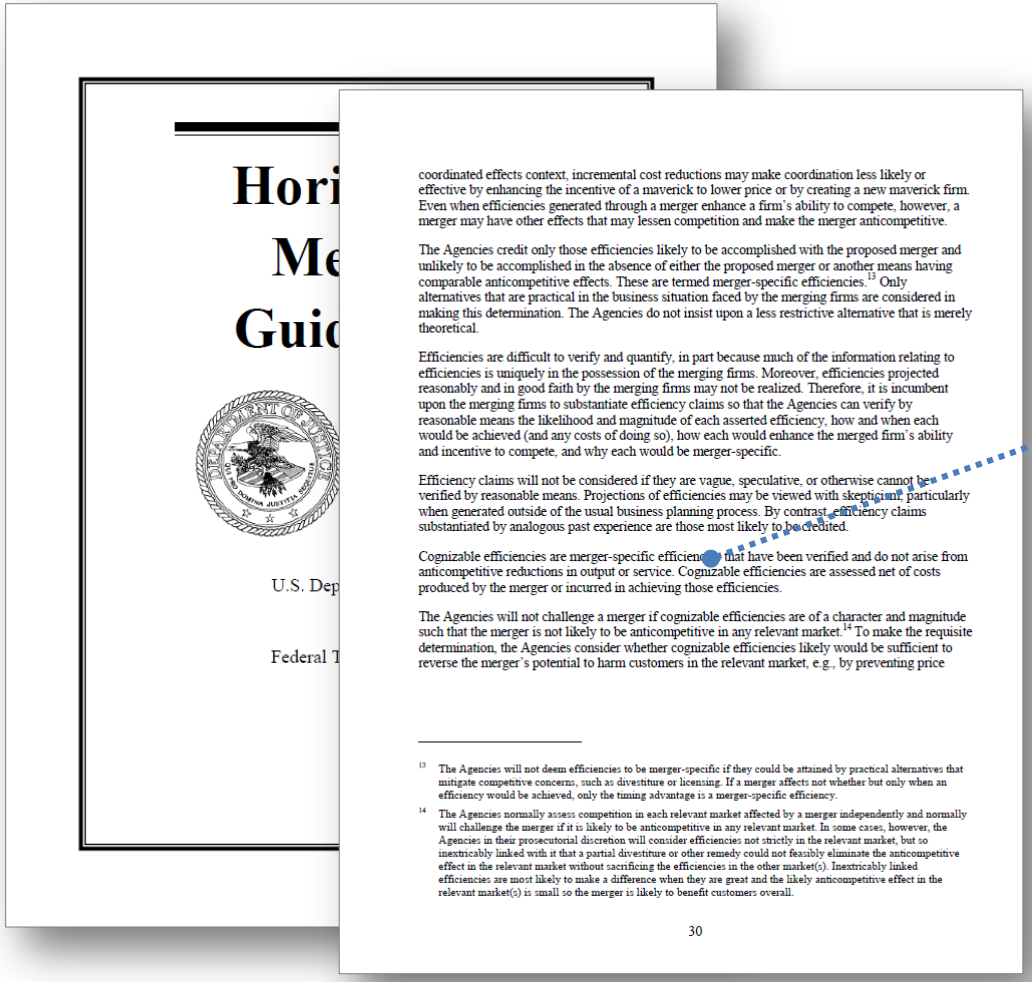
> And so that was part of the mission. So just throwing it over our shoulder and running for the hills wasn't a legitimate response on my part. We needed to remain in the game. We needed to consider how we could help and we needed to find ways to make it better.

Mark Bertolini,
CEO of Aetna

Tr. 1387:9-13

EFFICIENCIES

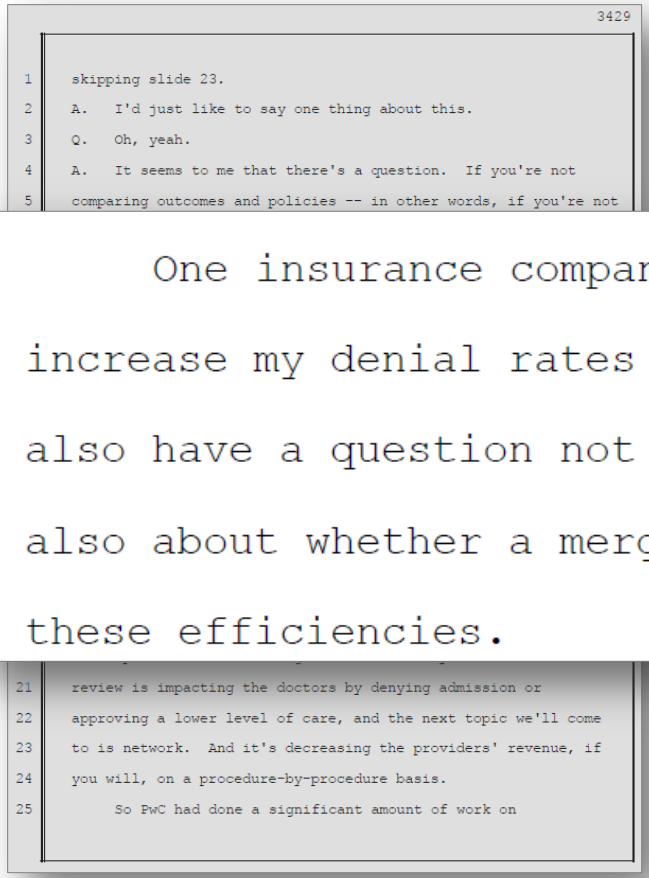
The claimed efficiencies do not outweigh the competitive harm



"Cognizable efficiencies are **merger-specific efficiencies** that have been **verified** and **do not arise from anticompetitive reductions in output or service."**

Horizontal Merger Guidelines § 10

Defendants' "concurrent review" efficiencies are based on the assumption that the merged company will deny more care



3429

skipping slide 23.
A. I'd just like to say one thing about this.
Q. Oh, yeah.
A. It seems to me that there's a question. If you're not comparing outcomes and policies -- in other words, if you're not

review is impacting the doctors by denying admission or approving a lower level of care, and the next topic we'll come to is network. And it's decreasing the providers' revenue, if you will, on a procedure-by-procedure basis.
So PwC had done a significant amount of work on

Ms. Christine Hammer, CPA

One insurance company could just decide, I'm going to increase my denial rates by X percent and save some money. So I also have a question not only about quality in this context but also about whether a merger is actually required to achieve these efficiencies.

Tr. 3429:10-14

The Defendants have made no showing to tie their claimed efficiencies to the challenged markets

The law does not allow "anticompetitive effects in one market" to be offset by "pro-competitive consequences in another/"

U.S. v. Philadelphia Nat'l Bank,
374 U.S. 321, 370 (1963)

Mr. Gokhale did not even attempt to quantify how much of his claimed efficiencies would remain with the merged company in the challenged markets, after all divestitures and individual commercial withdrawals.

Tr. 3435:14-24 (Christine Hammer)

U.S. & Plaintiff States

v.

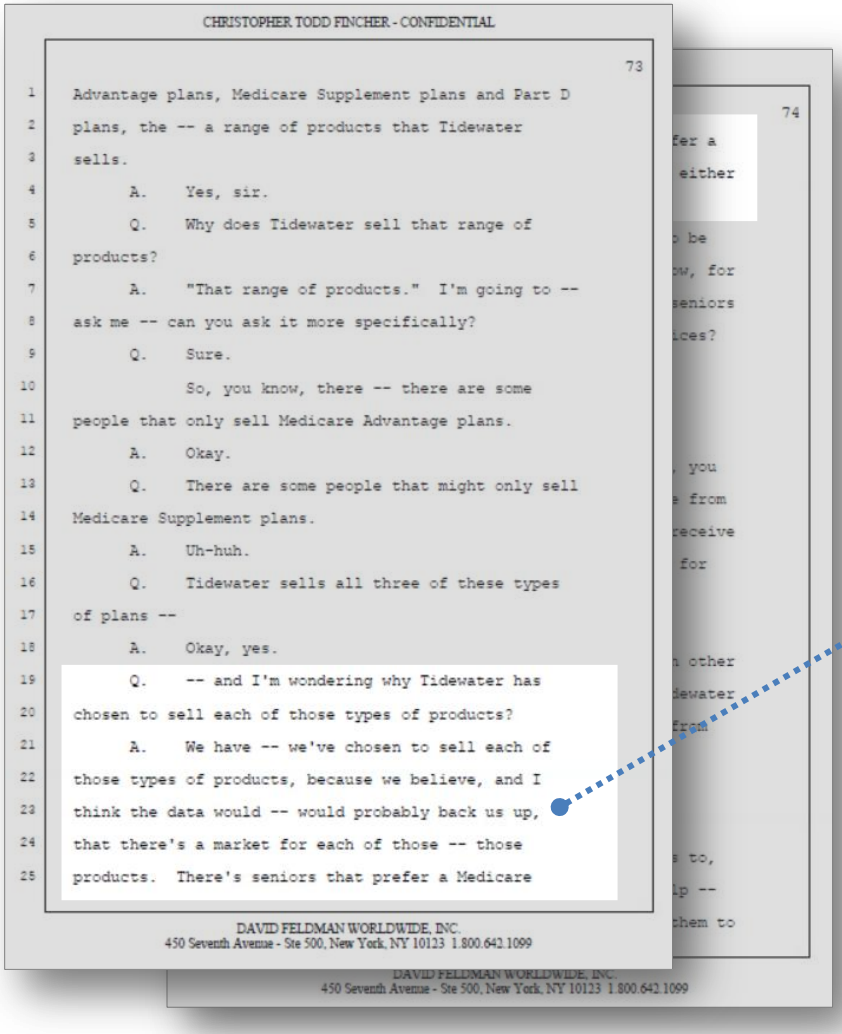
Aetna Inc. & Humana Inc.

Materials for Rebuttal & Appendix

MEDICARE ADVANTAGE

Market Definition

Brown Shoe: Industry Recognition



CHRISTOPHER TODD FINCHER - CONFIDENTIAL

73

Advantage plans, Medicare Supplement plans and Part D plans, the -- a range of products that Tidewater sells.

A. Yes, sir.

Q. Why does Tidewater sell that range of products?

A. "That range of products." I'm going to -- ask me -- can you ask it more specifically?

Q. Sure.

So, you know, there -- there are some people that only sell Medicare Advantage plans.

A. Okay.

Q. There are some people that might only sell Medicare Supplement plans.

A. Uh-huh.

Q. Tidewater sells all three of these types of plans --

A. Okay, yes.

Q. -- and I'm wondering why Tidewater has chosen to sell each of those types of products?

A. We have -- we've chosen to sell each of those types of products, because we believe, and I think the data would -- would probably back us up, that there's a market for each of those -- those products. There's seniors that prefer a Medicare

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 500, New York, NY 10123 1.800.642.1099

74

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 500, New York, NY 10123 1.800.642.1099

Fincher dep. 73:19-74:3

"We have – we've chosen to sell each of those types of products [Medicare Advantage, Medicare Supplements, and Part D plans], because we believe, and I think the data would – would probably back us up, that there's a market for each of those – those products/There's seniors that prefer a Medicare Supplement plan, and there are seniors that prefer a Medicare !d vantage plan/"

Todd Fincher,
President, Tidewater Management Group

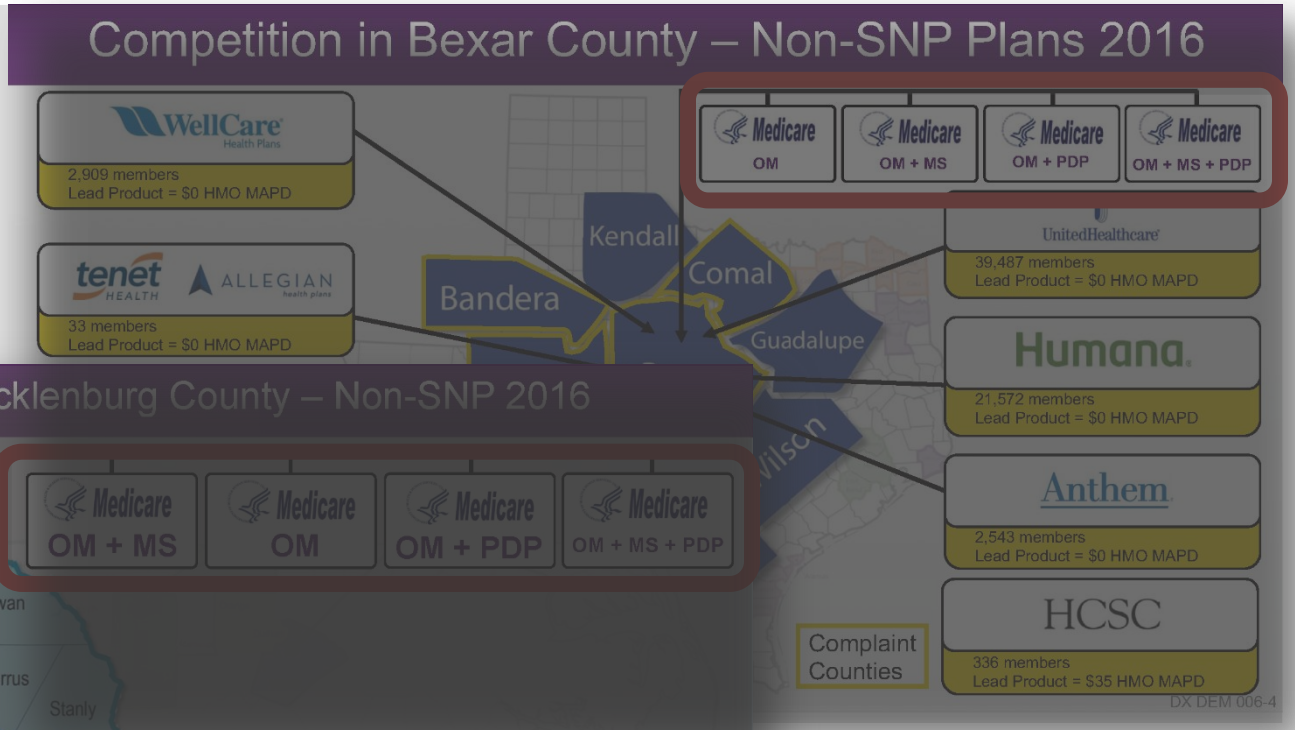
Brown Shoe: Medicare Advantage is separately managed and priced

8	**Q.** Because of the nature of the two categories of products, do
9	you agree with me that it makes sense to have a different
10	actuarial specialization around the pricing for the two
11	products?
12	**A. I think -- yeah. I think it makes sense that we have two**
13	**separate departments that do the work.**

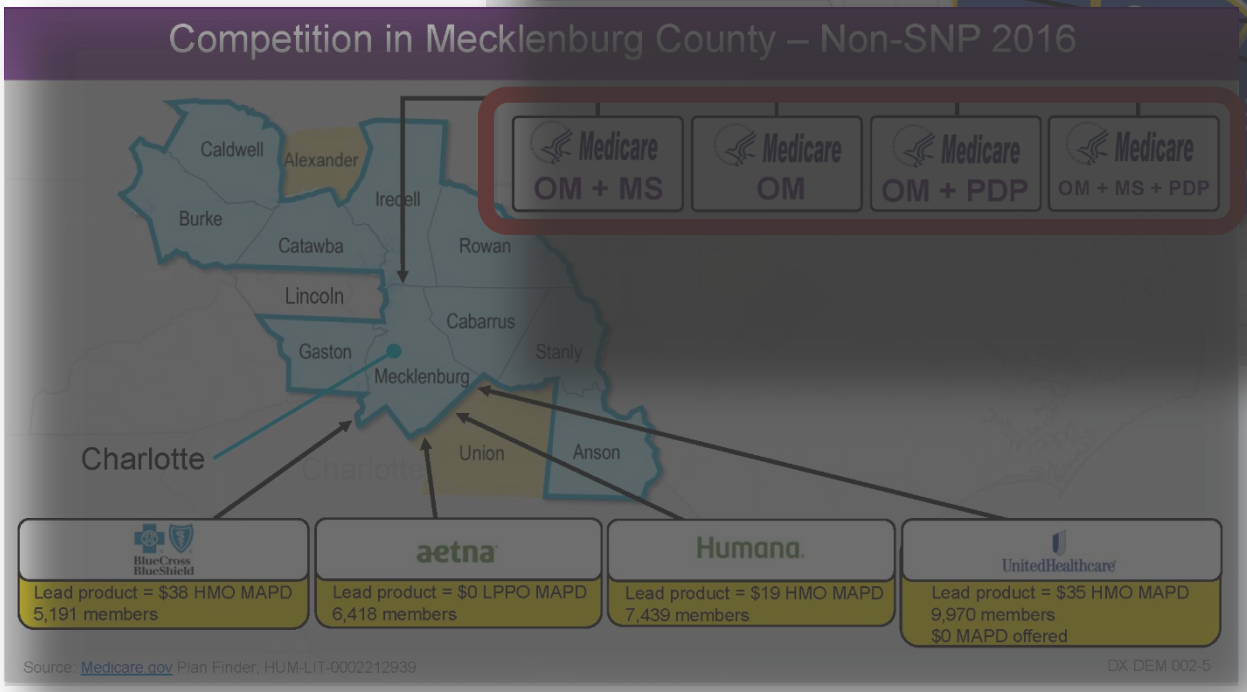
James Paprocki,
Head Individual Medicare Advantage actuary at Aetna

Tr. 1995:6-1996:13

The Defendants inserted Original Medicare into their trial demonstratives



DX-DEM-006



DX-DEM-002

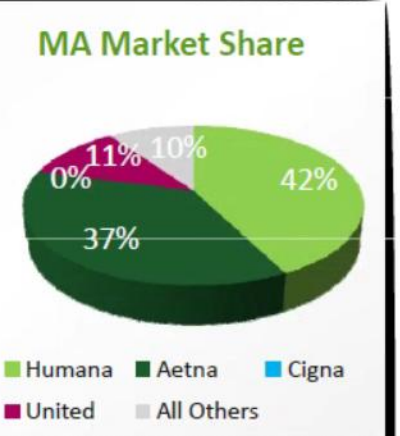
Defendants' actual business documents focus on other Medicare Advantage insurers

PX0039, at 55 (April 30, 2015)

Defendants' actual business documents focus on other Medicare Advantage insurers

Kansas City Market Analysis

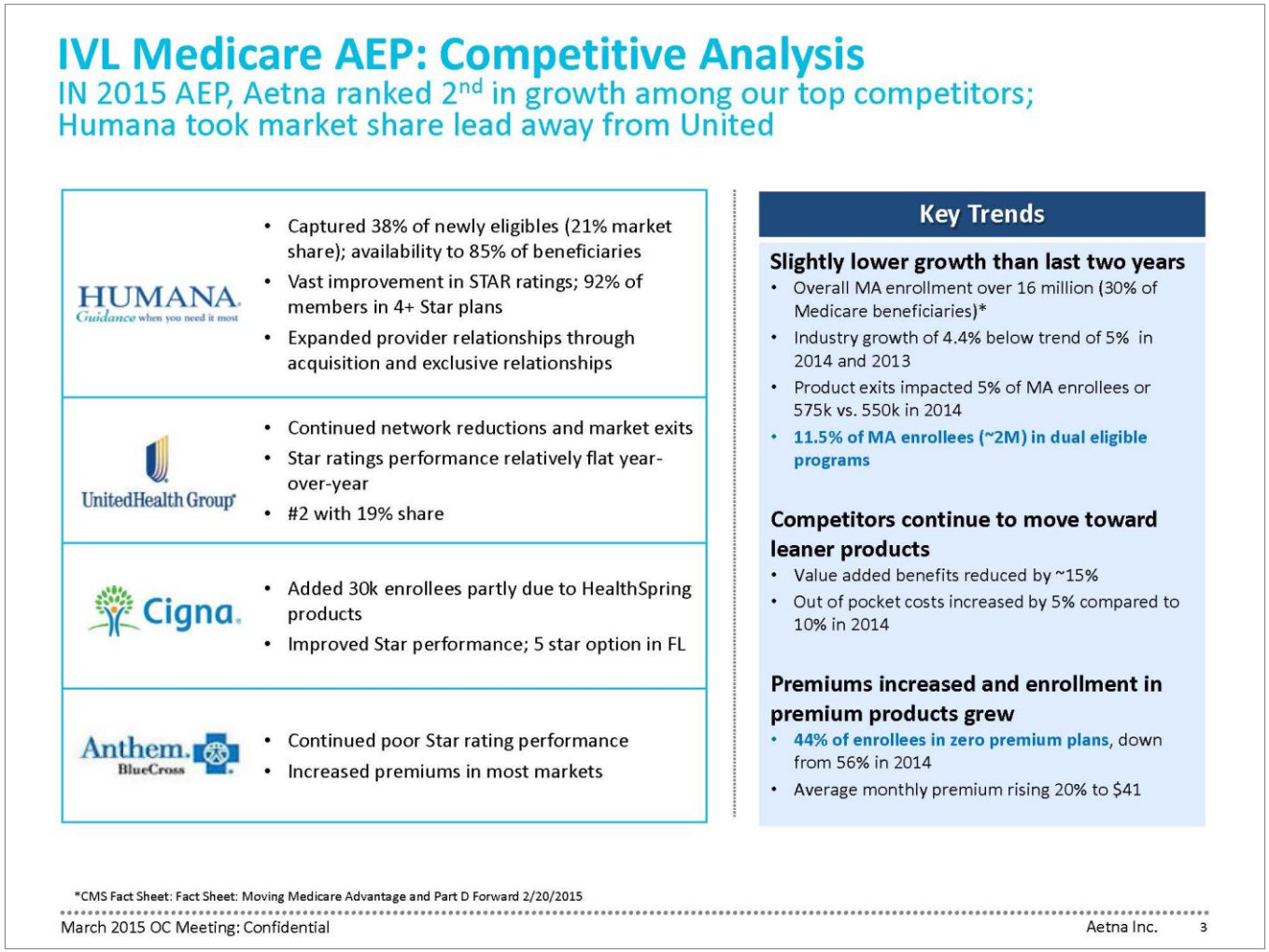
- Today, Humana (~50k mbrs.) and Aetna (~34k mbrs) dominate the Kansas City Market
- United (~6k mbrs.) and Cigna (new to KC for 2016) aren't strong competitors but are coming on strong in the KC market
- United is taking advantage of a contract consolidation with a Stars bonus increase to significantly improve benefits on it's existing premium HMO offering. Also, bringing to market a $0 HMO that has slightly better benefits than Humana's $0 plan
- Aetna is making moderate benefit improvements, maintaining their $0 HMO & LPPO plans
- Cigna is entering the market with a strong $0 HMO offering the lowest cost shares across the 5 key benefits



Carrier	Plan Type	STARS	Premium	MOOP	PCP	SPC	Inpatient	Rx
Humana	HMO	4	$0	$6,700	$25	$50	$350 Days 1-5	6/11/47/99/25%
Humana	HMO	4	$34	$6,500	$10	$45	$330 Days 1-5	6/11/47/99/29%
United	HMO	4	$39	$3900	$5	$40	$275 Days 1-6	2/8/45/95/28%
United	HMO	4	$0	$6700	$20	$50	$335 Days 1-5	2/12/47/100/26%
Aetna	HMO	3.5	$0	$5,000	$5	$40	$300 Days 1-5	4/9/47/100/33%
Aetna	PPO	4	$0	$6,700	$10	$50	$3505 Days 1-5	4/9/47/100/33%
Cigna	HMO	New	$0	$4,900	$0	$40	$250 Days 1-6	1/3/45/95/30%

PX0455, at 67 (Aug. 24, 2015)

Defendants' actual business documents focus on other Medicare Advantage insurers



IVL Medicare AEP: Competitive Analysis

IN 2015 AEP, Aetna ranked 2nd in growth among our top competitors; Humana took market share lead away from United

HUMANA Guidance when you need it most

- Captured 38% of newly eligibles (21% market share); availability to 85% of beneficiaries
- Vast improvement in STAR ratings; 92% of members in 4+ Star plans
- Expanded provider relationships through acquisition and exclusive relationships

UnitedHealth Group

- Continued network reductions and market exits
- Star ratings performance relatively flat year-over-year
- #2 with 19% share

Cigna

- Added 30k enrollees partly due to HealthSpring products
- Improved Star performance; 5 star option in FL

Anthem BlueCross

- Continued poor Star rating performance
- Increased premiums in most markets

Key Trends

Slightly lower growth than last two years

- Overall MA enrollment over 16 million (30% of Medicare beneficiaries)*
- Industry growth of 4.4% below trend of 5% in 2014 and 2013
- Product exits impacted 5% of MA enrollees or 575k vs. 550k in 2014
- **11.5% of MA enrollees (~2M) in dual eligible programs**

Competitors continue to move toward leaner products

- Value added benefits reduced by ~15%
- Out of pocket costs increased by 5% compared to 10% in 2014

Premiums increased and enrollment in premium products grew

- **44% of enrollees in zero premium plans**, down from 56% in 2014
- Average monthly premium rising 20% to $41

*CMS Fact Sheet: Fact Sheet: Moving Medicare Advantage and Part D Forward 2/20/2015

March 2015 OC Meeting: Confidential Aetna Inc. 3

PX0154, at 3 (Mar. 26, 2015)

Defendants' actual business documents focus on other Medicare Advantage insurers

Competitor by Plan Type

Total Medicare Advantage (including group)										
Plan	HMO		LPPO		RPPO		PFFS		Total	
	Members	Growth	Members	Growth	Members	Growth	Members	Growth	Members	Growth
Humana	60,101	36,899	59,860	6,134	28,421	302	7,903	1,675	156,285	41,056
United	76,839	196	90,202	3,517	0	0	5,053	1,377	172,094	2,336
BCBS	75,615	66,995	48,950	25,199	0	0	0	0	124,565	41,796
Aetna	2,523	713	29,417	24,076	0	0	0	0	31,940	24,789
Cigna	6,672	6,672	0	0	0	0	0	0	6,672	6,672

Medicare Advantage Individual Plans										
Plan	HMO		LPPO		RPPO		PFFS		Total	
	Members	Growth	Members	Growth	Members	Growth	Members	Growth	Members	Growth
Humana	60,101	36,899	24,008	4,652	28,396	1,973	7,903	1,675	120,408	41,849
United	75,511	207	10,548	2,136	0	0	5,053	1,377	91,112	3,306
BCBS	75,615	66,995	48,950	25,199	0	0	0	0	124,565	41,796
Aetna	2,523	713	26,451	23,919	0	0	0	0	28,974	24,632
Cigna	6,672	6,672	0	0	0	0	0	0	6,672	6,672

Humana

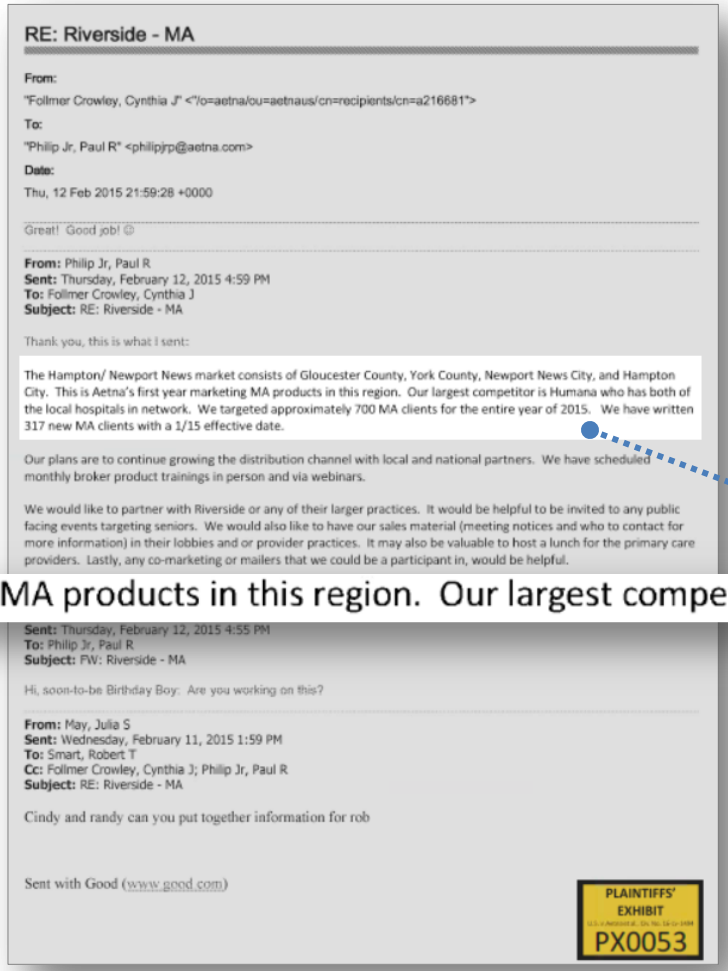
Based on data from the Competitive Landscape Report.

11/2/2016 4:46 PM 9

CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER

PX0295, at 48
(Apr. 28, 2015)

Defendants' actual business documents focus on other Medicare Advantage insurers



RE: Riverside - MA

From:
"Follmer Crowley, Cynthia J" <"/o=aetna/ou=aetnaus/cn=recipients/cn=a216681">
To:
"Philip Jr, Paul R" <philipjrp@aetna.com>
Date:
Thu, 12 Feb 2015 21:59:28 +0000

Great! Good job! ☺

From: Philip Jr, Paul R
Sent: Thursday, February 12, 2015 4:59 PM
To: Follmer Crowley, Cynthia J
Subject: RE: Riverside - MA

Thank you, this is what I sent:

The Hampton/ Newport News market consists of Gloucester County, York County, Newport News City, and Hampton City. This is Aetna's first year marketing MA products in this region. Our largest competitor is Humana who has both of the local hospitals in network. We targeted approximately 700 MA clients for the entire year of 2015. We have written 317 new MA clients with a 1/15 effective date.

Our plans are to continue growing the distribution channel with local and national partners. We have scheduled monthly broker product trainings in person and via webinars.

We would like to partner with Riverside or any of their larger practices. It would be helpful to be invited to any public facing events targeting seniors. We would also like to have our sales material (meeting notices and who to contact for more information) in their lobbies and or provider practices. It may also be valuable to host a lunch for the primary care providers. Lastly, any co-marketing or mailers that we could be a participant in, would be helpful.

Sent: Thursday, February 12, 2015 4:55 PM
To: Philip Jr, Paul R
Subject: FW: Riverside - MA

Hi, soon-to-be Birthday Boy: Are you working on this?

From: May, Julia S
Sent: Wednesday, February 11, 2015 1:59 PM
To: Smart, Robert T
Cc: Follmer Crowley, Cynthia J; Philip Jr, Paul R
Subject: RE: Riverside - MA

Cindy and randy can you put together information for rob

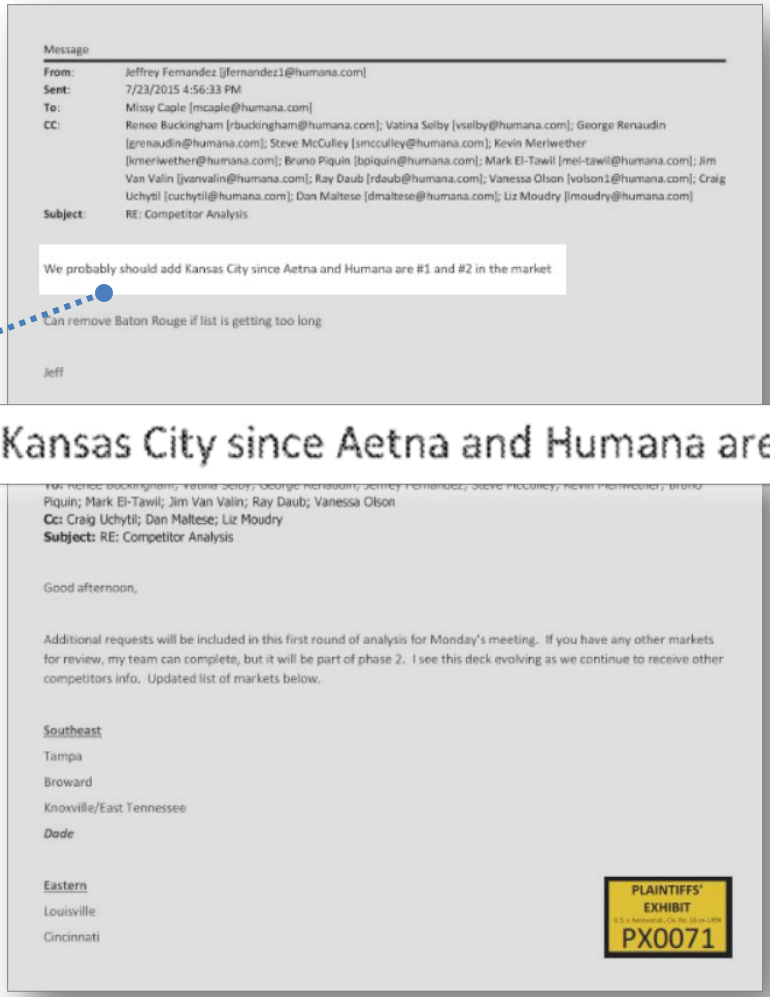
Sent with Good (www.good.com)

PLAINTIFFS' EXHIBIT
PX0053

This is Aetna's first year marketing MA products in this region. Our largest competitor is Humana who has both of the local hospitals in network.

PX0053 (Feb. 12, 2015)

Defendants' actual business documents focus on other Medicare Advantage insurers



Message

From: Jeffrey Fernandez [jfernandez1@humana.com]
Sent: 7/23/2015 4:56:33 PM
To: Missy Caple [mcaple@humana.com]
CC: Renee Buckingham [rbuckingham@humana.com]; Vatina Selby [vselby@humana.com]; George Renaudin [grenaudin@humana.com]; Steve McCulley [smcculley@humana.com]; Kevin Merlwether [kmerlwether@humana.com]; Bruno Piquin [bpiquin@humana.com]; Mark El-Tawil [mel-tawil@humana.com]; Jim Van Valin [jvanvalin@humana.com]; Ray Daub [rdaub@humana.com]; Vanessa Olson [volson1@humana.com]; Craig Uchytil [cuchytil@humana.com]; Dan Maltese [dmaltese@humana.com]; Liz Moudry [lmoudry@humana.com]
Subject: RE: Competitor Analysis

We probably should add Kansas City since Aetna and Humana are #1 and #2 in the market

Can remove Baton Rouge if list is getting too long

Jeff

We probably should add Kansas City since Aetna and Humana are #1 and #2 in the market

Piquin; Mark El-Tawil; Jim Van Valin; Ray Daub; Vanessa Olson
Cc: Craig Uchytil; Dan Maltese; Liz Moudry
Subject: RE: Competitor Analysis

Good afternoon,

Additional requests will be included in this first round of analysis for Monday's meeting. If you have any other markets for review, my team can complete, but it will be part of phase 2. I see this deck evolving as we continue to receive other competitors info. Updated list of markets below.

Southeast

Tampa

Broward

Knoxville/East Tennessee

Dade

Eastern

Louisville

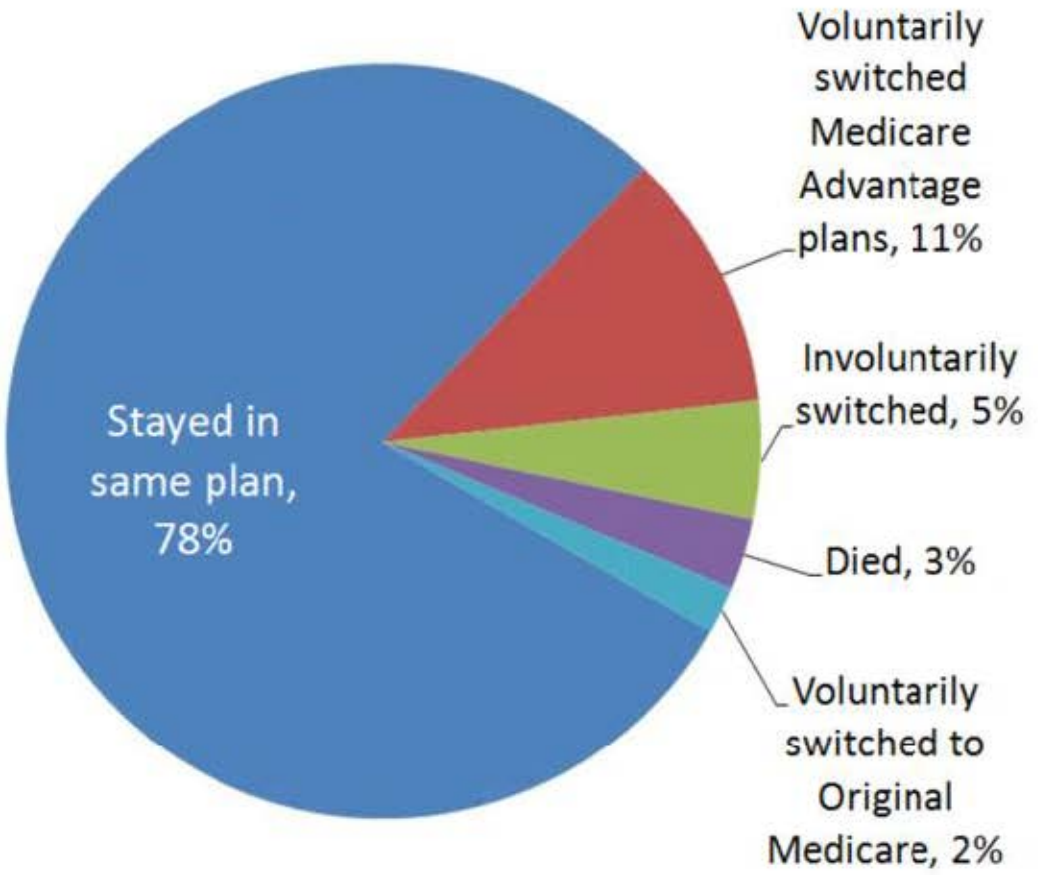
Cincinnati

PLAINTIFFS' EXHIBIT
PX0071

PX0071 (July 23, 2015)

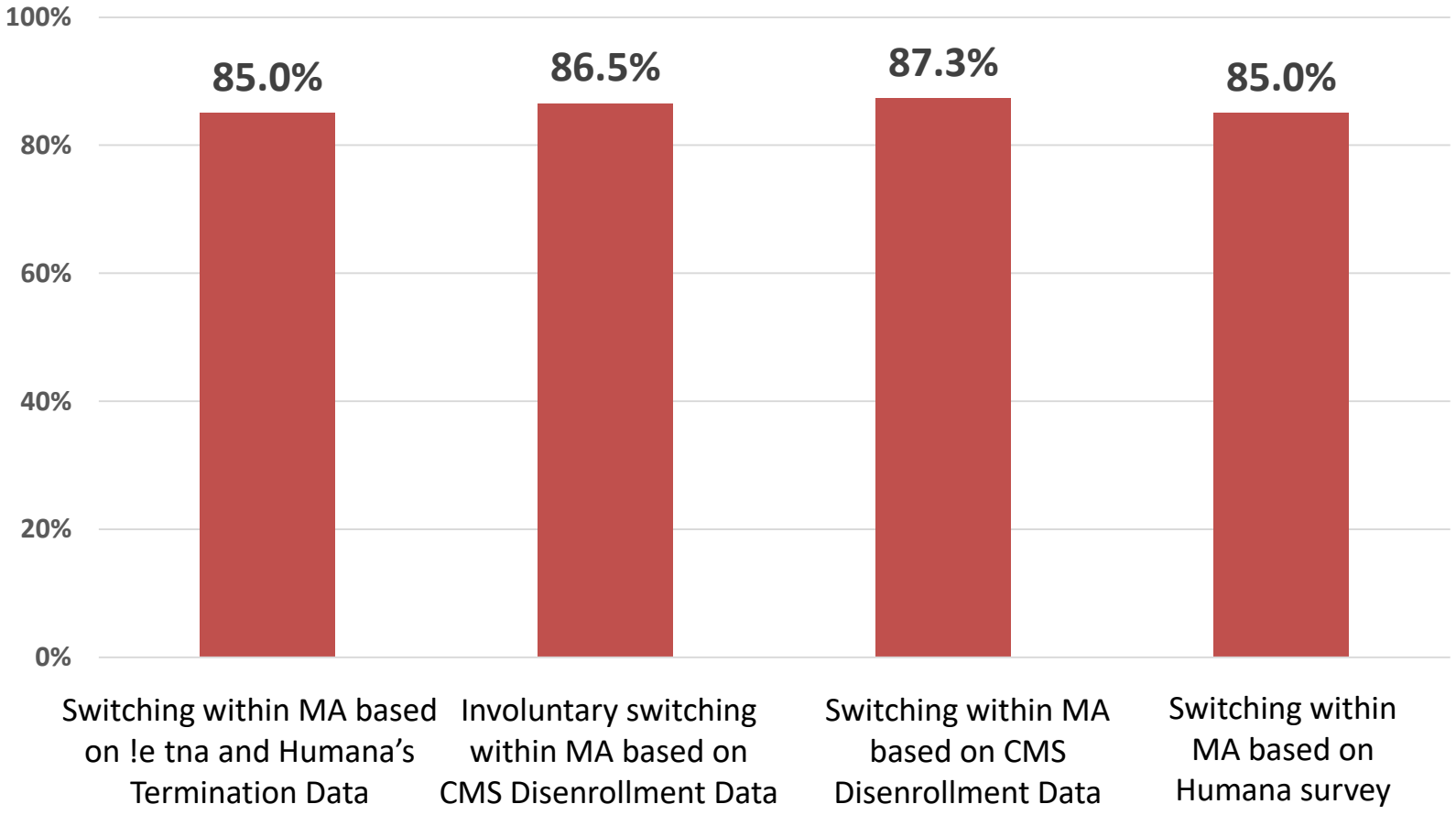
Few Medicare Advantage Enrollees Change Plans

Only **2%** of Medicare Advantage enrollees voluntarily switched to Original Medicare in 2013-2014.



See Medicare Advantage Plan Switching: Exception or Norm?, KFF Issue Brief, 20 September 2016.

Consumers have durable preferences for Medicare Advantage

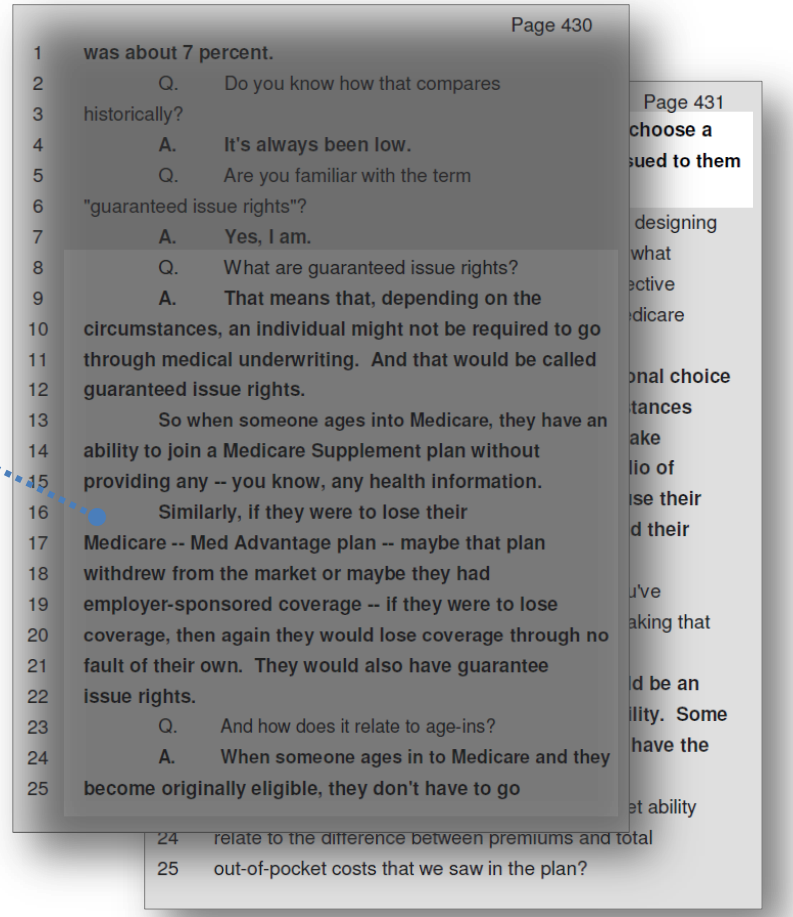


See PX0552, at 33 (Supplemental and Rebuttal Report of Aviv Nevo, Ph.D.); Tr. 929:25-930:15 (Prof. Gary Ford)

The behavior of seniors with "guaranteed issue rights" shows these durable preferences

"Seniors with guaranteed issue rights are like age-ins in that they can enroll in Medicare Supplement plans without undergoing medical underwriting/"

Nancy Cocozza,
Head of Medicare at Aetna



Page 430

was about 7 percent.
Q. Do you know how that compares historically?
A. It's always been low.
Q. Are you familiar with the term "guaranteed issue rights"?
A. Yes, I am.
Q. What are guaranteed issue rights?
A. That means that, depending on the circumstances, an individual might not be required to go through medical underwriting. And that would be called guaranteed issue rights.
So when someone ages into Medicare, they have an ability to join a Medicare Supplement plan without providing any -- you know, any health information.
Similarly, if they were to lose their Medicare -- Med Advantage plan -- maybe that plan withdrew from the market or maybe they had employer-sponsored coverage -- if they were to lose coverage, then again they would lose coverage through no fault of their own. They would also have guarantee issue rights.
Q. And how does it relate to age-ins?
A. When someone ages in to Medicare and they become originally eligible, they don't have to go

Page 431

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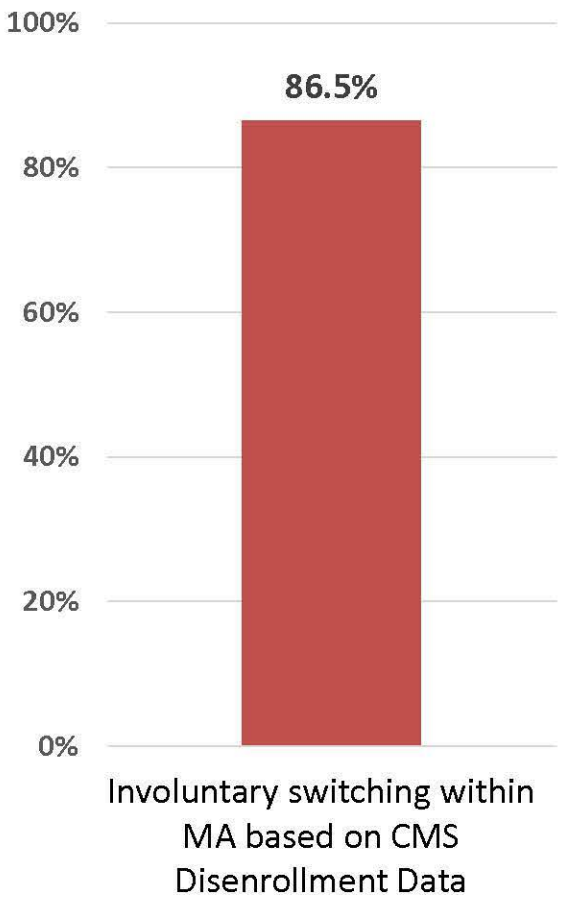
relate to the difference between premiums and total out-of-pocket costs that we saw in the plan?

Tr. 430:8-431:3

Medicare Advantage consumers with guaranteed issue rights overwhelmingly stay in Medicare Advantage



Q Did -- you said you had about 70 clients with Piedmont WellStar. Did they also come to you when Piedmont WellStar left the market?

A Yes.

Q Did you explain to them that they could switch to a Medicare Supplement without underwriting?

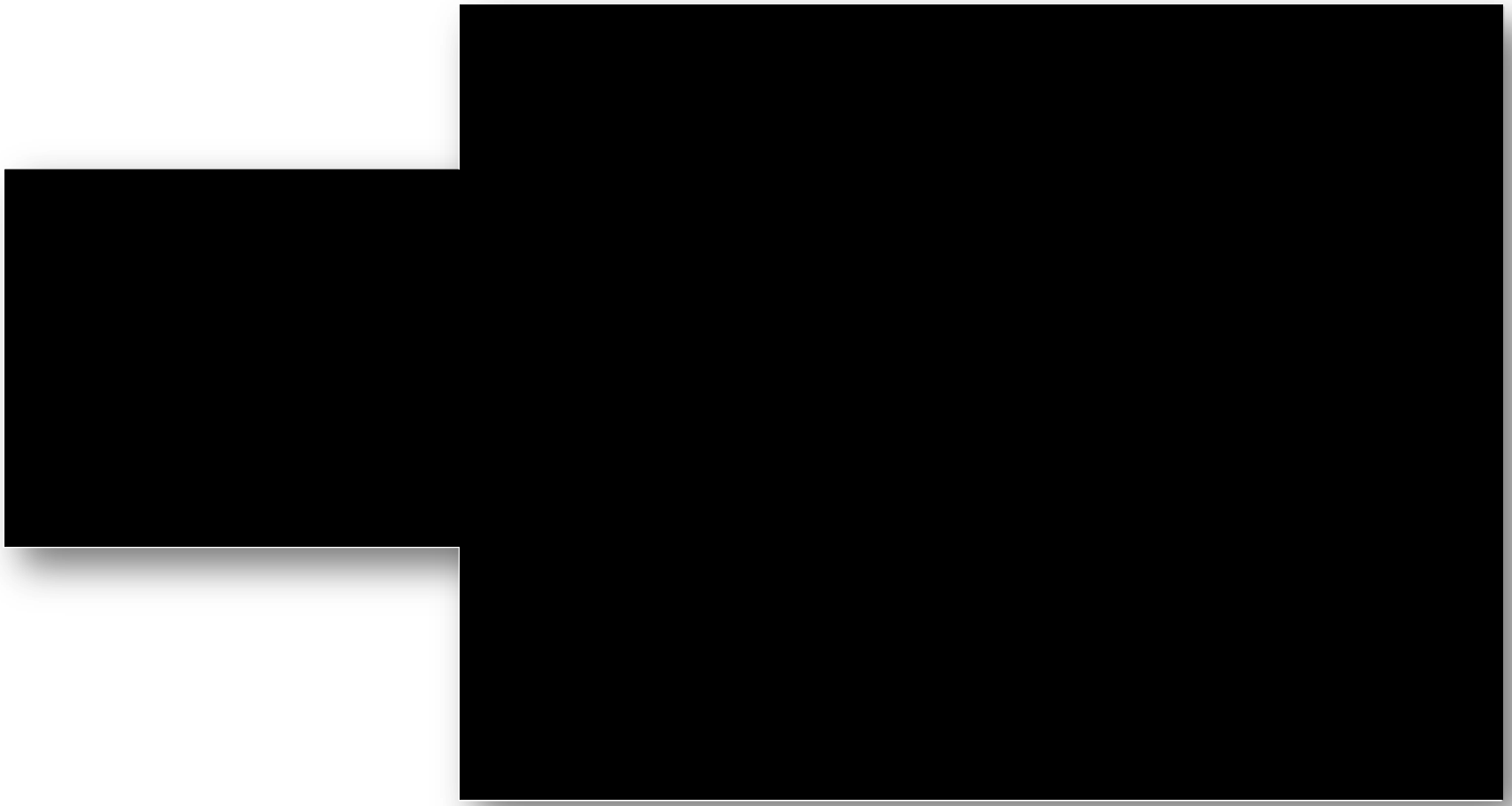
A Yes.

Q Of your about 70 or so clients, about how many of them stayed with another Medicare Advantage plan?

A It was over 90 percent that stayed with the Medicare Advantage plan.

Robert Fitzgerald, President, Robert Fitzgerald Insurance Agency
Tr. 1080:2-14

MA insurers can change prices at the county level even within a single plan through segmentation



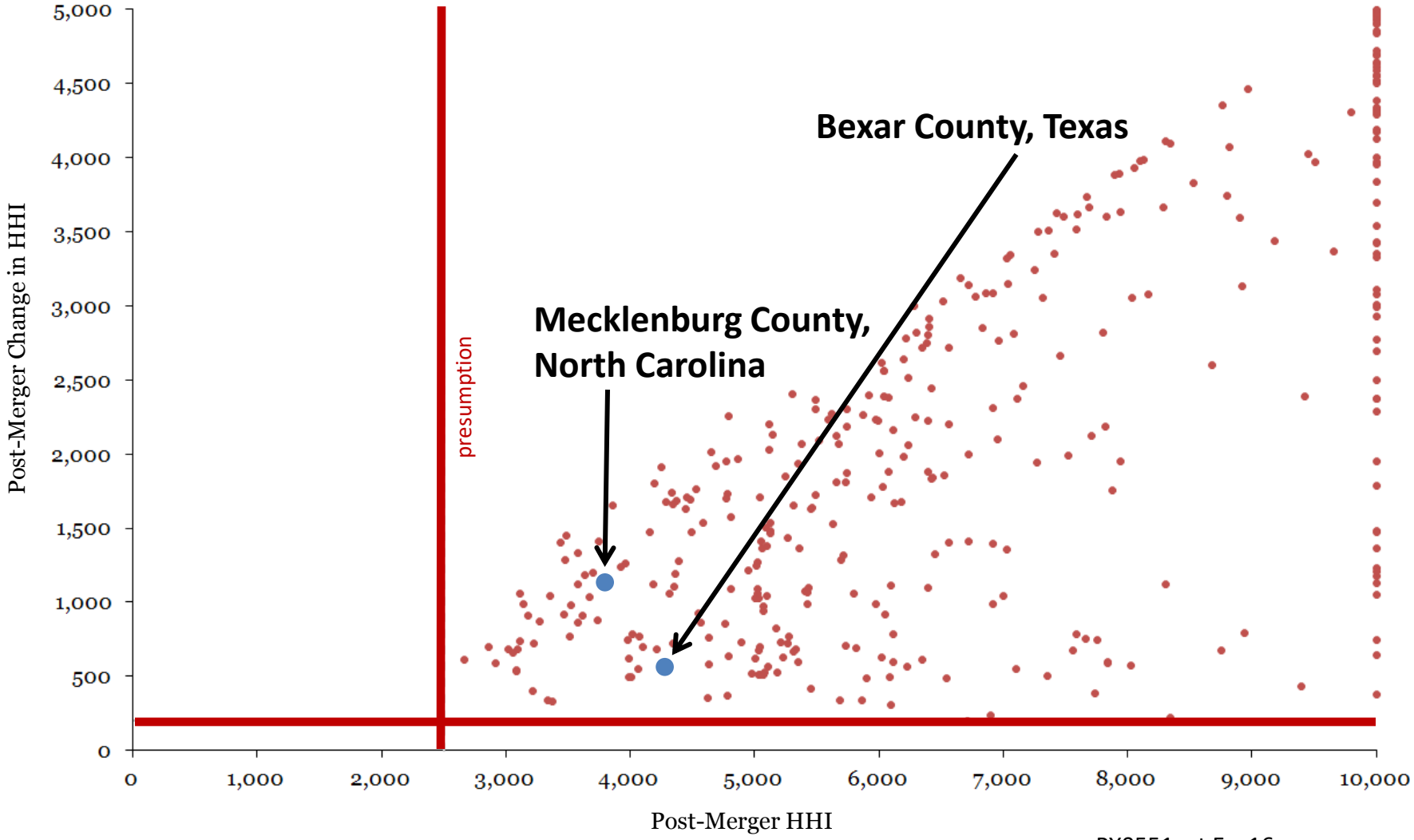
PX0035, at 3

Materials for Rebuttal & Appendix

MEDICARE ADVANTAGE

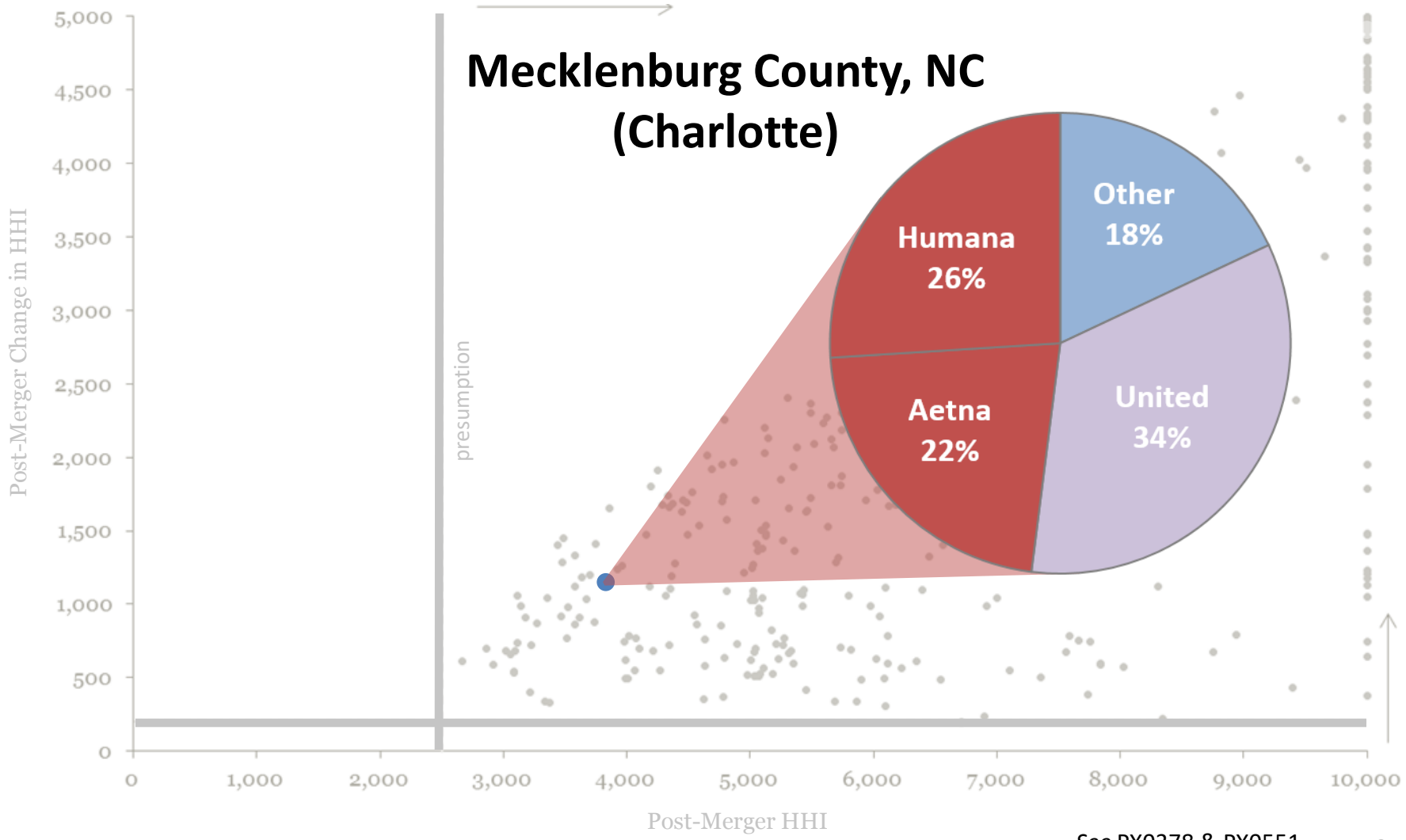
Competitive Effects

The merger is presumptively unlawful



PX0551, at Ex. 16
& Appendix I

The merger is presumptively unlawful



See PX0378 & PX0551, at Appendix I

Aetna and Humana compete in Mecklenburg County today

Q Okay. So Humana -- if I'm a senior and I'm living in Mecklenburg County and I'm interested in that zero premium product, then if I want to go to Humana, I'm going to be looking at your HMO; right?

A That is correct.

Q Okay. And then if I'm going to look at Aetna's product, I can look at their PPO product; right?

A That is correct.

Q Okay. And that's the same in wherever they're selling that PPO product in the state; correct?

Tr. 771:16-772:8

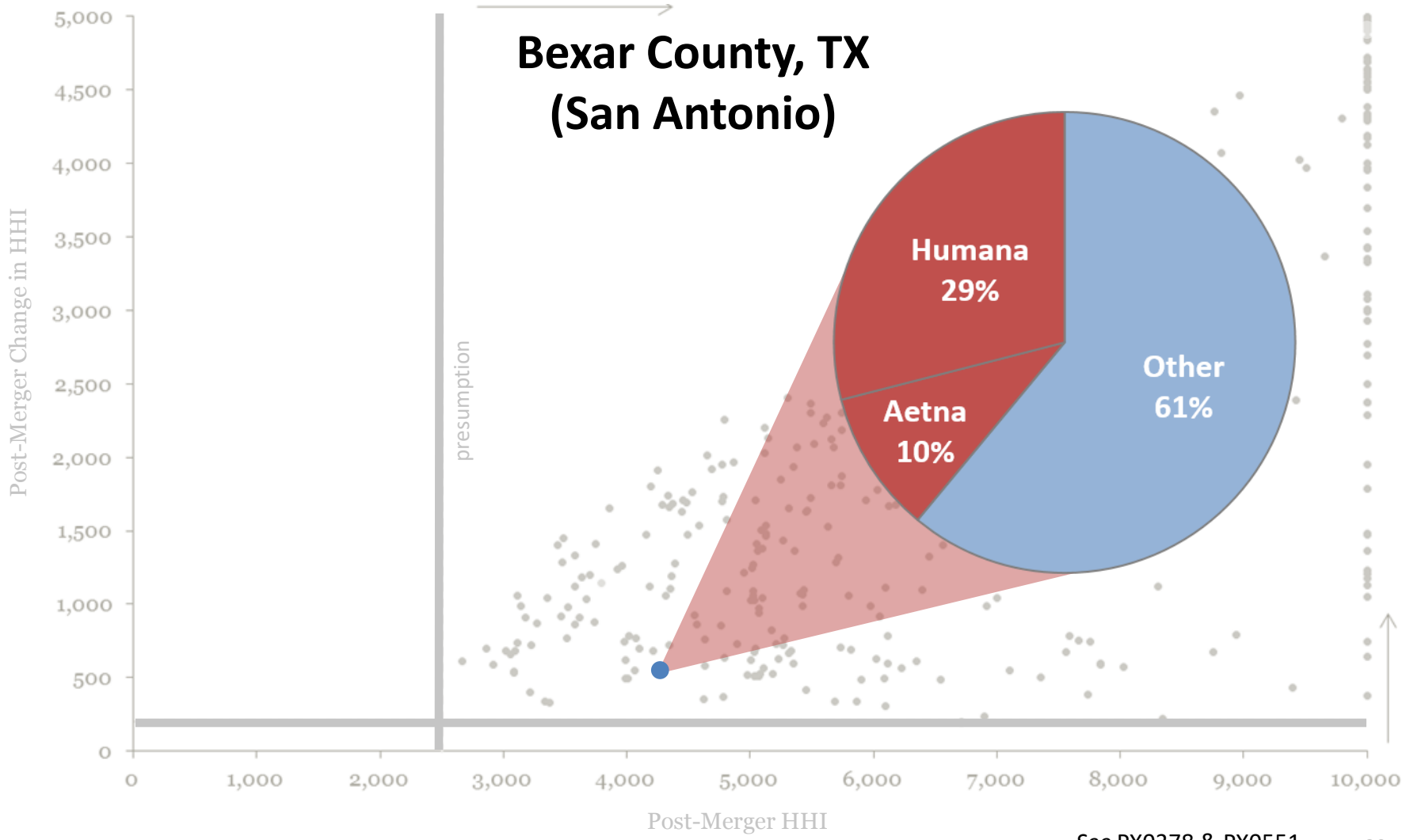
A Yes.

Q All right. And you have found over the last several years that the Humana HMO zero premium plan is actually competing against the Aetna zero premium PPO plan in the state; isn't that true?

A We were competing in particular areas with a zero HMO, which then went up to $19. And we still competed against the zero LPPO Aetna plan in many of those counties.

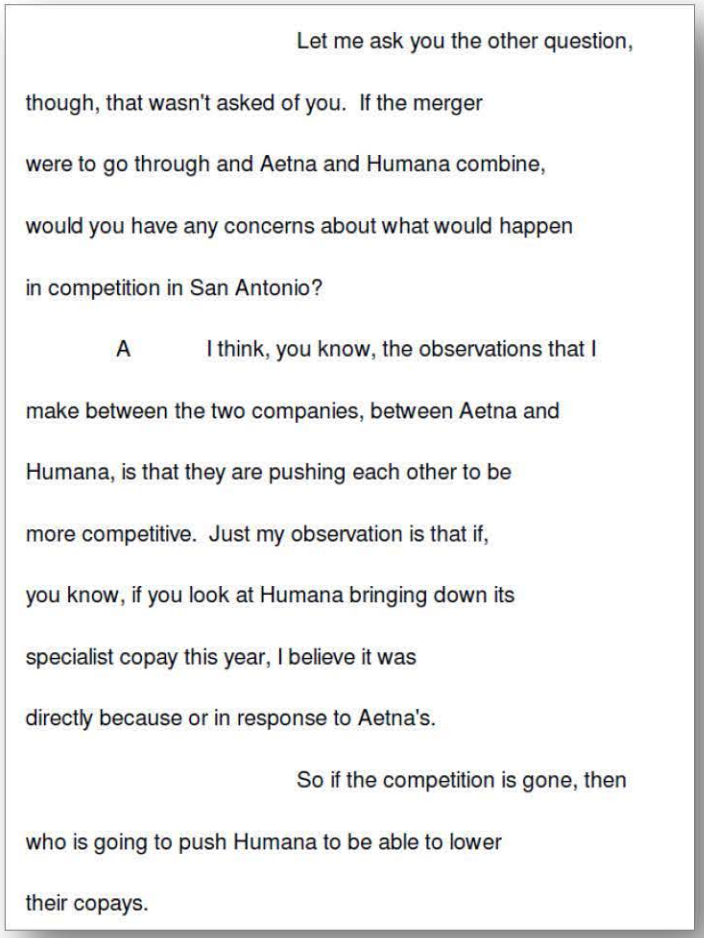
Patrick Farley,
North Carolina sales director for Humana

The merger is presumptively unlawful



See PX0378 & PX0551, at Appendix I

Aetna and Humana "are pushing each other to be more competitive" in Bexar County today



Let me ask you the other question, though, that wasn't asked of you. If the merger were to go through and Aetna and Humana combine, would you have any concerns about what would happen in competition in San Antonio?

A I think, you know, the observations that I make between the two companies, between Aetna and Humana, is that they are pushing each other to be more competitive. Just my observation is that if, you know, if you look at Humana bringing down its specialist copay this year, I believe it was directly because or in response to Aetna's.

So if the competition is gone, then who is going to push Humana to be able to lower their copays.

Raul Gonzalez,
President, Texas Medicare Solutions

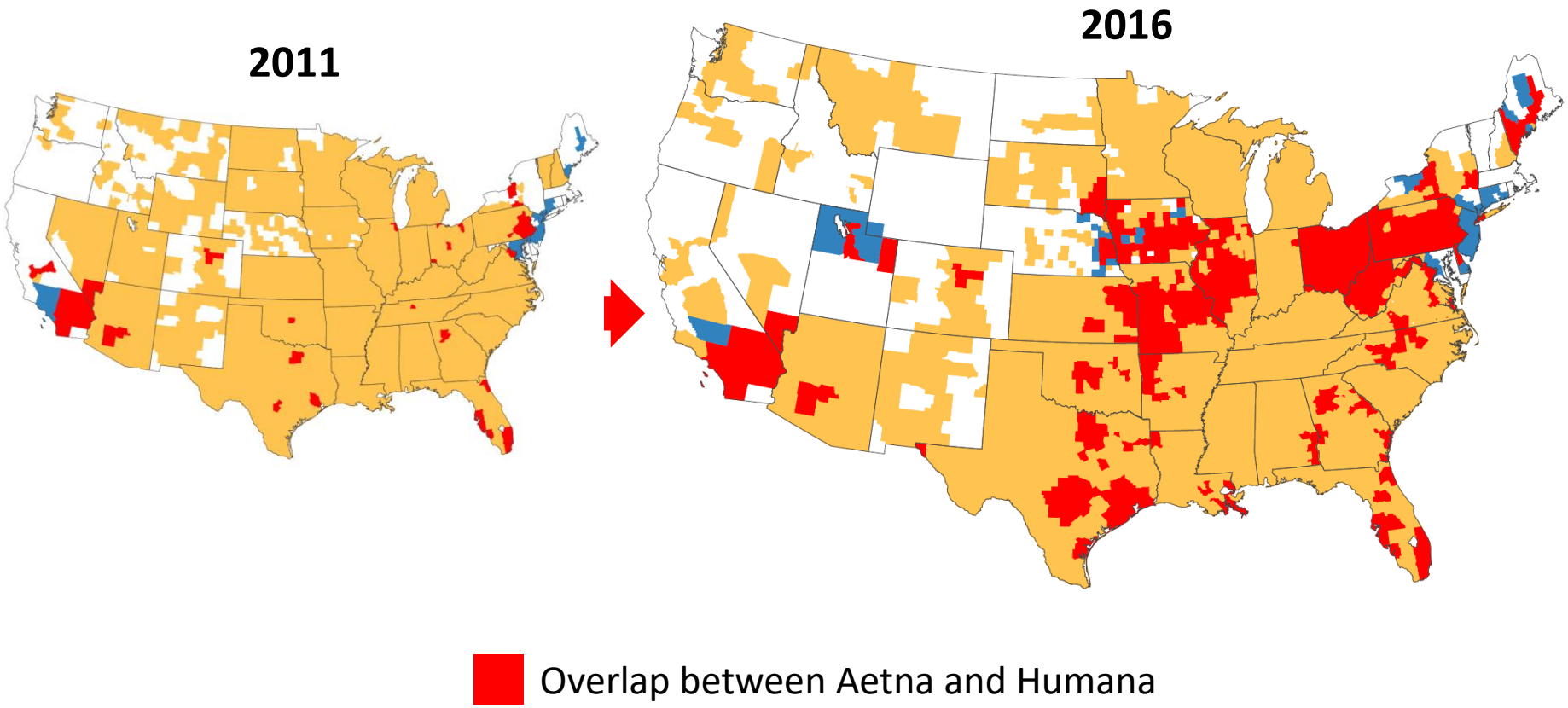
Tr. 1059:6-20

Aetna is a particularly aggressive competitor

"[A\n important consideration when analyzing possible anticompetitive effects" is whether the merger "would result in the elimination of a **particularly aggressive competitor** in a highly concentrated market/"

- FTC v. Staples, Inc.,
970 F. Supp. 1066, 1083 (D.D.C. 1997)

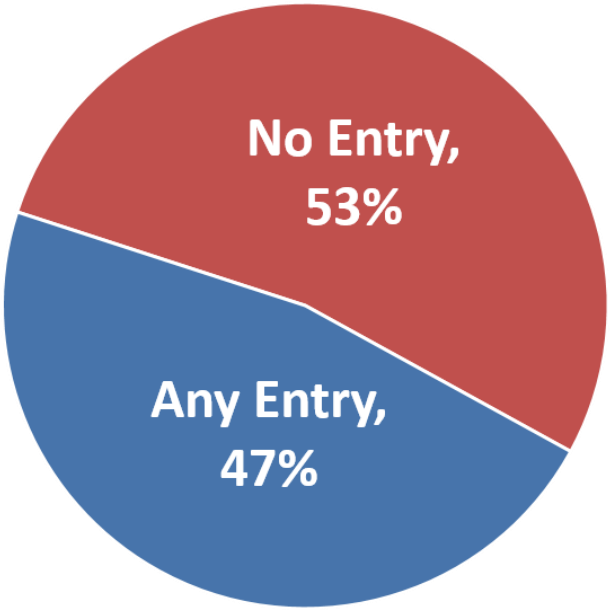
Aetna is a particularly aggressive competitor



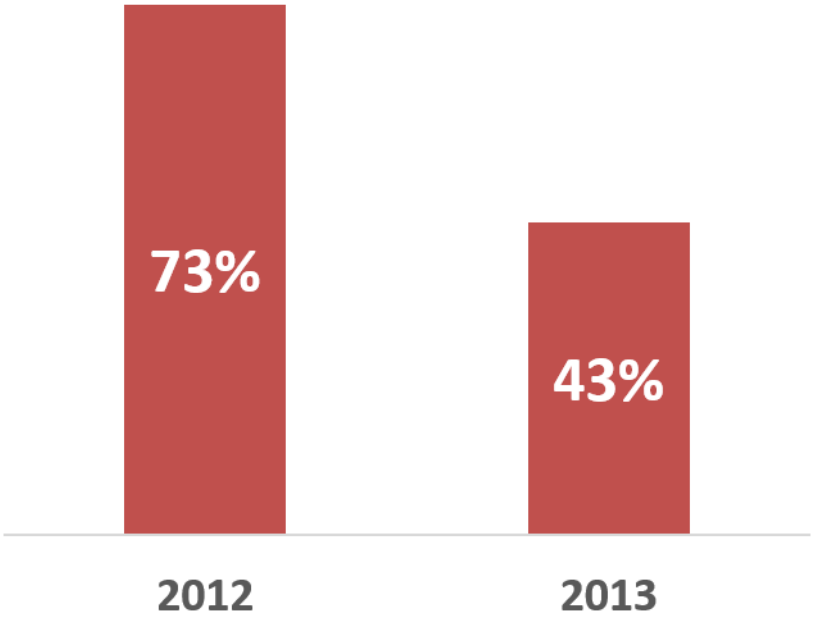
PX0551, at 110

Past experience shows that entry will not cure the competitive harm

Over the last five years, most Complaint counties experienced no entry at all.



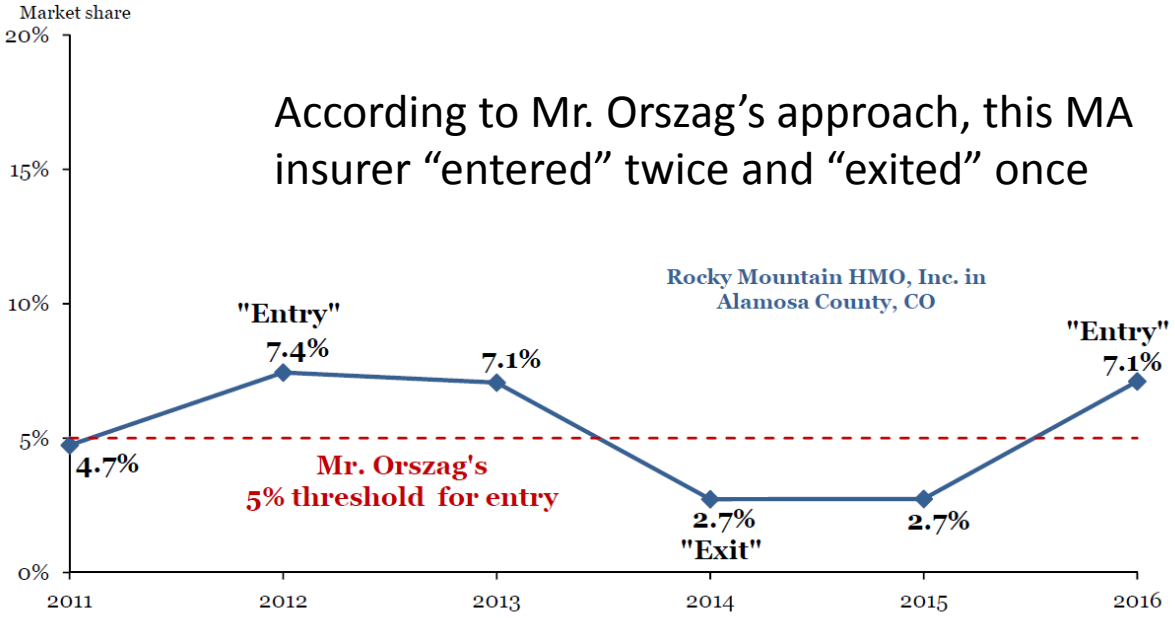
Most entrants from 2012, and nearly half from 2013, are no longer offering plans.



PX0551, at Ex. 25 & 26

Mr. Orszag's entry analysis double-counts incumbents

- By defining "entry" as any time an MA insurer reaches 5% MA market share and failing to exclude incumbents, Mr. Orszag overstates the amount of entry.
- Mr. Orszag's approach also overstates the timeliness of entry; his analysis does not identify *when* an insurer began offering plans and does not look at how long it took for any given insurer to reach 5% MA market share.



PX0552, at Ex. 24

CMS regulations do not replace competition or preempt the antitrust laws

Individual Bid Margins	• No rule capping individual bid margins • CMS requests margin reductions for a small number of plans per year • MA insurers negotiate and "push back" on CMS's requests
Aggregate Margins	• MA insurers can choose the level of aggregation • Aetna uses a "parent organization" level of aggregation • Aetna and Humana file bids with margins as high as 20%
Total Beneficiary Cost	• Can increase by $32 per member per month annually • Annual price or quality change of $384 ($32 per month for 12 months) not prohibited by the TBC test
Medical Loss Ratio	• Measured at the contract level, not plan level • Aetna's CMS contracts contain dozens of individual plans • Aetna has plans with MLRs below 85%

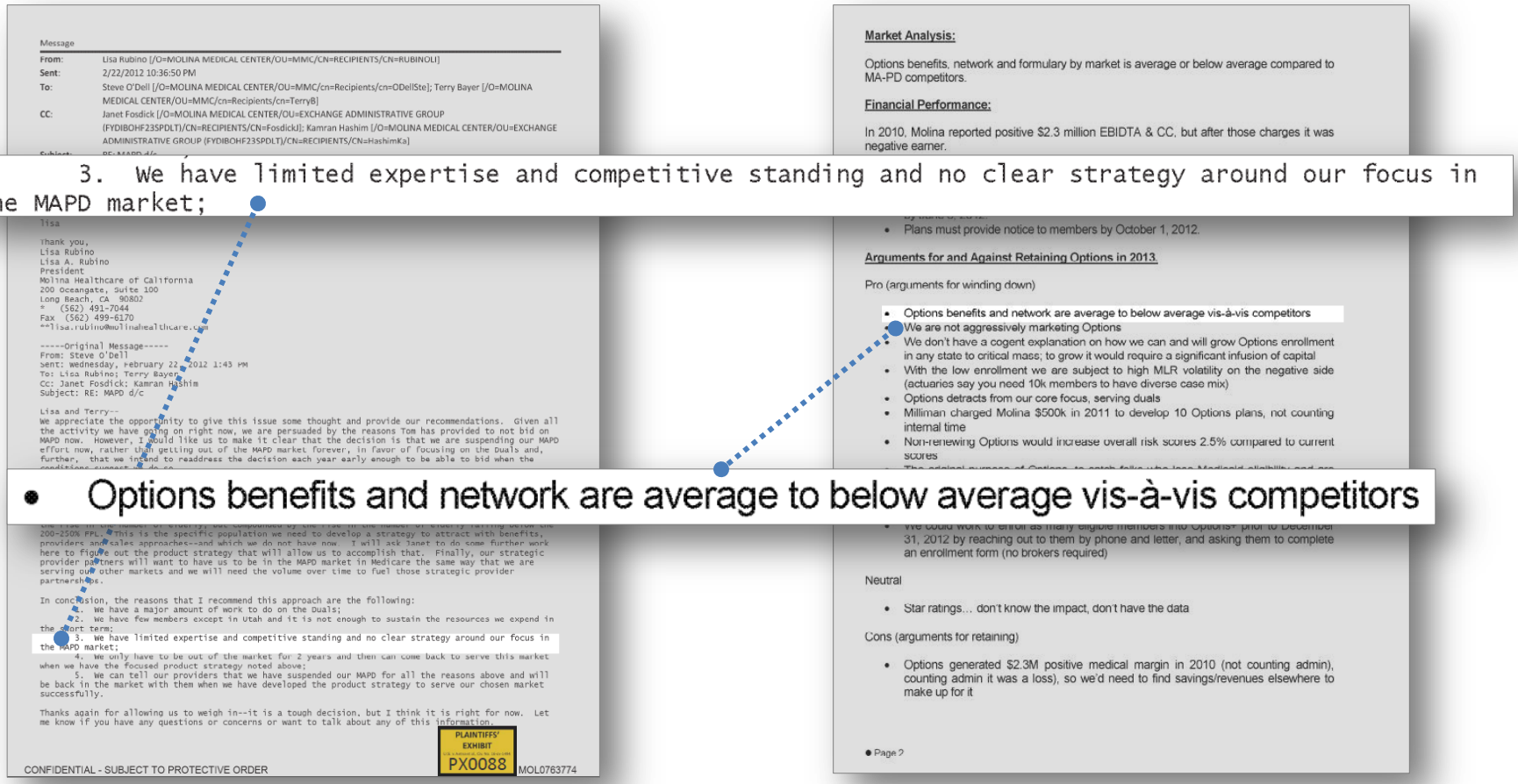
Tr. 2003:17-2014:19 (Paprocki); Tr. 574:7-18 (Wheatley)

Materials for Rebuttal & Appendix

MEDICARE ADVANTAGE

Proposed Remedy

Molina exited individual Medicare Advantage in 2012 because of "limited expertise and competitive standing"



Message

From: Lisa Rubino [/O=MOLINA MEDICAL CENTER/OU=MMC/CN=RECIPIENTS/CN=RUBINOLI]
Sent: 2/22/2012 10:36:50 PM
To: Steve O'Dell [/O=MOLINA MEDICAL CENTER/OU=MMC/cn=Recipients/cn=ODellSte]; Terry Bayer [/O=MOLINA MEDICAL CENTER/OU=MMC/cn=Recipients/cn=TerryB]
CC: Janet Fosdick [/O=MOLINA MEDICAL CENTER/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Fosdickj]; Kamran Hashim [/O=MOLINA MEDICAL CENTER/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=HashimKa]

lisa

Thank you,
Lisa Rubino
Lisa A. Rubino
President
Molina Healthcare of California
200 Oceangate, Suite 100
Long Beach, CA 90802
* (562) 491-7044
Fax (562) 499-6170
**lisa.rubino@molinahealthcare.com

-----Original Message-----
From: Steve O'Dell
Sent: Wednesday, February 22, 2012 1:43 PM
To: Lisa Rubino; Terry Bayer
Cc: Janet Fosdick; Kamran Hashim
Subject: RE: MAPD d/c

Lisa and Terry--
We appreciate the opportunity to give this issue some thought and provide our recommendations. Given all the activity we have going on right now, we are persuaded by the reasons Tom has provided to not bid on MAPD now. However, I would like us to make it clear that the decision is that we are suspending our MAPD effort now, rather than getting out of the MAPD market forever, in favor of focusing on the Duals and, further, that we intend to readdress the decision each year early enough to be able to bid when the

200-250% FPL. This is the specific population we need to develop a strategy to attract with benefits, providers and sales approaches--and which we do not have now. I will ask Janet to do some further work here to figure out the product strategy that will allow us to accomplish that. Finally, our strategic provider partners will want to have us to be in the MAPD market in Medicare the same way that we are serving our other markets and we will need the volume over time to fuel those strategic provider partnerships.

In conclusion, the reasons that I recommend this approach are the following:
1. We have a major amount of work to do on the Duals;
2. We have few members except in Utah and it is not enough to sustain the resources we expend in the short term;
3. We have limited expertise and competitive standing and no clear strategy around our focus in the MAPD market;
4. We only have to be out of the market for 2 years and then can come back to serve this market when we have the focused product strategy noted above;
5. We can tell our providers that we have suspended our MAPD for all the reasons above and will be back in the market with them when we have developed the product strategy to serve our chosen market successfully.

Thanks again for allowing us to weigh in--it is a tough decision, but I think it is right for now. Let me know if you have any questions or concerns or want to talk about any of this information.

PLAINTIFFS' EXHIBIT PX0088

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER MOL0763774

3. We have limited expertise and competitive standing and no clear strategy around our focus in the MAPD market;

Market Analysis:

Options benefits, network and formulary by market is average or below average compared to MA-PD competitors.

Financial Performance:

In 2010, Molina reported positive $2.3 million EBIDTA & CC, but after those charges it was negative earner.

- Plans must provide notice to members by October 1, 2012.

Arguments for and Against Retaining Options in 2013

Pro (arguments for winding down)

- Options benefits and network are average to below average vis-à-vis competitors
- We are not aggressively marketing Options
- We don't have a cogent explanation on how we can and will grow Options enrollment in any state to critical mass; to grow it would require a significant infusion of capital
- With the low enrollment we are subject to high MLR volatility on the negative side (actuaries say you need 10k members to have diverse case mix)
- Options detracts from our core focus, serving duals
- Milliman charged Molina $500k in 2011 to develop 10 Options plans, not counting internal time
- Non-renewing Options would increase overall risk scores 2.5% compared to current scores

- Options benefits and network are average to below average vis-à-vis competitors

- We could work to enroll as many eligible members into Options prior to December 31, 2012 by reaching out to them by phone and letter, and asking them to complete an enrollment form (no brokers required)

Neutral

- Star ratings… don't know the impact, don't have the data

Cons (arguments for retaining)

- Options generated $2.3M positive medical margin in 2010 (not counting admin), counting admin it was a loss), so we'd need to find savings/revenues elsewhere to make up for it

Page 2

PX0088, at 1; PX0092, at 2

Molina's Board recognizes its limitations in Medicare Advantage

We both agree that we don't have the internal talent to run it.

- **Dick Shapiro**, Molina Board member

Third, this is a very different business from what we do, including commercial marketing, pricing, contracting, etc. Unless we can acquire some talent as part of the deal, I think we are woefully under-resourced to be able to take this on.

- **Dale Wolf**, Molina Board member and former CEO of Coventry

I wonder how people will feel going from Aetna to a relatively unknown Molina in the medicare space. Wouldn't they be drawn to more recognized national brands?

- **Dick Shapiro**, Molina Board member

PX0086; PX0083; PX0499

Aetna plans to continue its rapid expansion; Molina may reduce its footprint

[redacted]

- Aetna Board of Directors Presentation, July 2015

Q. And here you're conveying that Molina may reduce the county footprint of the divestiture assets if there's low membership?

A. It's always a possibility. That's the words on the paper there, yes.

Q. And that's an accurate statement?

A. Yeah, it could.

Q. Molina may reduce the footprint if there's low membership?

A. Sure.

- Lisa Rubino,
Senior Vice President for Medicare at Molina

PX0075, at 7; Tr. 2493:17-2494:1

Before trial, Lisa Rubino raised the same concerns as Prof. Burns

Molina Would Not Receive the Resources that are Necessary to Compete

	Sale of an Intact Business	Proposed Divestiture
Provider Contracts	✓	✗
Star Ratings Infrastructure	✓	✗
Broker Network	✓	✗
Recognized Individual MA Brand	✓	✗
Employees and Infrastructure	✓	✗
Experience with PPO		

Message

From: Craig Bass [/O=MOLINA MEDICAL CENTER/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BASSCRAI]
Sent: 7/14/2016 7:57:05 PM
To: Lisa Rubino [/O=MOLINA MEDICAL CENTER/OU=MMC/cn=Recipients/cn=RubinoLi]
Subject: RE: is aetna's dental and vision their own or vendored

Thanks – very helpful. chin up on the audit. I know how hard and humbling those are…

From: Lisa Rubino
Sent: Thursday, July 14, 2016 2:55 PM
To: Craig Bass
Subject: RE: is aetna's dental and vision their own or vendored

I would not focus on it yet.. we will know more in a few weeks..then it could get balled up in litigation. We will have a 12-18 month TSA in place with them.. to run the business under our oversight..stay tuned..

I have been clear with Dr. Mario and John-key to success:

Their Star ratings need to come over-4-4.5-if not we are at risk of not being able to honor current benefits

Their network needs to be replicated.. lose key providers and we will lose members in droves

Sales and market engine-8 week selling period

GA and broker network..

Then the basics in ops and CM.. big fricken lift..

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Sales and market engine-8 week selling period

GA and broker network..

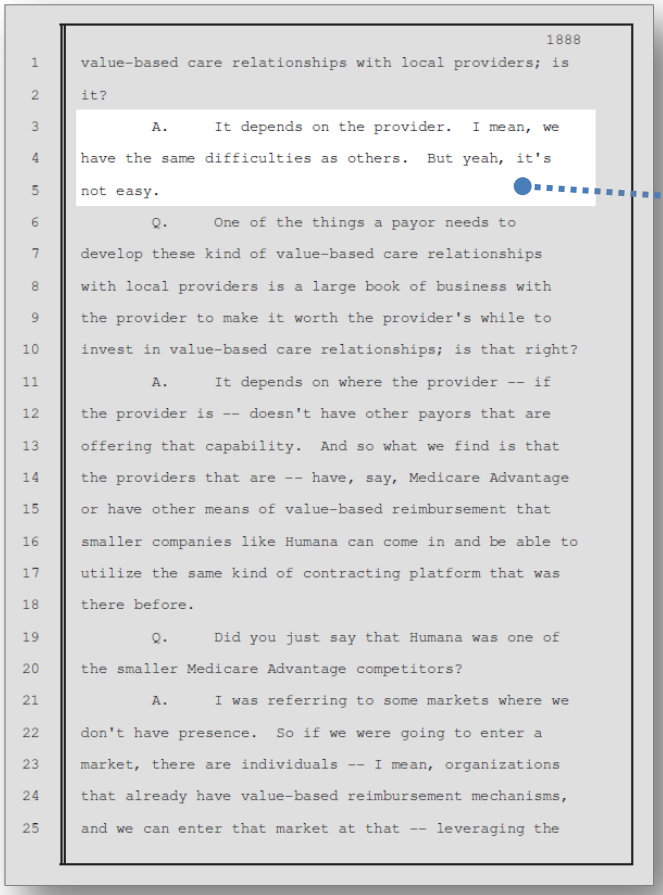
Then the basics in ops and CM.. big fricken lift..

- Lisa Rubino, Senior Vice President for Medicare at Molina

PX0102 (July 14, 2016)

Molina is unlikely to replicate Aetna and Humana's network

Bruce Broussard



1888

value-based care relationships with local providers; is it?

A. It depends on the provider. I mean, we have the same difficulties as others. But yeah, it's not easy.

Q. One of the things a payor needs to develop these kind of value-based care relationships with local providers is a large book of business with the provider to make it worth the provider's while to invest in value-based care relationships; is that right?

A. It depends on where the provider -- if the provider is -- doesn't have other payors that are offering that capability. And so what we find is that the providers that are -- have, say, Medicare Advantage or have other means of value-based reimbursement that smaller companies like Humana can come in and be able to utilize the same kind of contracting platform that was there before.

Q. Did you just say that Humana was one of the smaller Medicare Advantage competitors?

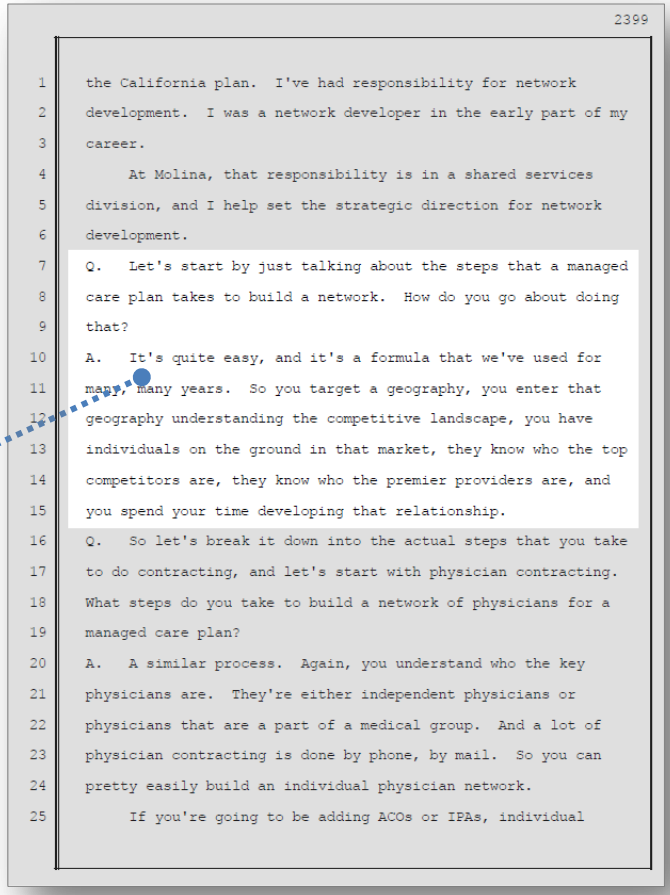
A. I was referring to some markets where we don't have presence. So if we were going to enter a market, there are individuals -- I mean, organizations that already have value-based reimbursement mechanisms, and we can enter that market at that -- leveraging the

Tr. 1888:3-5

But yeah, it's not easy.

It's quite easy

Lisa Rubino



2399

the California plan. I've had responsibility for network development. I was a network developer in the early part of my career.

At Molina, that responsibility is in a shared services division, and I help set the strategic direction for network development.

Q. Let's start by just talking about the steps that a managed care plan takes to build a network. How do you go about doing that?

A. It's quite easy, and it's a formula that we've used for many, many years. So you target a geography, you enter that geography understanding the competitive landscape, you have individuals on the ground in that market, they know who the top competitors are, they know who the premier providers are, and you spend your time developing that relationship.

Q. So let's break it down into the actual steps that you take to do contracting, and let's start with physician contracting. What steps do you take to build a network of physicians for a managed care plan?

A. A similar process. Again, you understand who the key physicians are. They're either independent physicians or physicians that are a part of a medical group. And a lot of physician contracting is done by phone, by mail. So you can pretty easily build an individual physician network.

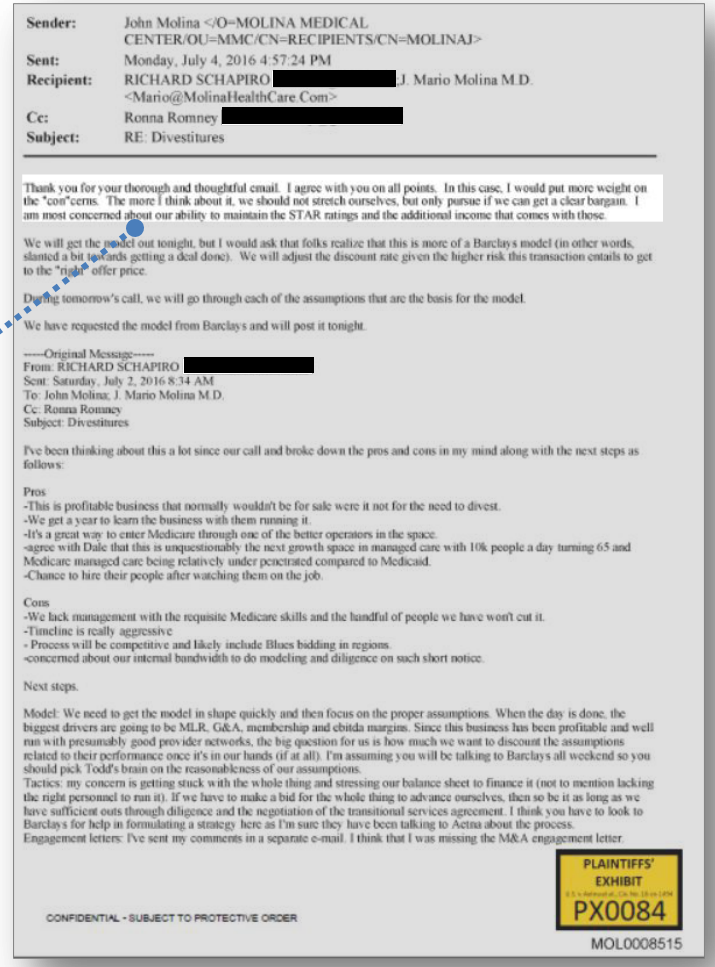
If you're going to be adding ACOs or IPAs, individual

Tr. 2399:10-15

Molina is unlikely to maintain Aetna and Humana's STAR scores

"The more I think about it, we should not stretch ourselves, but only pursue if we can get a clear bargain. I am most concerned about our ability to maintain the STAR ratings and the additional income that comes with those."

- John Molina,
Chief Financial Officer



Sender: John Molina </O=MOLINA MEDICAL CENTER/OU=MMC/CN=RECIPIENTS/CN=MOLINAJ>
Sent: Monday, July 4, 2016 4:57:24 PM
Recipient: RICHARD SCHAPIRO [redacted] J. Mario Molina M.D. <Mario@MolinaHealthCare.Com>
Cc: Ronna Romney [redacted]
Subject: RE: Divestitures

Thank you for your thorough and thoughtful email. I agree with you on all points. In this case, I would put more weight on the "con"cerns. The more I think about it, we should not stretch ourselves, but only pursue if we can get a clear bargain. I am most concerned about our ability to maintain the STAR ratings and the additional income that comes with those.

We will get the model out tonight, but I would ask that folks realize that this is more of a Barclays model (in other words, slanted a bit towards getting a deal done). We will adjust the discount rate given the higher risk this transaction entails to get to the "right" offer price.

During tomorrow's call, we will go through each of the assumptions that are the basis for the model.

We have requested the model from Barclays and will post it tonight.

-----Original Message-----
From: RICHARD SCHAPIRO [redacted]
Sent: Saturday, July 2, 2016 8:34 AM
To: John Molina; J. Mario Molina M.D.
Cc: Ronna Romney
Subject: Divestitures

I've been thinking about this a lot since our call and broke down the pros and cons in my mind along with the next steps as follows:

Pros
-This is profitable business that normally wouldn't be for sale were it not for the need to divest.
-We get a year to learn the business with them running it.
-It's a great way to enter Medicare through one of the better operators in the space.
-agree with Dale that this is unquestionably the next growth space in managed care with 10k people a day turning 65 and Medicare managed care being relatively under penetrated compared to Medicaid.
-Chance to hire their people after watching them on the job.

Cons
-We lack management with the requisite Medicare skills and the handful of people we have won't cut it.
-Timeline is really aggressive
- Process will be competitive and likely include Blues bidding in regions.
-concerned about our internal bandwidth to do modeling and diligence on such short notice.

Next steps.

Model: We need to get the model in shape quickly and then focus on the proper assumptions. When the day is done, the biggest drivers are going to be MLR, G&A, membership and ebitda margins. Since this business has been profitable and well run with presumably good provider networks, the big question for us is how much we want to discount the assumptions related to their performance once it's in our hands (if at all). I'm assuming you will be talking to Barclays all weekend so you should pick Todd's brain on the reasonableness of our assumptions.
Tactics: my concern is getting stuck with the whole thing and stressing our balance sheet to finance it (not to mention lacking the right personnel to run it). If we have to make a bid for the whole thing to advance ourselves, then so be it as long as we have sufficient outs through diligence and the negotiation of the transitional services agreement. I think you have to look to Barclays for help in formulating a strategy here as I'm sure they have been talking to Aetna about the process.
Engagement letters: I've sent my comments in a separate e-mail. I think that I was missing the M&A engagement letter.

PLAINTIFFS' EXHIBIT
PX0084

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MOL0008515

The risk of the proposed divestiture falls on seniors

"A purchaser's interests are not necessarily identical to those of the public, and so long as the divested assets produce something of value to the purchaser (possibly providing it with the ability to earn profits in some other market or to produce weak competition in the relevant market), it may be willing to buy them at a fire-sale price regardless of whether they cure the competitive concerns."

U.S. Department of Justice, Policy Guide to Merger Remedies 1 (2011)

The risk of the proposed divestiture falls on seniors

- Molina got "a screaming good price," as one Board member put it.
- Molina agreed to acquire Aetna and Humana's members for the "bargain price" of about $1,400 per member (including statutory capital), a significant discount from the typical purchase price of $3,000-$10,000 per member.
- Molina has put only $120 million at risk; the remainder of the purchase price of $400 million is statutory capital reserves that would remain with Molina if it exits MA markets.

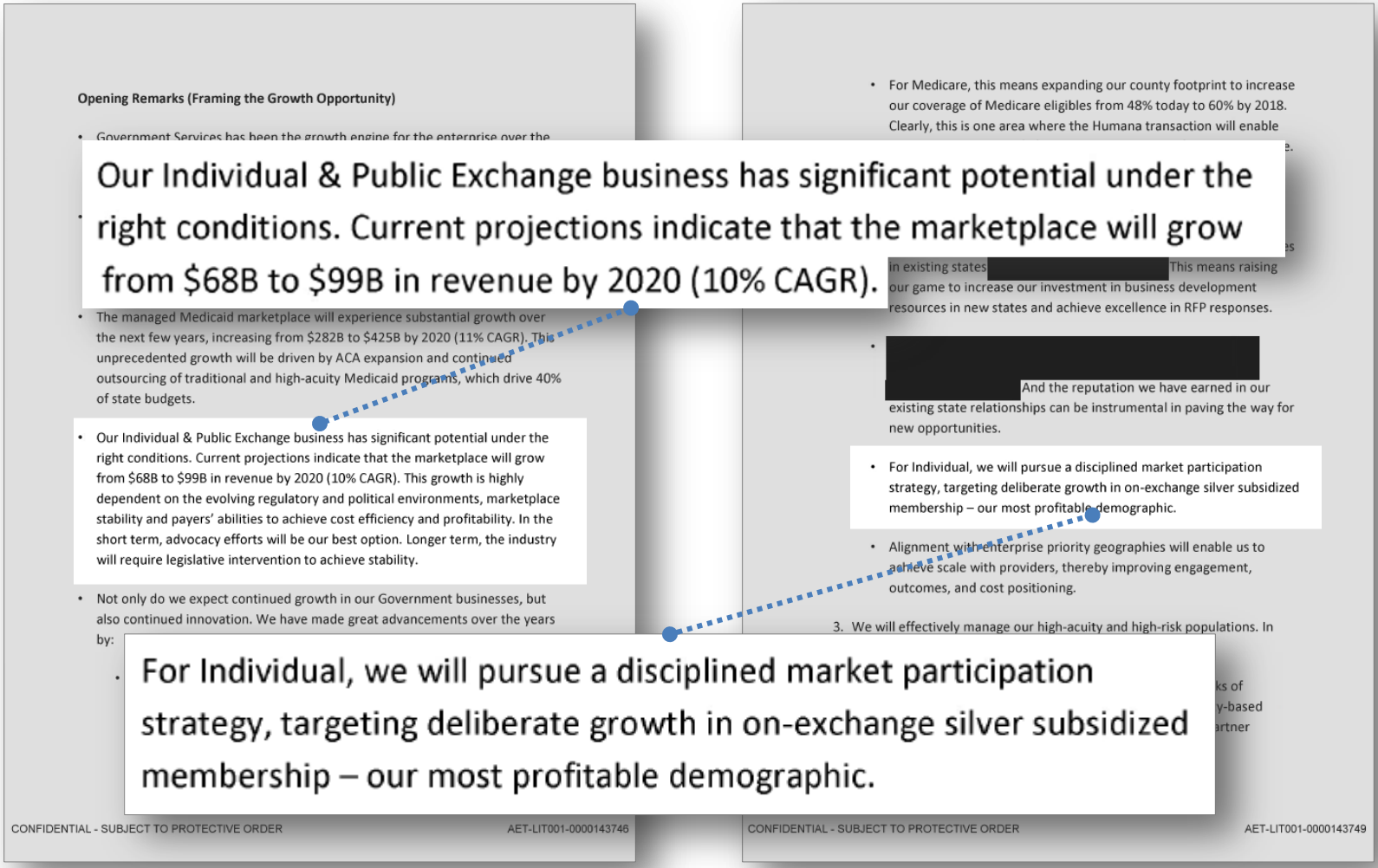
Tr. 2249:24-2250:13 (M. Molina); PX0100; Tr. 2328:24-2329:6 (M. Molina); Tr. 9882:1-21 (J. Molina)

Materials for Rebuttal & Appendix

PUBLIC EXCHANGES

Evasion of Scrutiny

July 19: Fran Soistman prepared speaking notes for the Board meeting on July 22



Opening Remarks (Framing the Growth Opportunity)

- Government Services has been the growth engine for the enterprise over the

- The managed Medicaid marketplace will experience substantial growth over the next few years, increasing from $282B to $425B by 2020 (11% CAGR). This unprecedented growth will be driven by ACA expansion and continued outsourcing of traditional and high-acuity Medicaid programs, which drive 40% of state budgets.

- Our Individual & Public Exchange business has significant potential under the right conditions. Current projections indicate that the marketplace will grow from $68B to $99B in revenue by 2020 (10% CAGR). This growth is highly dependent on the evolving regulatory and political environments, marketplace stability and payers' abilities to achieve cost efficiency and profitability. In the short term, advocacy efforts will be our best option. Longer term, the industry will require legislative intervention to achieve stability.

- Not only do we expect continued growth in our Government businesses, but also continued innovation. We have made great advancements over the years by:

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER AET-LIT001-0000143746

Our Individual & Public Exchange business has significant potential under the right conditions. Current projections indicate that the marketplace will grow from $68B to $99B in revenue by 2020 (10% CAGR).

- For Medicare, this means expanding our county footprint to increase our coverage of Medicare eligibles from 48% today to 60% by 2018. Clearly, this is one area where the Humana transaction will enable

in existing states [redacted] This means raising our game to increase our investment in business development resources in new states and achieve excellence in RFP responses.

- [redacted] And the reputation we have earned in our existing state relationships can be instrumental in paving the way for new opportunities.

- For Individual, we will pursue a disciplined market participation strategy, targeting deliberate growth in on-exchange silver subsidized membership – our most profitable demographic.

- Alignment with enterprise priority geographies will enable us to achieve scale with providers, thereby improving engagement, outcomes, and cost positioning.

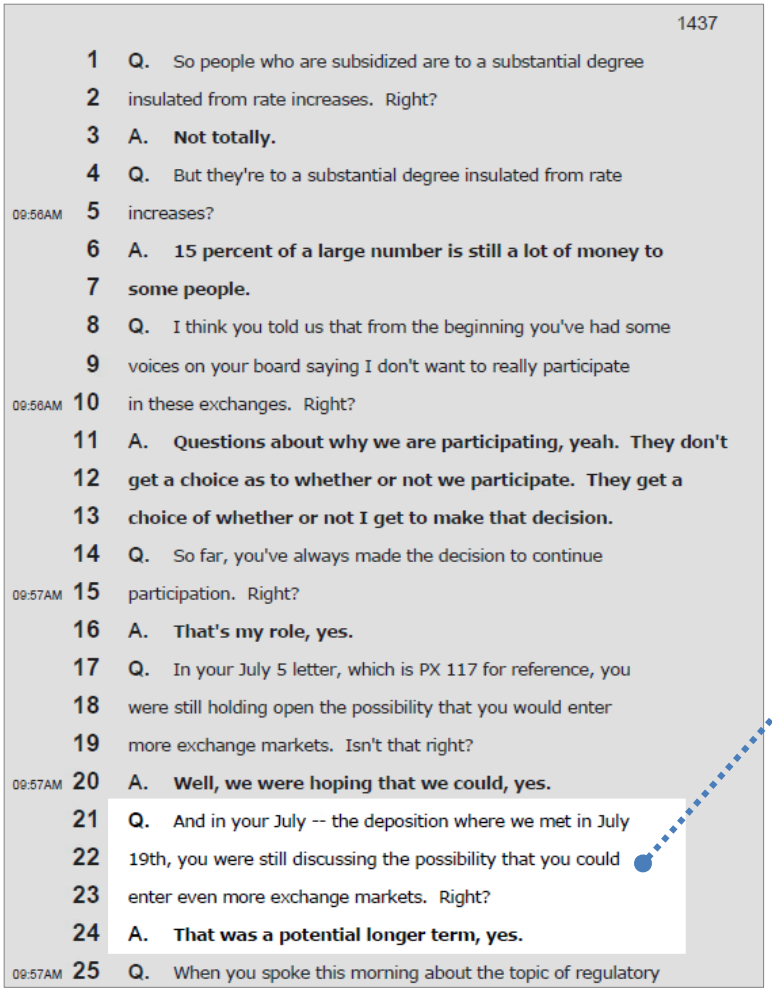
3. We will effectively manage our high-acuity and high-risk populations. In

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER AET-LIT001-0000143749

For Individual, we will pursue a disciplined market participation strategy, targeting deliberate growth in on-exchange silver subsidized membership – our most profitable demographic.

PX0120, at 2, 5 (July 19, 2016)

July 19: Mark Bertolini testified that Aetna was still discussing expansion



1437

Q. So people who are subsidized are to a substantial degree insulated from rate increases. Right?
A. **Not totally.**
Q. But they're to a substantial degree insulated from rate increases?
A. **15 percent of a large number is still a lot of money to some people.**
Q. I think you told us that from the beginning you've had some voices on your board saying I don't want to really participate in these exchanges. Right?
A. **Questions about why we are participating, yeah. They don't get a choice as to whether or not we participate. They get a choice of whether or not I get to make that decision.**
Q. So far, you've always made the decision to continue participation. Right?
A. **That's my role, yes.**
Q. In your July 5 letter, which is PX 117 for reference, you were still holding open the possibility that you would enter more exchange markets. Isn't that right?
A. **Well, we were hoping that we could, yes.**
Q. And in your July -- the deposition where we met in July 19th, you were still discussing the possibility that you could enter even more exchange markets. Right?
A. **That was a potential longer term, yes.**
Q. When you spoke this morning about the topic of regulatory

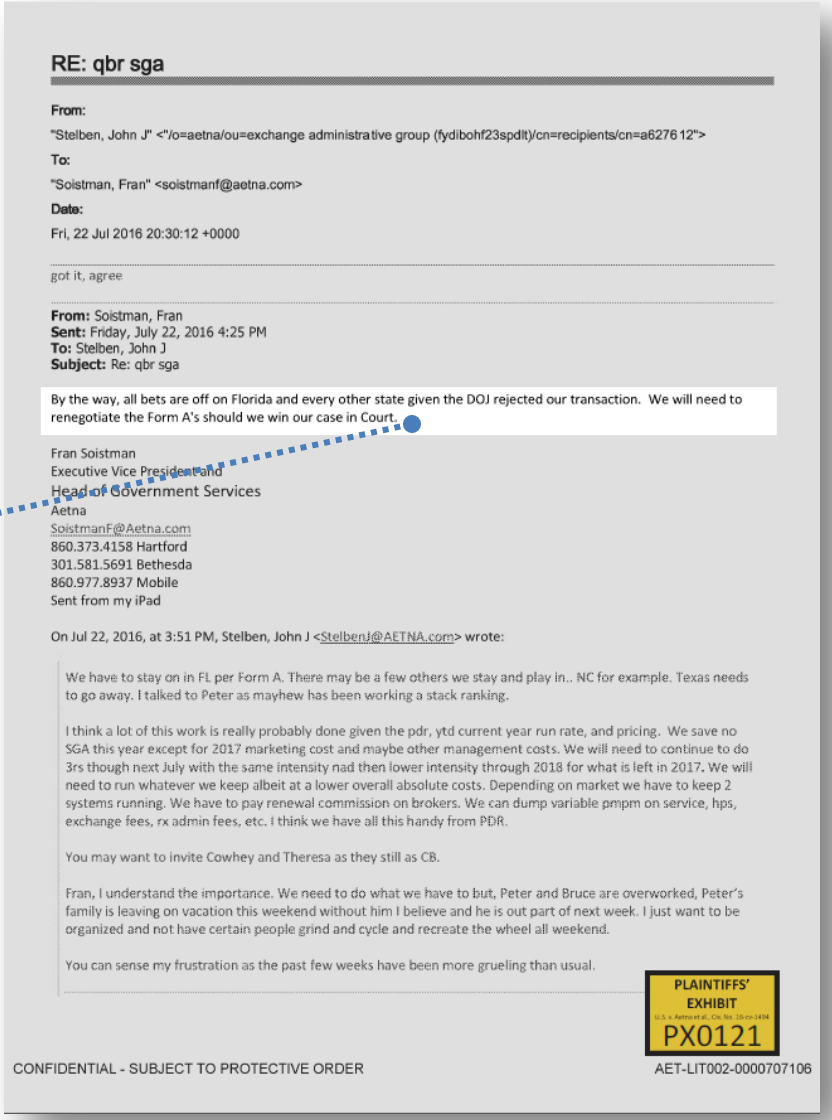
Tr. 1437:21-24

"Q. And in your July – the deposition where we met in July 19th, you were still discussing the possibility that you could enter even more exchange markets. Right?

That was a potential longer term, yes.

July 22: Soistman says that "all bets are off"

Soistman: "By the way, all bets are off on Florida and every other state given the DOJ rejected our transaction."



RE: qbr sga

From:
"Stelben, John J" <"/o=aetna/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=a627612">

To:
"Soistman, Fran" <soistmanf@aetna.com>

Date:
Fri, 22 Jul 2016 20:30:12 +0000

got it, agree

From: Soistman, Fran
Sent: Friday, July 22, 2016 4:25 PM
To: Stelben, John J
Subject: Re: qbr sga

By the way, all bets are off on Florida and every other state given the DOJ rejected our transaction. We will need to renegotiate the Form A's should we win our case in Court.

Fran Soistman
Executive Vice President and
Head of Government Services
Aetna
SoistmanF@Aetna.com
860.373.4158 Hartford
301.581.5691 Bethesda
860.977.8937 Mobile
Sent from my iPad

On Jul 22, 2016, at 3:51 PM, Stelben, John J <StelbenJ@AETNA.com> wrote:

> We have to stay on in FL per Form A. There may be a few others we stay and play in.. NC for example. Texas needs to go away. I talked to Peter as mayhew has been working a stack ranking.
>
> I think a lot of this work is really probably done given the pdr, ytd current year run rate, and pricing. We save no SGA this year except for 2017 marketing cost and maybe other management costs. We will need to continue to do 3rs though next July with the same intensity nad then lower intensity through 2018 for what is left in 2017. We will need to run whatever we keep albeit at a lower overall absolute costs. Depending on market we have to keep 2 systems running. We have to pay renewal commission on brokers. We can dump variable pmpm on service, hps, exchange fees, rx admin fees, etc. I think we have all this handy from PDR.
>
> You may want to invite Cowhey and Theresa as they still as CB.
>
> Fran, I understand the importance. We need to do what we have to but, Peter and Bruce are overworked, Peter's family is leaving on vacation this weekend without him I believe and he is out part of next week. I just want to be organized and not have certain people grind and cycle and recreate the wheel all weekend.
>
> You can sense my frustration as the past few weeks have been more grueling than usual.

PLAINTIFFS' EXHIBIT
PX0121

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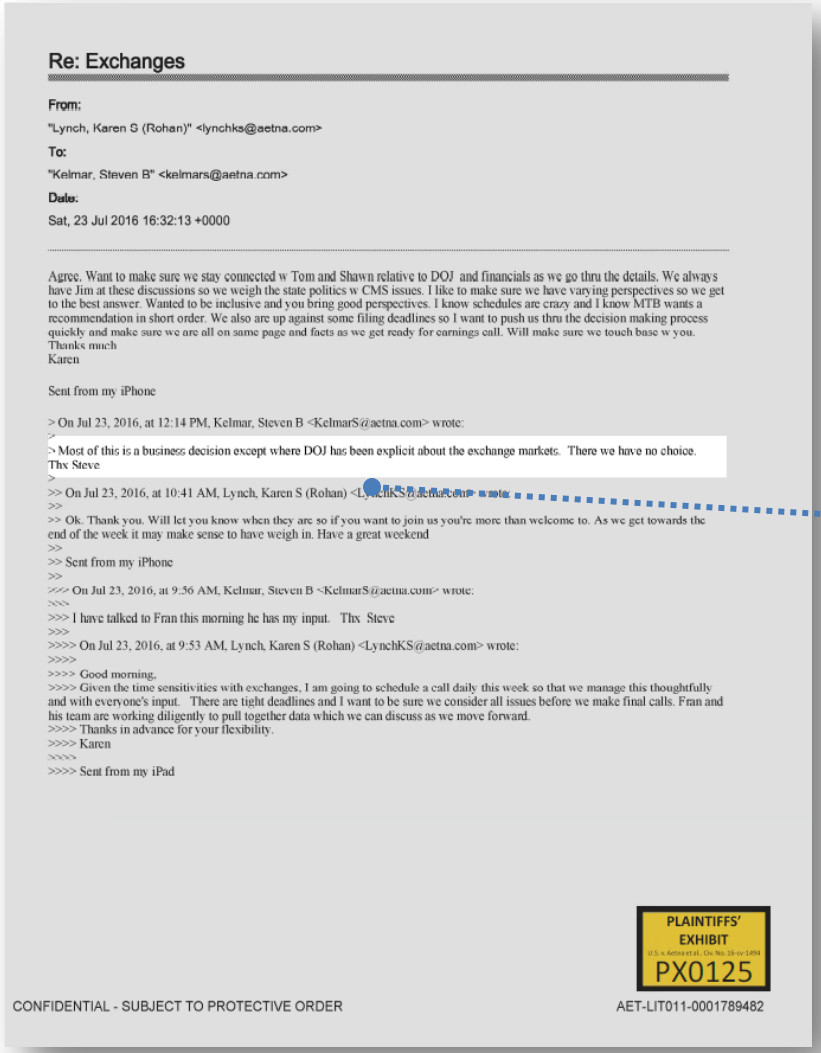
AET-LIT002-0000707106

PX0121, at 1 (July 22, 2016)

July 23: Kelmar says "we have no choice"



Re: Exchanges

From:

"Lynch, Karen S (Rohan)" <lynchks@aetna.com>

To:

"Kelmar, Steven B" <kelmars@aetna.com>

Date:

Sat, 23 Jul 2016 16:32:13 +0000

Agree. Want to make sure we stay connected w Tom and Shawn relative to DOJ and financials as we go thru the details. We always have Jim at these discussions so we weigh the state politics w CMS issues. I like to make sure we have varying perspectives so we get to the best answer. Wanted to be inclusive and you bring good perspectives. I know schedules are crazy and I know MTB wants a recommendation in short order. We also are up against some filing deadlines so I want to push us thru the decision making process quickly and make sure we are all on same page and facts as we get ready for earnings call. Will make sure we touch base w you.
Thanks much
Karen

Sent from my iPhone

> On Jul 23, 2016, at 12:14 PM, Kelmar, Steven B <KelmarS@aetna.com> wrote:
>
> Most of this is a business decision except where DOJ has been explicit about the exchange markets. There we have no choice.
Thx Steve
>
>> On Jul 23, 2016, at 10:41 AM, Lynch, Karen S (Rohan) <LynchKS@aetna.com> wrote:
>>
>> Ok. Thank you. Will let you know when they are so if you want to join us you're more than welcome to. As we get towards the end of the week it may make sense to have weigh in. Have a great weekend
>>
>> Sent from my iPhone
>>
>>> On Jul 23, 2016, at 9:56 AM, Kelmar, Steven B <KelmarS@aetna.com> wrote:
>>>
>>> I have talked to Fran this morning he has my input. Thx Steve
>>>
>>>> On Jul 23, 2016, at 9:53 AM, Lynch, Karen S (Rohan) <LynchKS@aetna.com> wrote:
>>>>
>>>> Good morning,
>>>> Given the time sensitivities with exchanges, I am going to schedule a call daily this week so that we manage this thoughtfully and with everyone's input. There are tight deadlines and I want to be sure we consider all issues before we make final calls. Fran and his team are working diligently to pull together data which we can discuss as we move forward.
>>>> Thanks in advance for your flexibility.
>>>> Karen
>>>>
>>>> Sent from my iPad

PLAINTIFFS' EXHIBIT
U.S. v. Aetna et al., Civ. No. 16-cv-1494
PX0125

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

AET-LIT011-0001789482

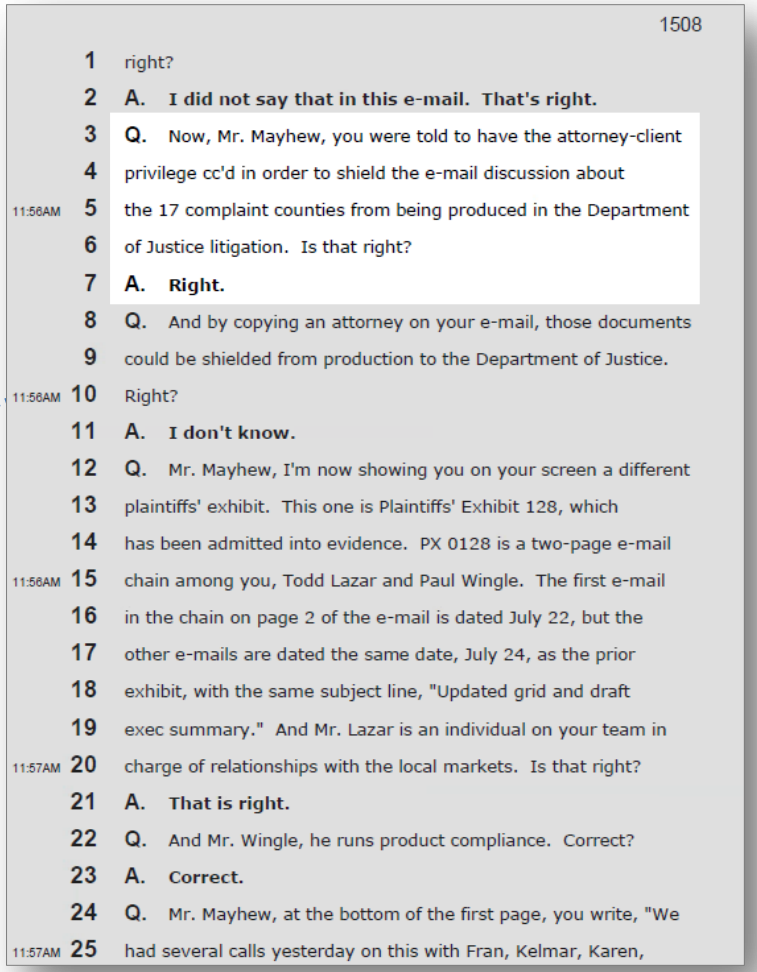
PX0125, at 1 (July 23, 2016)

Kelmar: "Most of this is a business decision except where DOJ has been explicit about the exchange markets. There we have no choice."

July 24: Mayhew says "I was told to be careful about putting any of that in writing"

Q. Now, Mr. Mayhew, you were told to have the attorney-client privilege cc'd in order to shield the e-mail discussion about the 17 complaint counties from being produced in the Department of Justice litigation. Is that right?

A. Right.



1508

right?
A. I did not say that in this e-mail. That's right.
Q. Now, Mr. Mayhew, you were told to have the attorney-client
privilege cc'd in order to shield the e-mail discussion about
11:56AM the 17 complaint counties from being produced in the Department
of Justice litigation. Is that right?
A. Right.
Q. And by copying an attorney on your e-mail, those documents
could be shielded from production to the Department of Justice.
11:56AM Right?
A. I don't know.
Q. Mr. Mayhew, I'm now showing you on your screen a different
plaintiffs' exhibit. This one is Plaintiffs' Exhibit 128, which
has been admitted into evidence. PX 0128 is a two-page e-mail
11:56AM chain among you, Todd Lazar and Paul Wingle. The first e-mail
in the chain on page 2 of the e-mail is dated July 22, but the
other e-mails are dated the same date, July 24, as the prior
exhibit, with the same subject line, "Updated grid and draft
exec summary." And Mr. Lazar is an individual on your team in
11:57AM charge of relationships with the local markets. Is that right?
A. That is right.
Q. And Mr. Wingle, he runs product compliance. Correct?
A. Correct.
Q. Mr. Mayhew, at the bottom of the first page, you write, "We
11:57AM had several calls yesterday on this with Fran, Kelmar, Karen,

Tr. 1508:3-7; PX0127.

Soistman wrote a recommendation on behalf of the team, and Bertolini accepted it

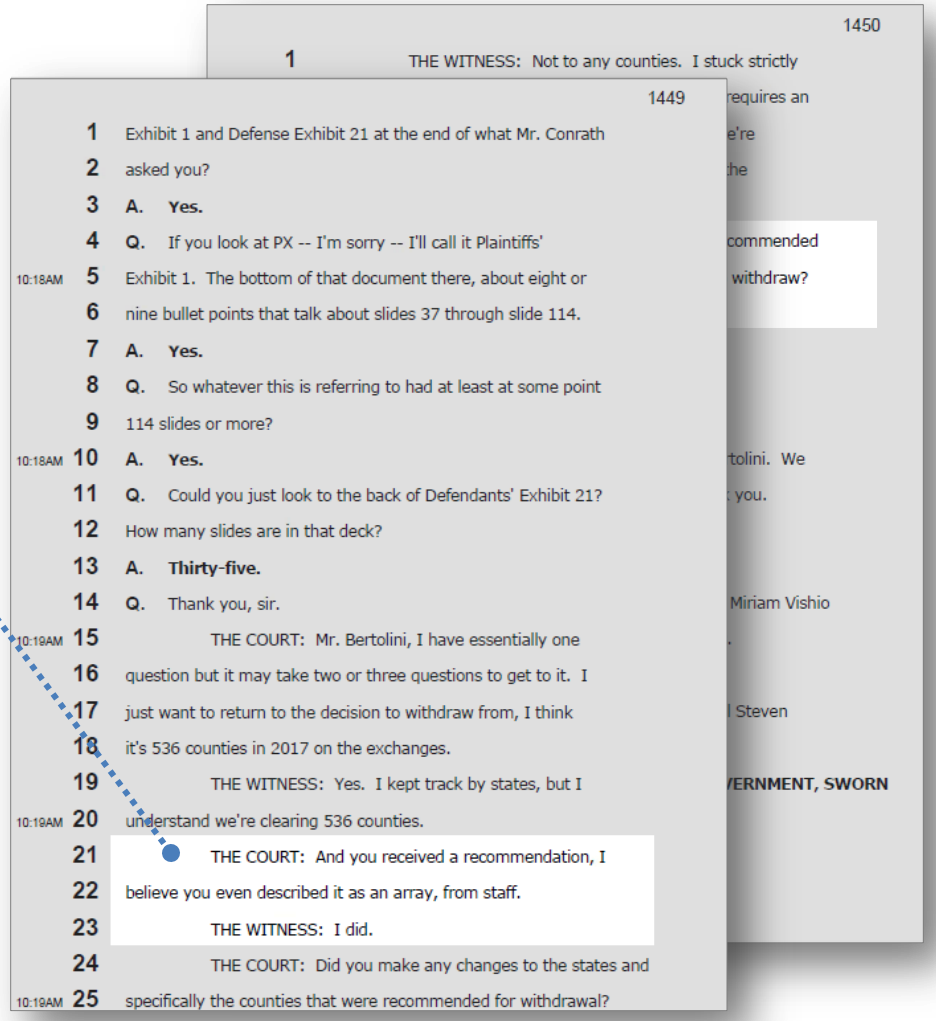
Q. [To Bertolini] And you received a recommendation, I believe you even described it as an array, from staff.

A. I did.

* * *

Q. But the counties that they recommended were the counties that ultimately your decision was to withdraw?

A. Right.



1450

1 THE WITNESS: Not to any counties. I stuck strictly

1449

1 Exhibit 1 and Defense Exhibit 21 at the end of what Mr. Conrath
2 asked you?
3 **A. Yes.**
4 **Q.** If you look at PX -- I'm sorry -- I'll call it Plaintiffs'
10:18AM 5 Exhibit 1. The bottom of that document there, about eight or
6 nine bullet points that talk about slides 37 through slide 114.
7 **A. Yes.**
8 **Q.** So whatever this is referring to had at least at some point
9 114 slides or more?
10:18AM 10 **A. Yes.**
11 **Q.** Could you just look to the back of Defendants' Exhibit 21?
12 How many slides are in that deck?
13 **A. Thirty-five.**
14 **Q.** Thank you, sir.
10:19AM 15 THE COURT: Mr. Bertolini, I have essentially one
16 question but it may take two or three questions to get to it. I
17 just want to return to the decision to withdraw from, I think
18 it's 536 counties in 2017 on the exchanges.
19 THE WITNESS: Yes. I kept track by states, but I
10:19AM 20 understand we're clearing 536 counties.
21 THE COURT: And you received a recommendation, I
22 believe you even described it as an array, from staff.
23 THE WITNESS: I did.
24 THE COURT: Did you make any changes to the states and
10:19AM 25 specifically the counties that were recommended for withdrawal?

Tr. 1449:21-1450:8

Materials for Rebuttal & Appendix

PUBLIC EXCHANGES

Competitive Effects

Economic evidence confirms both market definition and the importance of competition

Academic Literature

HHS and Dafny & Gruber studies show that prices rise when exchange markets become more concentrated

HHS, Tebaldi, and Dafny et al. show customer substitution at levels that would allow a hypothetical monopolist to increase price

Hypothetical Monopolist Test

On exchange plans pass the single product test

A 10 percent SSNIP would be profitable for at least one plan in all Complaint counties for a wide range of margins and measures of customer substitution

Regression Analysis

A regression of price measures on HHI finds that an increase in concentration leads to higher premiums

Average second lowest silver premiums in Complaint counties would increase by 2.1 percent

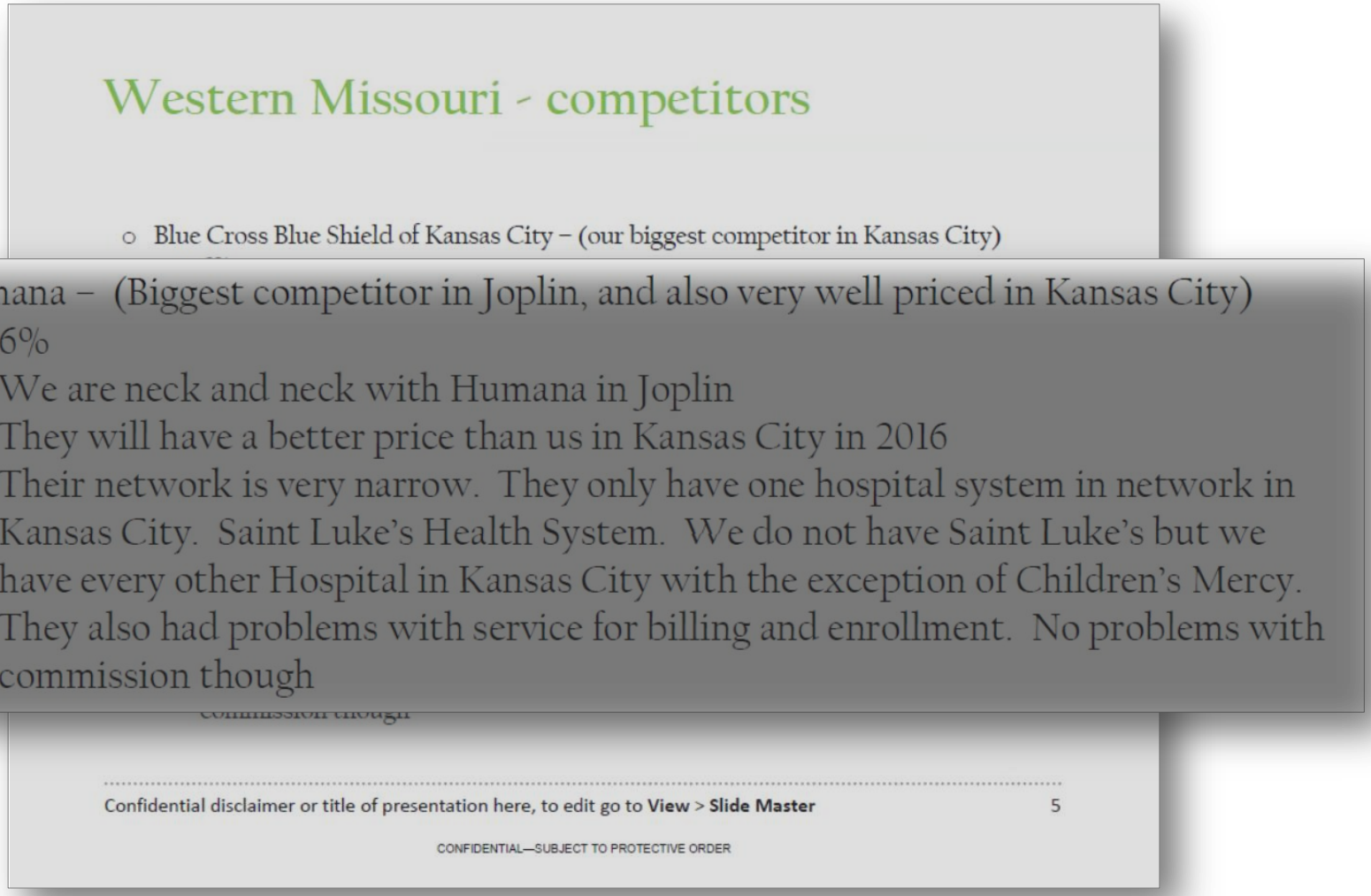
PX0551, at ¶¶ 168-77, 277-81, 317-22, Ex. 32, 34 & 35 (Expert Report of Aviv Nevo, Ph.D.)

Defendants' predictions of Humana's 2017 market share do not reflect reality

- Mr. Orszag predicted that Humana would have less than 1% market share in 2017 in the Complaint counties.
- But in 6 of the 17 counties, Humana will be one of only two insurers selling plans on-exchange.
- Basic economic theory teaches that firms compete where they expect to be profitable in the future.

PX0711; Tr. 1676:4-16 (Nevo)

Aetna and Humana are significant competitors for individual insurance



Western Missouri - competitors

- Blue Cross Blue Shield of Kansas City – (our biggest competitor in Kansas City)
- Humana – (Biggest competitor in Joplin, and also very well priced in Kansas City)
  - 6%
  - We are neck and neck with Humana in Joplin
  - They will have a better price than us in Kansas City in 2016
  - Their network is very narrow. They only have one hospital system in network in Kansas City. Saint Luke's Health System. We do not have Saint Luke's but we have every other Hospital in Kansas City with the exception of Children's Mercy.
  - They also had problems with service for billing and enrollment. No problems with commission though

Confidential disclaimer or title of presentation here, to edit go to **View** > **Slide Master** 5

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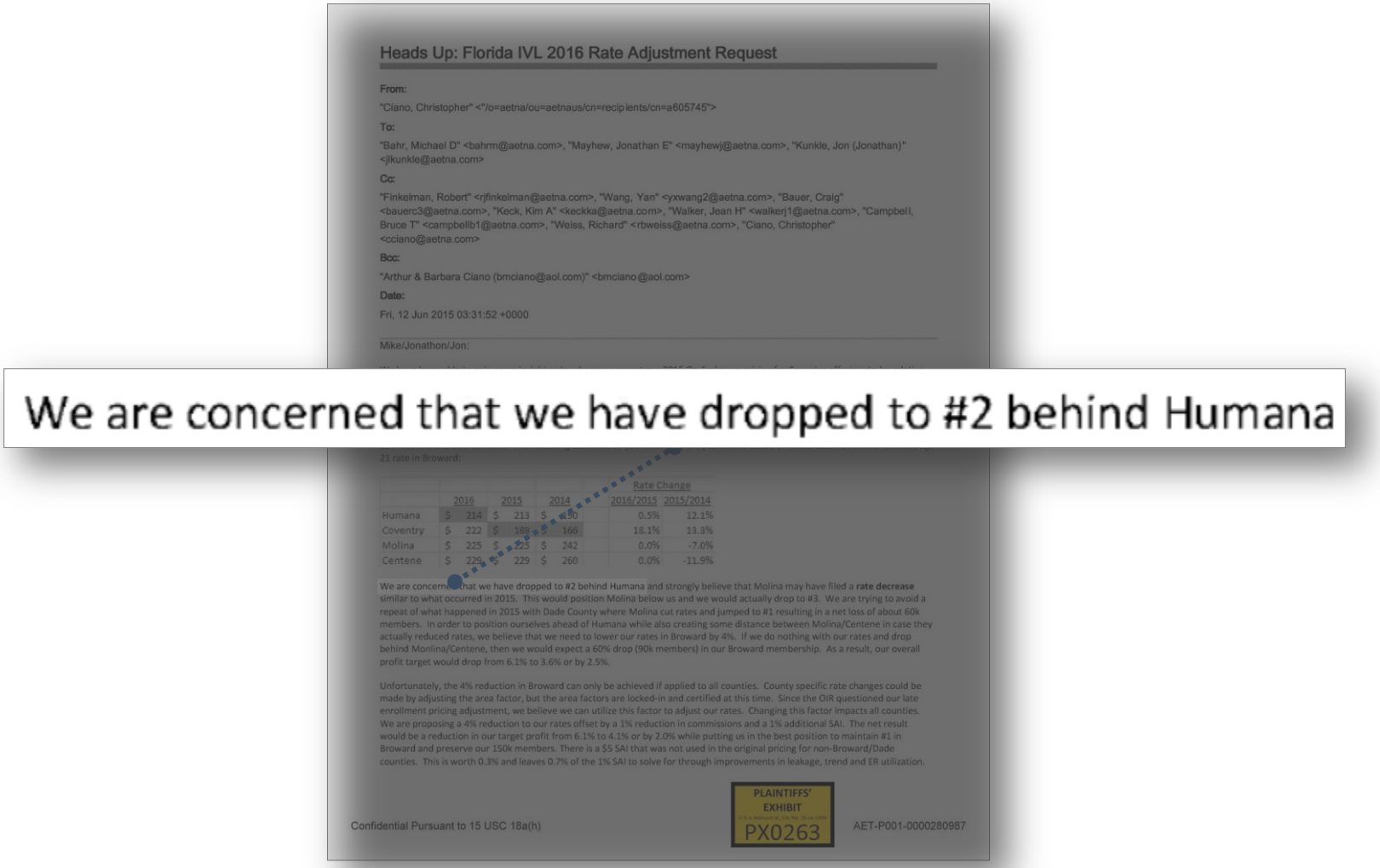
PX0351, at 159 (Aug. 28, 2015)

Aetna and Humana are significant competitors for individual insurance



Heads Up: Florida IVL 2016 Rate Adjustment Request

From:

"Ciano, Christopher" <"/o=aetna/ou=aetnaus/cn=recipients/cn=a605745">

To:

"Bahr, Michael D" <bahrm@aetna.com>, "Mayhew, Jonathan E" <mayhewj@aetna.com>, "Kunkle, Jon (Jonathan)" <jlkunkle@aetna.com>

Cc:

"Finkelman, Robert" <rjfinkelman@aetna.com>, "Wang, Yan" <yxwang2@aetna.com>, "Bauer, Craig" <bauerc3@aetna.com>, "Keck, Kim A" <keckka@aetna.com>, "Walker, Jean H" <walkerj1@aetna.com>, "Campbell, Bruce T" <campbellb1@aetna.com>, "Weiss, Richard" <rbweiss@aetna.com>, "Ciano, Christopher" <cciano@aetna.com>

Bcc:

"Arthur & Barbara Ciano (bmciano@aol.com)" <bmciano@aol.com>

Date:

Fri, 12 Jun 2015 03:31:52 +0000

Mike/Jonathon/Jon:

We are concerned that we have dropped to #2 behind Humana

21 rate in Broward:

	2016	2015	2014	Rate Change 2016/2015	Rate Change 2015/2014
Humana	$ 214	$ 213	$ 190	0.5%	12.1%
Coventry	$ 222	$ 188	$ 166	18.1%	13.3%
Molina	$ 225	$ 225	$ 242	0.0%	-7.0%
Centene	$ 229	$ 229	$ 260	0.0%	-11.9%

We are concerned that we have dropped to #2 behind Humana and strongly believe that Molina may have filed a **rate decrease** similar to what occurred in 2015. This would position Molina below us and we would actually drop to #3. We are trying to avoid a repeat of what happened in 2015 with Dade County where Molina cut rates and jumped to #1 resulting in a net loss of about 60k members. In order to position ourselves ahead of Humana while also creating some distance between Molina/Centene in case they actually reduced rates, we believe that we need to lower our rates in Broward by 4%. If we do nothing with our rates and drop behind Monlina/Centene, then we would expect a 60% drop (90k members) in our Broward membership. As a result, our overall profit target would drop from 6.1% to 3.6% or by 2.5%.

Unfortunately, the 4% reduction in Broward can only be achieved if applied to all counties. County specific rate changes could be made by adjusting the area factor, but the area factors are locked-in and certified at this time. Since the OIR questioned our late enrollment pricing adjustment, we believe we can utilize this factor to adjust our rates. Changing this factor impacts all counties. We are proposing a 4% reduction to our rates offset by a 1% reduction in commissions and a 1% additional SAI. The net result would be a reduction in our target profit from 6.1% to 4.1% or by 2.0% while putting us in the best position to maintain #1 in Broward and preserve our 150k members. There is a $5 SAI that was not used in the original pricing for non-Broward/Dade counties. This is worth 0.3% and leaves 0.7% of the 1% SAI to solve for through improvements in leakage, trend and ER utilization.

PLAINTIFFS' EXHIBIT PX0263

Confidential Pursuant to 15 USC 18a(h)

AET-P001-0000280987

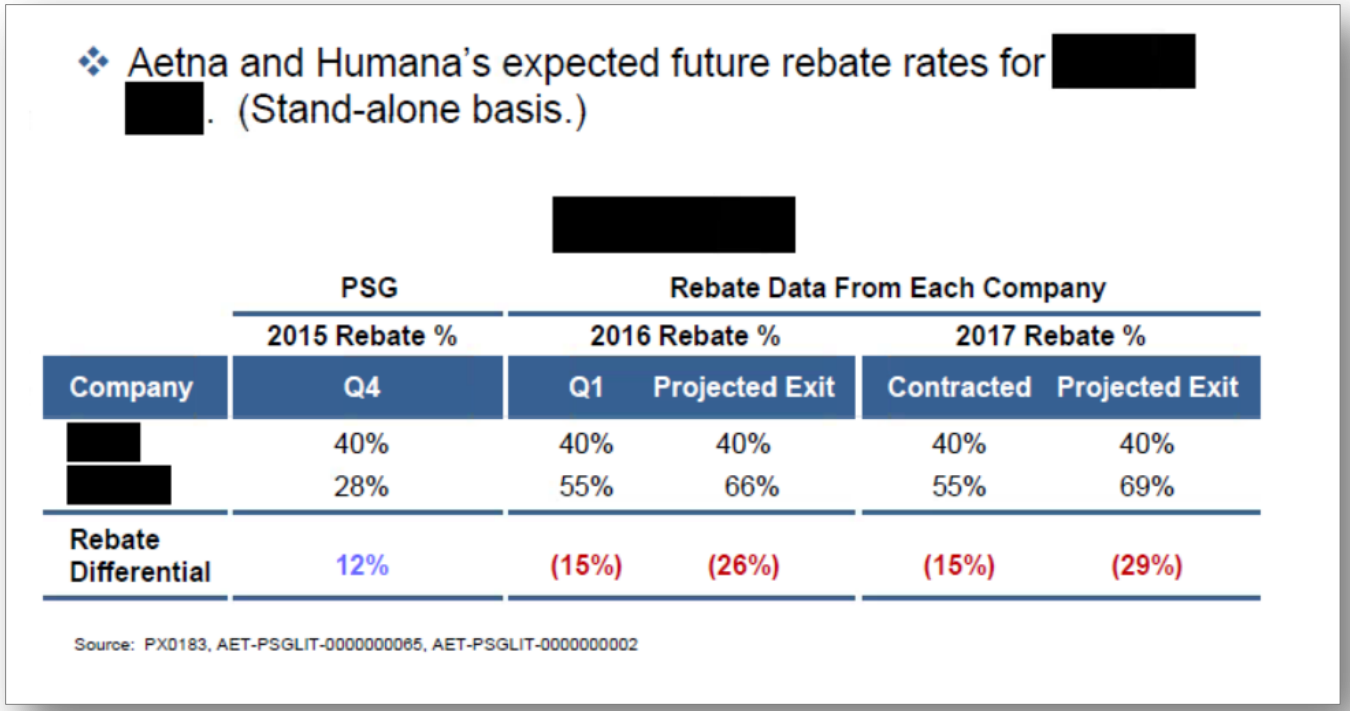
PX0263 (June 12, 2015)

Materials for Rebuttal & Appendix

EFFICIENCIES

Defendants calculated pharmacy efficiencies using just a single quarter of data

- Ms. Hammer testified that any pharmacy efficiencies based on rebates would require a longitudinal study.
- Aetna's original consultant, Deloitte, agreed that a longitudinal study was needed, so Aetna chose a different consulting firm.



❖ Aetna and Humana's expected future rebate rates for [redacted]. (Stand-alone basis.)

[redacted]

	PSG	Rebate Data From Each Company			
	2015 Rebate %	2016 Rebate %		2017 Rebate %	
Company	Q4	Q1	Projected Exit	Contracted	Projected Exit
[redacted]	40%	40%	40%	40%	40%
[redacted]	28%	55%	66%	55%	69%
Rebate Differential	12%	(15%)	(26%)	(15%)	(29%)

Source: PX0183, AET-PSGLIT-0000000065, AET-PSGLIT-0000000002

U.S. & Plaintiff States

v.

Aetna Inc. & Humana Inc.