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11 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

12 In the Matter of:
13 RBR Management LLC, dba Community
14 Ambulance,
15 Applicant.

No. 2017-EMS-0104-DHS

**DIGNITY HEALTH’S RESPONSE
TO AMR’S “NOTICE OF FILING
MARICOPA COUNTY SUPERIOR
COURT RULING . . .”**

16 Dignity Health responds to the notice that the AMR CON holders filed on
17 October 13, 2017. In that notice, AMR informed the ALJ that the superior court had denied
18 Dignity Health’s application for a preliminary injunction. That is accurate. But AMR’s
19 notice also seems to assume that, because the superior court did not grant a preliminary
20 injunction, the ALJ must automatically grant AMR’s motion to intervene. That is not
21 correct.

22 In the October 11 minute entry (which is attached to AMR’s notice), the superior
23 court judge specifically found that AMR’s attempt to intervene in this proceeding is “in
24 violation of the Non-Interference Provision” of the contract between Dignity Health and
25 AMR. (10/11/2017 Minute Entry, p. 2) The judge also specifically recognized the
26 possibility that the ALJ might deny AMR’s motion to intervene. The minute entry states:
“As far as the Court is aware, the Administrative Law Judge has not yet ruled on AMR’s

1 motion to intervene, **and could yet choose to deny that motion.**” (*Id.*, p. 4, n.2) (emphasis
2 added)

3 The bottom line is that the superior court judge’s decision on the preliminary
4 injunction does not, in any way, compel the ALJ to allow AMR to intervene in this
5 proceeding. The ALJ might, for example, deny AMR’s motion based on the fact that AMR
6 waived its right to intervene. AMR’s head of Arizona operations, Glenn Kasprzyk,
7 admitted at the evidentiary hearing in superior court that Arizona law does not require
8 AMR to intervene in this proceeding.¹ Mr. Kasprzyk also acknowledged that AMR had,
9 through the Non-Interference Provision, waived its right to intervene and oppose a CON
10 application by Dignity Health.² The superior court judge’s finding that AMR’s attempted
11 intervention in this proceeding is “in violation of the Non-Interference Provision”
12 necessarily means that AMR’s waiver extended to a CON application by a subsidiary of
13 Dignity Health, such as Community Ambulance.

14 Beyond the contractual waiver, there might be other grounds for the ALJ to deny
15 AMR’s motion to intervene. Because Dignity Health’s pending motion to intervene is for
16 the purpose of addressing issues relating to the contract between Dignity Health and AMR,
17 Dignity Health will not address those other grounds at this time. Dignity Health likewise
18 will not address the other requests in AMR’s notice (granting the motions to intervene by
19 Maricopa Ambulance and ABC Ambulance, denying Community Ambulance’s motion to
20 stay, and setting a scheduling conference).

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25 ¹ Ex. A, Glenn Kasprzyk Transcript, p. 56, lines 19-24.

26 ² *Id.*, p. 61, lines 4-10.

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RESPECTFULLY SUBMITTED this 20th day of October, 2017.

COPPERSMITH BROCKELMAN PLC

By /s/Andrew S. Gordon
Andrew S. Gordon
Scott M. Bennett
Attorneys for Dignity Health

CERTIFICATE OF SERVICE

ORIGINAL filed using the OAH electronic document filing system <https://portal.azoah.com/oedf> this 20th day of October, 2017 with copies provided to all parties on the approved mailing list this 20th day of October, 2017 by posting through the designated OAH website at <https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html>.

/s/Georgina S. Hadley
Georgina S. Hadley

Exhibit A

Exhibit A

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DIGNITY HEALTH,

Plaintiff,

vs.

AMR HOLDING CO., INC, ET AL,

Defendant.

No. CV 2017-009481

Phoenix, Arizona
September 28, 2017
2:17 p.m.

BEFORE THE HONORABLE DANIEL G. MARTIN

Designation of Record

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

Proceedings recorded by electronic sound recording; transcript produced by eScribers, LLC.

CHRIS HWANG
Transcriptionist



I N D E XSeptember 28, 2017PLAINTIFF'S WITNESSESDIRECTCROSSREDIRECTRECROSSVD

(None)

DEFENDANT'S WITNESSESDIRECTCROSSREDIRECTRECROSSVD

Glen Kasprzk

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EXHIBITSPLAINTIFF'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
None			

DEFENDANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
39	RFI response	26	26



APPEARANCES

September 28, 2017

Judge: Daniel G. Martin

For the Plaintiff:

Andrew S. Gordon

Scott M. Bennett

Witnesses:

None

For the Defendant:

Paul J. McGoldrick

Ronna L. Fickbohm

Witnesses:

Glen Kasprzyk



Phoenix, Arizona

September 28, 2017

(The Honorable Daniel G. Martin Presiding)

EVIDENTIARY HEARING:

(Designation of Record begins at 2:17 p.m.)

THE CLERK: May I have your full name?

THE WITNESS: Sure, Glen Raymond Kasprzyk, K-A-S-

THE CLERK: Okay, K-A-S.

THE WITNESS: -- P-R-Z-Y-K.

GLEN KASPRZYK

called as a witness for the Plaintiff, having been duly sworn,
testified as follows:

THE COURT: Thank you. Mr. Kasprzyk, I think you
know the drill by now. If you'd please come around and have a
seat to my right. Please make yourself comfortable. Help
yourself to water if you wish.

And Ms. Fickbohm, you may begin whenever you are
ready.

DIRECT EXAMINATION

BY MS. FICKBOHM:

Q Good afternoon, Mr. Kasprzk.

A Good afternoon.

Q Please state your full name for the record?

A Glen Raymond Kasprzk.

Q And tell me what your occupation is?



1 A I am the regional chief operating officer for AMR,
2 overseeing operations in Arizona and New Mexico.

3 Q And can you tell the judge what that involves?

4 A It involves coordinating with our local operations
5 oversight of the financial status of the organization, support
6 services that have a day-to-day direct impact on our
7 organization.

8 Q And how long have you been in the ambulance business
9 in Arizona?

10 A I came to Arizona in 2006.

11 Q And have -- has all that involvement been in the
12 management capacity?

13 A Yes.

14 Q And can you just give the judge very briefly the
15 summary or outline or chronology of AMR's entry into the --
16 into Arizona?

17 A Sure. In approximately 2008, AMR acquired River
18 Medical Ambulance out of Lake Havasu. That was the first point
19 of entry for AMR. And then subsequently in 2013, 2014, began
20 the process of acquiring Life Line Ambulance Service in
21 Prescott, which I was part of that organization as their chief
22 operating officer. And then --

23 Q So when they acquired that company, they acquired
24 you?

25 A Yes, they acquired me. And then around about the



1 same time that that was transaction was closing, Rural/Metro
2 was going to through bankruptcy and had some financial
3 struggles. And then we filed a certificate application for
4 American Medical Response of Maricopa.

5 Q And that went to hearing in approximately the fall of
6 2014?

7 A Sounds correct.

8 Q Do you remember when AMR Maricopa became certificated
9 to provide ambulance transports in Maricopa County?

10 A I believe it was February 28th, 2015 -- 27 -- it
11 was -- remember the day, I just don't remember the date. It
12 was at the end of February.

13 Q Okay. And tell the judge the nature of that
14 certificate of necessity. Is it just for interfacility
15 transports?

16 A No, so that certificate allows AMR of Maricopa to
17 provide both 911 and interfacility convalescent response within
18 Maricopa County.

19 Q And when you say allows, are there also duties and
20 obligations under that certificate of necessity that AMR
21 Maricopa is not allowed to disregard?

22 A Yes.

23 Q And can you tell the judge what those obligations and
24 duties are?

25 A Maintain response time compliance, plus all of the



1 stipulated obligations when AMR came in to the market as far as
2 participating in AZ Peers (phonetic), the programs that are
3 mutually beneficial to the prehospital environment and the
4 regulator.

5 Q And if AMR Maricopa receives a call through the 911
6 system in order to perform a transport, is it allowed to
7 basically say, oh, we don't want to go do that, it's too far?

8 A No.

9 Q Is it allowed to say, oh, we don't want to do that,
10 the person's not going to be able to pay us?

11 A No.

12 Q So are there obligations to respond regardless of the
13 quality of the call or the likelihood of getting paid?

14 A That's correct.

15 Q And is it the same with the interfacility transports,
16 the 911 transports? You don't get to pick and choose which
17 ones you do, do you?

18 A No.

19 Q Okay. And so after it acquired, just so we get the
20 chronology down, AMR Maricopa received a CON in February of
21 2015 after a hearing. Oh, and let me just back up. So when
22 AMR of Maricopa submitted its application to become a
23 certificated both 911 and 991 provider in Maricopa County, did
24 it just fill out an application and get a certificate?

25 A It did not.



1 Q Did it have to go through a hearing?

2 A Extensive process, yes.

3 Q And it had to have its application vetted by the
4 bureau?

5 A Yes.

6 Q And then do you remember how long the hearing lasted?

7 A A long time. I don't remember dates. I've been
8 involved in a lot of hearings, but it was several weeks if I
9 recall.

10 Q And were there existing CON providers that intervened
11 and contested the application?

12 A Yes, the Rural/Metro Corporation.

13 Q And is that uncommon in -- especially in an area
14 where there's already an existing provider, and another
15 provider wants to come in and get a CON, is it uncommon for the
16 existing provider to intervene and object?

17 A Not uncommon.

18 Q And would it be uncommon for the existing provider to
19 not intervene and not object?

20 A That would be an unusual circumstance.

21 Q So AMR Maricopa and the other AMR CON holders that
22 have sought to intervene in the RBR CON application proceeding,
23 are they the only ones who have sought to intervene?

24 A No.

25 Q Who else has sought to or have been allowed to



1 intervene?

2 A Maricopa Ambulance and ABC Ambulance.

3 Q And are those competitors of AMR Maricopa?

4 A Yes.

5 Q The authority that Maricopa Ambulance holds in
6 Maricopa County, is that just 911 or is it like what AMR
7 Maricopa has the authority and obligations?

8 A Very similar to AMR, both 911 and interfacility
9 convalescent covering just about the same geographic surface
10 area in Maricopa County.

11 Q And then you also mentioned an entity called ABC
12 Ambulance. Can you tell the judge what the scope of their
13 certificate of necessity is?

14 A They are an interfacility convalescent transport
15 provider only within Maricopa County.

16 Q And are they an unlimited interfacility transport
17 provider?

18 A They have a restricted certificate of necessity.

19 Q And how is it restricted?

20 A They only are allowed to add a certain number of
21 ambulances through a certain duration of time. So they were
22 granted an initial number and I don't recall their numbers
23 originally and then they could add additional ambulances each
24 additional year over a period of time.

25 Q And are you familiar with the reason for those



1 limitations?

2 A I was not party to any of those discussions, so I
3 don't know why.

4 Q So with regard to certificate of necessity
5 applications, either as a representative of an intervening
6 party or as a representative of a party applying for
7 certificate of necessity, roughly how many of these proceedings
8 would you say you've been involved with?

9 A Five or six. It's -- sometimes they blur together
10 because they run about the same time, but I have experience in
11 those.

12 Q And is part of your job requirements the necessity to
13 be familiar with the statutes and regulations governing
14 ambulance transport business in Arizona?

15 A Very much so.

16 Q And are you in general and familiar with the
17 Department of Health Services and what we call the bureau, the
18 Bureau of Emergency Medical Services and Trauma Systems'
19 procedural requirements?

20 A Very familiar.

21 Q And does DHS in fact issue certificate of necessities
22 that have limitations placed on them either on 911 authority or
23 on non-911 authority?

24 A There are some certificates that do have some
25 limitation to them.



1 Q So that's not something that's a brand new concept in
2 Arizona?

3 A No.

4 Q So I'd ask you to turn to the smaller notebook in
5 front of you. And let's look at -- have you discuss a couple
6 examples of those?

7 A Sure.

8 Q So at my request, did you give me a few examples of
9 restricted CONs?

10 A Yes.

11 Q Okay. So let's turn to Exhibit Number 52, the --
12 which is marked in your book as 22.

13 A 22.

14 Q And this is the Comtrans ambulance certificate of
15 necessity?

16 A It appears so.

17 Q Okay. So can you tell the judge who is -- who's
18 the -- Comtrans is wholly owned by who?

19 A Comtrans is a wholly owned subsidiary of American
20 Medical Response or AMR Hold Co. --

21 Q Okay.

22 A -- in this case.

23 Q And there's a note on the bottom of Comtrans. And
24 tell the judge what the limitation on Comtrans' ability to
25 provide ambulance transport services is?



1 A So under through response times below D note,
2 "ambulance service is limited to behavioral health situations
3 such as drugs, alcohol, and mental health related crises."

4 Q I'd ask you to turn the tab to 53. And tell the
5 judge what we have here?

6 A This is -- appears to be a copy of ABC Ambulance's
7 certificate of necessity.

8 Q And who owns ABC Ambulance?

9 A Neil Thomas (phonetic) is the owner of ABC Ambulance.

10 Q Is this a competitor of AMR Maricopa's?

11 A Yes.

12 Q And is there any limitation on services that ABC
13 Ambulance is allowed to provide?

14 A On page 2 under -- as kind of alluded to earlier type
15 of service, there is a special provision there as discussed
16 that clarifies the number of ambulances they are allowed to
17 place into service over a period of years.

18 Q Okay. And turning the third tab, tab number 24, are
19 you familiar with the Green Valley Fire District's CON
20 application?

21 A Yes.

22 Q And has there been a decision entered by the director
23 allowing Green Valley a certificate of necessity?

24 A Yes.

25 Q Has that certificate of necessity actually been



1 issued yet?

2 A To the best of my knowledge, it has not been
3 officially issued.

4 Q And was this a proceeding that a couple -- AMR wholly
5 owned affiliates subsidiaries intervened in?

6 A Yes.

7 Q And did the matter actually go to hearing?

8 A It did not.

9 Q And how did the matter get resolved?

10 A We worked with Chief Chuck Wonder (phonetic) of the
11 fire district, understood the needs of what he wanted to do
12 within his community, and work through a process to arrange an
13 agreement to have restricted certificate to help augment the
14 system. But it was designed around a very finite number of
15 resources and calls and then allowed for the ability to add a
16 search capacity or flex vehicle when the system was overloaded.
17 I believe it's termed on demand or in demand ambulance.

18 Q So if you turn to page 4, is the limitation on that
19 certificate of necessity that the director has allowed outlined
20 there?

21 A Yes.

22 Q So they're allowed to have one full time basically 9
23 is 911 ambulance seven days a week, 24 hours a day, right?

24 A Yes.

25 Q And one in demand ambulance, correct?



1 A That is correct.

2 Q And then there's a lengthy discussion about what in
3 demand means?

4 A That's correct.

5 Q That's pretty detailed limitation, isn't it?

6 A Very specific.

7 Q With this limitation, was that something that you and
8 that AMR and Green Valley got together and came up with, that
9 they could both live with?

10 A We discussed it in length.

11 Q And with that limitation, were you then able to go
12 back and look at the two CON holders wholly owned by AMR in the
13 area and determine exactly what the impact on operations and on
14 the public will be -- would be?

15 A Yes.

16 Q And as part of telling the director this is what we
17 think the CON should read, was information provided to her
18 about what the impact on the public was expected to be or was
19 not to expected to be if the CON was issued?

20 A There was discussion around that to ensure that not
21 only Green Valley was served, but the intervening holders had
22 service area requirements that went beyond Green Valley. So
23 there was an understanding that we couldn't deteriorate that
24 service in those rural communities.

25 So all of that information that the data around that was



1 fully discussed, so everyone understood what the impact would
2 be and how we could work together to enhance the service there
3 with Green Valley having a very limited certificate.

4 Q And with that, were the two intervenors able to tell
5 the director that this was not going to negatively impact the
6 public?

7 A Yes.

8 Q And were they able to tell the director that this
9 would not negatively impact their existing operations and
10 ability to serve the public?

11 A Yes.

12 Q If -- let's take Dignity, for example, wanted limited
13 authority to do non-911 service. Say they submitted an
14 application Dignity Health, asking for a CON that allowed them
15 to do non-911 coverage for patients from the five facilities
16 covered by the contract they have with AMR Exhibit 1, is that
17 the type of limitation that with your expertise you think could
18 be written up and proposed to the director as to the suggested
19 CON, non-911 coverage any interfacility convalescent
20 prescheduled transport for patients of these five facilities?
21 Is that possible?

22 A Yes.

23 Q And what if somebody on one of those transports
24 suddenly, their condition deteriorated and they had to be taken
25 somewhere else? Would that limitation mean, oh, we have to



1 just drop this patient by the side of the road and hope
2 somebody else picks them up?

3 A No, patient care is first and foremost. So if there
4 was a closer, more appropriate facility due to patient
5 condition, that would warrant a diversion to that facility.
6 Whether it's interfacility or even a 911 when you're going to a
7 destination, and all of a sudden, the patient has a change in
8 condition that warrants a closer facility for a faster
9 intervention.

10 Q Regardless of whether or not it technically falls
11 within your CON?

12 A Regardless, right.

13 Q Okay. Let's -- given that background discussion of
14 the type of Maricopa environment and regulatory environment,
15 let's go back to when and how you started communicating with
16 Dignity, which communications ultimately lead to the contract
17 that brings us here today. How did those communications start
18 and were you involved in them?

19 A As we were wrapping up the hearing and in
20 anticipation for being able to enter the market --

21 Q The hearing?

22 A The AMR -- I'm sorry the AMR Maricopa hearing, the
23 CON 136, we had discussions with many entities, you know, prior
24 to that to gauge where the market was, issues within the
25 market, discussions about, you know, potential service. So



1 yeah, there were interactions not only with Dignity, but other
2 facilities as well. And I don't specifically recall the first
3 point of contact, but it would have been early 2015, if memory
4 serves me correct.

5 Q And AMR Maricopa, awaiting the outcome of its CON
6 hearing, would that have been an American Medical Response,
7 Inc. first presence in Maricopa County?

8 A Yes. Well, let me rephrase that. Maricopa wide
9 presence through the Life Line certificate. There was a
10 footprint within northwest Maricopa County.

11 Q And since has come up before, could you tell the
12 judge Life Line CON 62 is based out of where?

13 A Prescott.

14 Q And what part of Maricopa County does it cover?

15 A It covers the northwest corner. Wickenburg, which is
16 half divided between Yavapai and Maricopa and then Circle City,
17 Morristown, Wittmann, and Surprise.

18 Q And are there hospitals in that Maricopa County part
19 of the CON?

20 A Wickenburg Community Hospital.

21 Q And is that a Dignity facility?

22 A It is not.

23 Q When you first talked to Dignity representatives, who
24 was that representative, do you recall?

25 A Jeff O'Malley.



1 Q And at the time, did you offer to enter into a
2 contract with Dignity?

3 A Prior to the CON, we couldn't enter into a contract,
4 but I think the spirit of the dialogue was looking to build the
5 relationship in some more formal way to understand the needs of
6 the health care system and how AMR could provide that service
7 to Dignity.

8 Q Why couldn't you enter a contract with them before
9 you had a certificate of necessity?

10 A If you don't have a certificate of necessity, you're
11 unable to provide ambulance service anywhere in the state.

12 Q And can you contract to provide ambulance services
13 without have the Department of Health Services approve that
14 contract?

15 A You could, but you would be in violation of bureau
16 regulations. So all contracts have to be submitted, reviewed,
17 and approved. And then once approved by the bureau, then they
18 are a valid contract.

19 Q And when we talk about contracts, we're talking about
20 any agreement where a discount can be provided?

21 A Yes.

22 Q When did -- oh, you already told us. AMR Maricopa
23 got its certificate of necessity in late February --

24 A Late February.

25 Q -- of 2015.



1 A Yes.

2 Q And tell me how that changed or impacted the
3 communications with Mr. O'Malley?

4 A It allowed us then to start moving into more serious
5 dialogue regarding specific contracts, scope of service,
6 expectations.

7 Q And in the preliminary discussions, and I want to
8 talk about before Dignity issued its RFI, what was the focus of
9 those discussions?

10 A Just service generally. Beyond Dignity, other
11 facilities had expressed frustration with the current provider
12 that was there, the level of service, the timeliness of
13 service. So the same things we were hearing from Dignity were
14 nothing that we hadn't heard before.

15 Q And the -- I noticed that the person who signed the
16 contract we're on here today, Exhibit 1, was Leslie Mueller
17 (phonetic). Can you tell the judge who Leslie Mueller is?

18 A Leslie Mueller was the regional CEO at the time that
19 we entered the market and she is no longer with our
20 organization.

21 Q And Jeff -- she had the job that Jeff McCollom now
22 has?

23 A Yes.

24 Q Okay. And was she involved in the discussions about
25 a Dignity contract?



1 A She was involved from the aspect of part of the
2 processes, we were working through it, but nothing formally
3 with Dignity. It would have been via myself.

4 Q So who was the management person in Arizona who was
5 going to have to live with any terms of the contract discounts,
6 you got to do X, you got to Y, you got do Z. Who's the guy who
7 at the end of the day has to live with all of this from an
8 operations and financial perspective?

9 A Thank you. That would be me.

10 Q Okay. And so, are you the person who would have
11 ultimately gone to Leslie Mueller and say let's sign this
12 contract?

13 A Yes.

14 Q And in your communications with Jeff O'Malley, did
15 you make it pretty clear I'm the head of operations in Arizona?

16 A I don't recall how necessarily that was structured,
17 but I think there was an understanding of the hierarchy of
18 leadership and probably Mr. Cloward had had discussions on who
19 the key principals were in Arizona.

20 Q Your business cards and email have your title on
21 them?

22 A They do.

23 Q And in your preliminary meetings with Mr. O'Malley,
24 John Valentine (phonetic) participated in one or more of
25 those?



1 A I believe so.

2 Q General manager for Maricopa County?

3 A We both at that time, I was kind of in transition
4 with AMR. So I was still the COO of Life Line, but as the new
5 entity, AMR Maricopa was the administrative general manager of
6 that particular site. So because of the startup and the
7 complexity of it, both John and I were splitting specific
8 duties to make sure that we could stay focused as we were going
9 live on specific parts.

10 Q Did you ever say or do anything to Jeff O'Malley to
11 tell him that Paul Cloward, your sales representative, could
12 enter into a contract or make promises on behalf of the
13 company?

14 A No.

15 Q Would that be in line with company policies and
16 procedures?

17 A Yeah, Paul does not have the authority to do that.

18 Q At some point in time, did AMR make a presentation to
19 Dignity about what it could provide?

20 A We did.

21 Q And I'd ask you to look in your white notebook and
22 turn to what for you will be Tab 9 and it will be marked with
23 the Court's exhibits as Tab 39 and ask if you recognize this?

24 A Yes, this was a slide deck that was prepared by the
25 team for Dignity.



1 Q And did you participate in the presentation of this?

2 A I was present.

3 Q And what's -- is there any focus of this presentation
4 beyond ambulance transportation services that can be provided?

5 A No, it's really more about services that we can
6 provide and meeting requirements that meet the needs of those
7 patients that require ambulance transportation.

8 Q Up to the point of submitting this or while
9 submitting this, any mention by Jeff O'Malley about, well,
10 that's nice, but we do want to get our CON at some point in
11 time?

12 A Yeah. At some point, that was there. But to be
13 quite honest with you, again, it was very similar to what I
14 would describe as service issues. When we met both with
15 private entities and public entities, there was just a general
16 desire where people said because of what had transpired, I want
17 a CON. I think, from the aspect of keeping it in their back
18 pocket, if something else happened. So it was not surprising.

19 Q Did the Rural/Metro 2013 bankruptcy filing have some
20 longstanding ripples in the community?

21 A Even to this day.

22 Q And after AMR Maricopa basically because of that
23 bankruptcy was able to get a CON, did you start to hear the
24 statements about entities wanting their own CONs more
25 frequently or less frequently?



1 A It was probably about the same. I think there was a
2 lot of concern about the system. I think it became more
3 frequent for a while and it probably subsided as the system has
4 stabilized with the entry of other provides, fire departments,
5 getting certificates of necessity.

6 Q So did you hear public entities after AMR Maricopa
7 entered the system say, gee, we'd like to get our own CON?

8 A Yes, and they did.

9 Q Did everyone who said that to you seek one?

10 A No.

11 Q And did you hear hospitals or private companies say
12 you know we'd really like to get our own CON?

13 A That was not uncommon.

14 Q And did everybody who said that go out and get a CON?

15 A No.

16 Q Did you perceive that everybody who said it was
17 serious about actually going through the process and doing it?

18 A I perceived it as somewhat serious as to they were
19 concerned about the system, but not from the serious side that
20 they were going to act on that. I think there was a lot of
21 watch and see as AMR entered the market to see how it would be
22 stabilized. And then with the subsequent purchase of
23 Rural/Metro, that had generally subsided through today. But
24 you know, I think people had varying degrees of their level of
25 seriousness, whether they didn't understand the process or they



1 understood the process. They thought it was, you know, just we
2 want it because we want it.

3 Q Was there any sense that you got from talking to
4 various ambulance transport users about we're worried that, you
5 know, you're coming in. This issue is going to be business as
6 usual, Rural/Metro problems all over again, new company, new
7 name, same problems?

8 A There were individuals that were more skeptical than
9 others. I think there were other individuals, too, who knew
10 the history of AMR, had seen the reputation of the
11 organizations that AMR was operating in Arizona. At that
12 point, River Medical and Life Line. And that there was a
13 certain measure of trust that there'd be stability put back
14 into the system.

15 But it was more about proving that versus hearing, well,
16 the things will be better. Because of the challenges in the
17 environment with Rural/Metro throughout the state where they
18 operated, people wanted to see that the action or the words
19 actually lead to measurable actions of truth.

20 Q And the words meaning that AMR's words lead to
21 action?

22 A Yes.

23 Q And when you made this presentation, Exhibit 39, any
24 discussion during that presentation about, well, we might bite
25 for the -- we might agree to this, but you've got to agree that



1 we can get our own CON?

2 A Not to my knowledge.

3 Q And do you remember about when this presentation was
4 made?

5 A I would say it was probably June, July 15 in that
6 range. It was summertime. It was getting warm.

7 Q After the RFI response?

8 A Yes.

9 MS. FICKBOHM: I would move for admission of Exhibit
10 39?

11 MR. GORDON: No objection.

12 THE COURT: Thank you, counsel. 39 is admitted.

13 (Defendant's Exhibit 39 Received)

14 BY MS. FICKBOHM:

15 Q Were you involved in the review and response to
16 Dignity's RFI?

17 A I was part of the team that was putting the slide
18 deck and preparing for it.

19 Q Did any part of that RFI dated April 13th, 2015 cause
20 you to believe that Dignity as a condition of making a contract
21 with AMR Maricopa would require AMR Maricopa to agree to not
22 object if Dignity tried to get its own CON?

23 A No.

24 Q And the RFI response was signed off on by John
25 Valentine, correct?



1 A I believe it was, yes.

2 Q And so, if you turn to Exhibit 51, and see it there.
3 And if you look at page five. Oh, not just John. Who
4 submitted this to everybody?

5 A Both John and I did. As I alluded to earlier, we
6 were kind of dividing the role up with the startup.

7 Q And there's nothing in that presentation or that
8 response to the RFI that relates to as part of this agreement
9 read that Dignity can also get a CON and we won't object?

10 A No.

11 Q On August 10th, 2015, Paul Cloward sent the AMR
12 template contract that the bureau and department had approved
13 over to Jeff O'Malley for contact for comment. You heard Paul
14 testify to that?

15 A Yes.

16 Q Whose direction was that done at?

17 A That was -- at that point where the dialogue was,
18 that was relayed in, we were clear to go with beginning a draft
19 contract.

20 Q So who in leadership would have told Paul go ahead
21 and send them templates?

22 A Both John and I would have cleared at that point.

23 Q And was there anything in that template about Dignity
24 getting a CON?

25 A No.



1 Q What precisely, if anything, had Dignity, Jeff
2 O'Malley, said to you or to anybody else to your knowledge up
3 to the point in time where that template that was sent on
4 August 10, 2015 about its desire to get a CON? Anything more
5 than the casual comments that that we already talked about,
6 like, gee, maybe I'd like my own?

7 A No, from the discussions, there was nothing very
8 specific to that. I mean, I think there was the interpretation
9 because of where the system was that the desire may have been
10 to get a safety net at some point, but it wouldn't have walked
11 away that that was their end goal was to get a CON.

12 Q And those casual comments compared to the rest of
13 your discussions and the team's discussions with Jeff O'Malley,
14 what's the weight, like 10 percent, 90 percent, 50 percent, 50
15 percent, 40 percent? What was it?

16 A The weight I know was minimal. We're more focused in
17 on service. And it was something that I was hearing, and you
18 know, I felt that where we were going as an organization, that
19 we would exceed expectations.

20 Q Do you think that those comments made up more than 1
21 percent of your discussions?

22 A No.

23 Q Up through the time that the template for the
24 contract was sent out, authorized to be sent out to Dignity,
25 had Jeff O'Malley said anything to you about Dignity's



1 relationship with the Nevada RBR organization?

2 A No.

3 Q Had he said anything indicating that Dignity was
4 intending or desiring to enter into a joint venture with any
5 third party to provide ambulance transport services?

6 A No, I would have recalled that specifically, because
7 it would have been a little bit of a game changer.

8 Q What do you mean?

9 A We would have had more discussion around that as it
10 relates to what that would look like and how we would frame
11 that up, but there was no concrete mention of this is what we
12 want to do. So therefore none of that language was ever
13 contemplated in a contract.

14 Q Did he ever say anything to you indicating that
15 Dignity wanted authority greater than authority to handle its
16 own patients from these 100 percent Dignity-owned facilities?

17 A No.

18 Q And the 100 percent own Dignity facilities in
19 Maricopa County are the ones listed in the opening paragraph of
20 Plaintiff's Exhibit 1 of the contract?

21 A Yes.

22 Q All right. So after Dignity filed this lawsuit, did
23 you go back and look through your emails and notes to see if
24 you had anything in writing from Jeff O'Malley about Dignity
25 wanting to get its own certificate of necessity?



1 A I did.

2 Q And did you find anything?

3 A There was nothing in any of the searches around CON's
4 community ambulance, any related things to the situation that
5 were identified.

6 Q Now we know from Jeff O'Malley's testimony that
7 paragraph 18 of the contract was inserted by Dignity at the end
8 of the back and forth on the contract, right?

9 A Yes.

10 Q And before paragraph 18 came your way, did you have
11 any serious discussions with anybody from Dignity, including
12 Jeff O'Malley, that Dignity was going to require AMR to agree
13 to not object if Dignity sought authority to serve the patients
14 that the contract covered?

15 A No discussions.

16 Q If paragraph 18 had -- well, let me -- were there any
17 discussions that Dignity might want to get a CON through some
18 third party joint venture or a CON that would allow it greater
19 authority than the patients from those five facilities?

20 A No.

21 Q Is that the kind of thing you'd remember?

22 A I'd remember that.

23 Q If Jeff O'Malley had conditioned this customer
24 service agreement, Plaintiff's Exhibit 1, that Leslie Mueller
25 signed off on at your -- with your consent, if they had



1 conditioned their participation in that on American Medical AMR
2 Maricopa agreeing to not participate in a DHS regulatory
3 proceeding brought by a third party that Dignity own the
4 majority interest in, but it was not the sole owner, would you
5 have consented to that?

6 A Absolutely not.

7 Q And if they had conditioned their agreement to that
8 contract on AMR Maricopa agreeing to not object or participate
9 in a CON proceeding that they or some entity they were
10 affiliated with had brought in order to obtain unlimited
11 non-911 authority from Maricopa County, would you have agreed
12 to that?

13 A Most certainly not.

14 Q And can you explain to the judge why you never would
15 have agreed to either of those things?

16 A The implications around that could be devastating for
17 a provider. And the application process allows for the entry
18 of evidence into to show the impact on the provider or
19 providers and how they service delivery could change service in
20 the urban community and the rural community, rates and charges,
21 a myriad of issues that are vetted through the bureau's process
22 through OA (phonetic) to ensure that the system remains
23 sustainable.

24 Q Can't you just look at somebody's application and
25 say, well, you know, here's their application, we know the



1 impact on us is going to be?

2 A Absolutely not. It's just a proforma, just an
3 estimate.

4 Q So in the application, there is an estimate as to the
5 number of transports they expect to do year 1?

6 A There is.

7 Q And is that a commitment to only do that number of
8 transports year 1?

9 A No.

10 Q And is it a commitment to only do that number of
11 transports year 2, 3, 4, 5, 6, 7?

12 A No.

13 Q And as a person who has experience in getting CONs,
14 for example AMR Maricopa, what's the profile of volume of
15 transports done generally look like after a CON is first
16 obtained? Is it like the same year 1 and then just continues
17 straight out? Do you start out great and then it declines?
18 How does it -- what's the profile look like?

19 A You start out small and then you grow and grow and
20 grow. And beyond year 1, you probably, if you're doing a level
21 of service that is meeting the expectations of the people who
22 are providing, your volume will continue to grow.

23 Q So I want to delve in a little bit to some of the
24 things you said, but I want to clarify one point before we go
25 there. Without your consent to Plaintiff's Exhibit 1, the



1 contract, would that contract have ever been signed?

2 A No.

3 Q Okay. So what was your understanding of paragraph 18
4 when Paul Cloward forwarded that to, as he puts it, legal and
5 leadership. You're part of the leadership, right?

6 A That's correct.

7 Q So when you looked at it, tell me exactly what you
8 read paragraph 18 to mean?

9 A So the first part of paragraph 18 is the standard
10 that this is nonexclusive. There's a lot of federal provisions
11 that regulate what we do. So you can't say that you're
12 exclusive. So they -- that standard boilerplate language.
13 Then as it goes on, I --

14 Q And so, let me just back up. So non-exclusive in
15 layman's terms, what does that mean?

16 A They can -- anybody we're contracting with could use
17 another provider and provide that service.

18 Q Okay. And is RBR Management the Nevada entity
19 another certificated Arizona provider?

20 A They are not.

21 Q So from your understanding of this paragraph, would
22 the non-exclusivity portion of it apply to any agreements
23 currently struck with RBR Management?

24 A It wouldn't apply.

25 Q Because?



1 A They're not certificated. So, in essence, the only
2 other providers that do interfacility, there's a fire district
3 that does do interfacility, but it's limited to their district
4 would just be ABC or Maricopa Ambulance.

5 Q Or an AMR entity?

6 A Or an AMR Entity (indiscernible) yes.

7 Q So what did the rest of paragraph 18 mean to you?

8 A So what it meant to me was that if they wanted to
9 enter into any contract with another certificated provider to
10 provide that service, we certainly weren't going to interfere
11 with it. And if Dignity itself -- Dignity wanted to get a
12 certificate to service those specific five facilities that were
13 listed in paragraph 1, that they would have that ability to do
14 that.

15 Q And if they were able to service through their own
16 CON those specific five facilities, is that an impact that AMR
17 would be able to evaluate and adapt to?

18 A Yes, because you know what that volume is.

19 Q So tell the judge what is the volume of patients --
20 patient transports related to those five facilities?

21 A It's approximately 8,000.

22 Q 8,000 in what period of time?

23 A A year.

24 Q Okay. And for all of Maricopa County, how many
25 approximately non-911 transports are out there available for



1 providers to do annually?

2 A Just north of 100,000 trips.

3 Q So these five facilities are well under 10 percent?

4 A Yes.

5 Q And of that 100,000, non-911 transports that are out
6 there available for providers to do, those are being done by
7 ABC, by AMR or Rural/Metro now owned by AMR entities, or by
8 Maricopa Ambulance with a small amount by fire districts?

9 A A small amount, yeah, that's correct.

10 Q So what is the AMR Rural/Metro share of that?

11 A Approximately 85,000.

12 Q And tell the judge how that body of transports, the
13 non-911 transports synergistically works with the 911 service
14 that the AMR entities provide. And before you do that, I want
15 to ask you first, are the 911 services that the AMR and
16 Rural/Metro entities provide in Maricopa County, is it all
17 urban?

18 A No.

19 Q Do you have some very unpopulated rural land you have
20 to cover?

21 A We do.

22 Q Wilderness land you have to cover?

23 A Canulick (phonetic).

24 Q And within the urban area, are there some
25 neighborhoods that are, where you're more like to be able to



1 collect your rates and charges than others?

2 A Payer mix varies by community, yes.

3 Q And do you get it to pick and choose which
4 neighborhood you go into?

5 A No.

6 Q Okay. And of the 911 business in Maricopa County,
7 was ABC doing that business?

8 A They do not.

9 Q Some fire districts do cover their own areas, right?

10 A Yes.

11 Q And so, what percentage of the 911 business would you
12 say that AMR and Rural/Metro's doing?

13 A Approximately half, probably just a little bit below
14 half, but below half with the addition of some of the fire
15 districts that have recently got CONs.

16 Q And is that because fire districts frequently will
17 get a 911 CON, but not do interfacility?

18 A Yes.

19 Q And compare the weight of the volume, how many 911
20 generated transports are there in Maricopa County in a year?

21 A Collectively, north of 200,000. Phoenix being the
22 largest area. City of Phoenix, sorry.

23 Q So you -- so AMR's doing more than 100,000 911 calls
24 a year.

25 A Approximately.



1 Q And is there any relationship between the non-911
2 services that AMR provides, the AMR entity as a whole through
3 its various organizations, and the 911 service?

4 A They're synergistic.

5 Q And explain to the judge how that is?

6 A So emergency medical services are highly
7 unpredictable. So there are times where volume on both sides
8 does come into play and you need additional resources. So the
9 system does pull from the interfacility side to augment 911.
10 And 911 sometimes is pulled to augment interfacility. There's
11 a lot variables that go into that as far as what a particular
12 system is doing, where the request might be, especially on the
13 interfacility call where the resources are. We could probably
14 have a dialogue for hours on deployment.

15 Q Okay. So if your interfacility transports
16 drastically dropped, you would need to decrease the number of
17 ambulances and bodies you had available to respond to those?

18 A Certainly you would have to.

19 Q And would that limit resources available to the 911
20 system?

21 A That would limit the resource from the aspect of the
22 backup vehicle, not necessarily the individual contracted 911
23 service area though.

24 Q What about it from an overall financial stability
25 perspective? Is there any interrelationship?



1 A Both play a role in overall system stability,
2 financial stability.

3 Q Would the AMR organization be able to predict and
4 adapt to the loss of less than 10 percent of the county-wide
5 available non-911 transport work, for example, if Dignity did
6 get a CON to do all of the transports covered by the contract
7 namely the five facilities covered by the contract, those 8,000
8 a year calls?

9 A Very similar to Green Valley, you know exactly what
10 the impact is.

11 Q And so, if Dignity had applied for a certificate of
12 necessity to itself serve the five facilities covered by the
13 ambulance transport service contract Exhibit 1, would AMR have
14 objected?

15 A No.

16 Q And would it have been able to provide information to
17 the director about what it expected the impact on the public,
18 the public in rural wilderness areas, the public it serves
19 through the 911, and its own ability to continue services would
20 be. Would -- could it provide that information?

21 A If the director would want to know all of that, we'd
22 provide it.

23 Q And could it provide that without participating in
24 the hearing?

25 A It could be done.



1 Q And why is that?

2 A Because you can work through the framework of the
3 process, put an agreement in place that clearly outlines that,
4 have the dialogue with the bureau. And then very similar to
5 Green Valley, stipulate through the process as to what the
6 framework of that relationship and the service being provided
7 is.

8 Q And I want you to contrast that to the RBR CON
9 application, where they're seeking unlimited non-911 authority.
10 Can you tell by looking at their application what they impact
11 on AMR or AMR organization CON holders in Maricopa County, what
12 the impact on their ability to continue providing let's start
13 with quality 911 services is going to be?

14 A No.

15 Q And can you tell what the impact on AMR, the AMR
16 organization's various AMR CON holders' financial stability is
17 going to be?

18 A No.

19 Q Can you tell based purely on their application what
20 the impact on the public and wilderness in rural areas is going
21 to be?

22 A No.

23 Q And can you tell what the impact is going to be on
24 the AMR CON holder's ability to continue serving as wilderness?

25 A No.



1 Q And rural areas is going to be?

2 A I'm sorry, no, you can't.

3 Q And why can you tell that if they specifically just
4 sought to do the transports from those five specific facilities
5 versus an unlimited CON? What's the difference?

6 A Because you know the universe of calls you're dealing
7 with. You know the concentration of volume. And you know the
8 limitations that will be imposed and what the impact will be on
9 your particular service and how those adjustments will or will
10 not impact the service around the greater certificate area.

11 Q So how when you go through one of these CON
12 proceedings as an intervenor, how do you figure out eventually
13 what the impact is going to be on you the intervenor's
14 operations and on the public you serve?

15 A So like any process, you got gather that information
16 at the hearing. You -- there's more discussion around their
17 application, their intent for service. You get a clearer
18 picture into what their model will be. And then, you can
19 evaluate how that impacts whatever intervenor's involved. And
20 that's what the hear process elicits. So what you see on an
21 application doesn't clearly identify all the operational
22 parameters that come forth through the OA process.

23 Q So it sounds like you're say these hearings are
24 pretty fluid proceedings as far as finding out information and
25 getting information back?



1 A Yes.

2 Q In the industry, the ambulance transport industry, is
3 there a term used if somebody wants to do just non-911 calls
4 and to an unlimited extent and at the same time not have any
5 responsibility for supporting the area's 911 system?

6 A Unfortunately, the term cream skimming, cherry
7 picking, yeah, it exists in our industry.

8 Q And why do people use that term?

9 MR. GORDON: Your Honor, I'm going to object. I have
10 no idea what the relevance of this is.

11 THE COURT: I assume there are a couple policy
12 arguments that are going to be advanced here?

13 MS. FICKBOHM: Right. I mean, yeah, exactly. They
14 have to prove the public policy supports keeping us out.

15 THE COURT: I'm with you, counsel.

16 MS. FICKBOHM: Okay thank you.

17 BY MS. FICKBOHM:

18 Q Go ahead.

19 A Could you restate the question, please?

20 Q Why are those sort of what I would call sort of
21 derogatory terms used for people who want to come in and just
22 cherry pick the non-911 calls without supporting the 911
23 system?

24 A Because they just want to be able to provide very
25 specific service, and in essence, pick certain types of calls



1 that probably have a better payer mix and not have the
2 responsibility to service the far-reaching area. So in
3 essence, it can deteriorate the rural communities.

4 Q Would you ever agree to consent to another provider
5 coming in and being allowed unlimited non-911 authority in
6 Maricopa County, while having no responsibility for the 911
7 system?

8 A That impact, as you work through the process, you
9 understand that. But at face value, just allowing somebody to
10 come in and do that without the opportunity to vet it through
11 the process, could have far reaching impacts throughout the
12 entire service area, especially to the provider that's
13 responsible for serving the 911 side of the house in the
14 greater area.

15 Q So would you on behalf of AMR ever make that
16 agreement?

17 A We would not make that agreement.

18 Q So when you got -- when you got new paragraph 18 from
19 the contract, did you understand that as being AMR's consent
20 that Dignity could just go out and seek an unlimited non-911
21 CON?

22 A No.

23 Q At the time you contract the original contract, it
24 said that one was signed. Was the Life Line CON 62
25 organization part of the AMR, Inc. family?



1 A Yes.

2 Q Why was that not included in the contract, that
3 organization?

4 A The area that it serves in Maricopa County didn't
5 have any Dignity facility.

6 Q And did Jeff O'Malley ask you when you were entering
7 into the original contract in this Exhibit 1 to include Life
8 Line CON Number 62?

9 A I don't recall any discussion with him regarding
10 that.

11 Q After the contract was put in place with Dignity, how
12 did the relationship and service go? I mean, you get any
13 complaints about AMR service under the contract?

14 A No, I actually attended the -- I believe the first
15 kickoff meeting where we reviewed compliance. There were
16 several of our team members. There were several of Dignity's
17 team members. Service was going well. Were there some
18 outlying issues and getting adjusted to the agreement? Yes.
19 And that was the purpose of those quarterly meetings that I
20 think, you know, the BD team, the business development team
21 routinely had.

22 No different than we have with any of our other contracted
23 providers. I think everyone wants to understand when there's
24 deficiencies, how we improve, have open and honest dialogue
25 regarding service, and whether the expectations are being met.



1 And also, as you mature with that relationship, you might
2 identify areas that you want to enhance or change the service
3 delivery model. So partner dialogue is good and the feedback
4 was positive.

5 Q I want to ask you to -- we've been talking about the
6 amendment to the ambulance services agreement, Plaintiff's
7 Exhibit 2 if you want to look at it, but that's your signature
8 on the amendment?

9 A Yeah, yes, it is.

10 Q You're familiar with that? Tell us when and how that
11 amendment came about? What was the purpose of that amendment?

12 A So after we completed the state process to transfer
13 the CON, the Rural/Metro -- legacy Rural/Metro CONs to AMR,
14 there were several contracts that were legacy related to
15 Rural/Metro and we --

16 Q Contracts with?

17 A Health care providers entities.

18 Q Okay.

19 A And part of that the Bureau of EMS had wanted us to
20 clean those contracts up and for the purposes of providing
21 service because we now had the Rural/Metro companies, the
22 southwest companies, the PMT companies, that we eliminated the,
23 for lack of better words, hodgepodge of contracts and put them
24 under the AMR Hold Co. shell.

25 Q And are -- were you aware when you went to sign off



1 on Exhibit 2 that at Jeff O'Malley request, the Rural/Metro
2 doing business as Canyon State company that had been acquired
3 from Rural/Metro was taken off the list of entities that would
4 be included in the amendment?

5 A I had reviewed, as any agreement, I do take a look at
6 them and had noted that those were omitted.

7 Q And were you also aware that the Life Line CON 62 had
8 been taken off the list of providers including the contract by
9 Jeff O'Malley?

10 A Yes.

11 Q Okay. And was -- were those exclusions okay with
12 you?

13 A They were fine.

14 Q And why were those exclusions okay?

15 A There was no primary Dignity facilities in those
16 Maricopa service areas that both CON or the Canyon State and
17 the Life Line service area, the part of Maricopa they covered.

18 Q So the five facilities covered by the ambulance
19 customer service agreement, Exhibit Number 1, you already
20 testified none are in Life Line CON 682's area. None of those
21 are in the overlap that Canyon State has in Maricopa either?

22 A No.

23 Q When you found out about the RBR community ambulance
24 CON application, did that cause you to have any concern that
25 Dignity would take the position and in fact sue you, sue AMR



1 saying that you can't intervene in the RBR CON application
2 proceeding? Did you have any concern that that was going to
3 happen?

4 A No. RBR was a different entity. I had no idea who
5 they were.

6 Q And did -- beyond that, did this application give
7 rise to any concern that you might lose business, you know,
8 because your contract with Dignity wasn't exclusive. Did you
9 have a concern that if RBR became certificated, you might lose
10 some of your business to it?

11 A I think with any provider, you always have the
12 concern that you're going to lose service. So the threat was
13 real.

14 Q And so did you initiate discussions with Dignity
15 about that to try to like save the business?

16 A No, we didn't because from my view, we were providing
17 a service and I didn't see the tie to Dignity specific there.

18 Q In RBR's CON application, how many ambulance
19 transports do they project in their proforma ARCR they're going
20 to do in year 1?

21 A I believe between 11,000, 11,500, somewhere in that
22 range. I'd have to look at the application to give you the
23 specific number.

24 Q Was it more than the number -- the body of transports
25 that are done by the AMR Rural/Metro entities for Dignity out



1 of the five facilities under the contract?

2 A That that was more.

3 Q And I think you already testified that the ARCR
4 doesn't limit their ultimately authority. So did the RBR CON
5 application give rise to any concerns on your part about a
6 negative impact to any of the AMR COR holders or the public
7 they serve?

8 A Absolutely.

9 Q Along the lines you already talked about?

10 A Yes.

11 Q I won't ask you to repeat that. When you first saw
12 the application, do you remember about when that was?

13 A June 16, somewhere in there was not too long after it
14 was filed.

15 Q June 2016?

16 A Yes, I'm sorry.

17 Q And at the time, did you form an intent about what
18 AMR would do at the time of this notice for a hearing?

19 A We were going to intervene.

20 Q And when are you first able to intervene
21 procedurally?

22 A Once it's noticed for a hearing.

23 Q And we know from Plaintiff's Exhibit Number 3, which
24 is in front of you in the big notebook, that that happened at
25 the very beginning of June 2017, correct?



1 A I believe that is correct. Let me make sure. Sorry.
2 Yeah, June 2017.

3 Q And do you know how soon after that AMR filed its
4 motion asking to intervene? I'll give you a hint, you can look
5 at Plaintiff's Exhibit 4.

6 A Okay. You filed that approximately 14 days after the
7 notice was provided to all the CON holders that would be
8 impacted.

9 Q And I apologize if I already conversation covered
10 this, but has anyone else moved to intervene or to grant an
11 intervening party status in that proceeding?

12 THE COURT: You did cover that, counsel.

13 MS. FICKBOHM: Okay. Thank you.

14 BY MS. FICKBOHM:

15 Q So you learned about the RBR application -- CON
16 application while discussions were underway about amending the
17 contract with Dignity in order to add the Rural/Metro entities
18 that had been acquired, correct?

19 A Correct.

20 Q Did that give you any cause to have concern about
21 signing that amendment?

22 A No, it was clear how the language was written.

23 Q I'm sorry, you're going to have to detail that. What
24 do you mean?

25 A Section 18 as it relates to the five facilities in



1 paragraph 1.

2 Q Okay. And did you see that as one in the same as the
3 RBR application?

4 A Did not.

5 Q Okay. And did you have a meeting in October of 2016
6 when Mr. O'Malley, he mentioned that during his testimony?

7 A I was present for that meeting.

8 Q And he said that you told him then that you wanted to
9 keep you as small as possible. "I want to keep you as small as
10 possible." Did you use those words?

11 A Not in an October meeting. I think he was referring
12 to a meeting in June or July of this year.

13 Q Oh, okay. And did you use those words then?

14 A No, it was specifically dialoguing around those five
15 facilities and what Dignity wanted, Dignity itself wanted to
16 do.

17 Q So you're going to have to tell us a little bit more
18 than that. What do you mean?

19 A So as -- the interpretation and the understanding was
20 if Dignity was getting a CON, that it would be limited to those
21 five facilities. Dignity itself, not RBR or any other entity,
22 that would be limiting the certificate. So if -- I guess to
23 paraphrase, small, you wouldn't have a large number of
24 ambulances to operate services out of five facilities.

25 Q Yeah, how many ambulances would you need, roughly



1 speaking, to do 8,000 transports in your five facilities?

2 A It would vary, but you're probably around 4 to 6.
3 And it's by system design, time of day. I mean, you could have
4 a little bit more. You could have nothing less than that for
5 sure.

6 THE COURT: You should watch your time, Ms. Fickbohm,
7 it's running out.

8 MS. FICKBOHM: Oh, I didn't know I had a time limit,
9 I'm sorry.

10 THE COURT: We only have a day today.

11 MS. FICKBOHM: Oh, right, right. And I am finished.
12 I'm sorry, you're right.

13 THE COURT: Uh-huh.

14 MS. FICKBOHM: The sun is moving in that direction.

15 THE COURT: It is moving in that direction, yes.

16 MS. FICKBOHM: Thank you. Thank you, sir.

17 BY MS. FICKBOHM:

18 Q Let's go to the Exhibit Number 26, the amendment.
19 This is -- that was discussed with that counsel discussed with
20 you I think it was Mr. McCollom on the stand. Page -- Bates
21 page 553 where the --

22 A Okay.

23 Q -- where language was added to say to include those
24 listed below and any other CON's acquired, owned, and/or
25 operated by or under provider or its affiliates in the future.



1 What was your understanding of what that language meant?

2 A If we acquired somebody from this point forward in
3 the future, then that entity would be bound to this agreement.

4 Q And at that time, Life Line CON 62 and Canyon State
5 were already owned by the AMR organization?

6 A Yes, they were.

7 Q So they wouldn't be future acquired entities.

8 A No.

9 Q Mr. O'Malley testified that when he met with you and
10 others in October 2016, he said you guys can't intervene in the
11 RBR proceeding. Do you remember him say that?

12 A He said something to that effect.

13 Q And did that lead to a dialogue?

14 A Not much at that point. It was --

15 Q And why not?

16 A I don't think at that point, there was much dialogue.
17 I think the meeting was getting to a sour point and it was time
18 to move on.

19 Q And didn't that give you cause for concern about
20 going forward with the amendment?

21 A No.

22 Q Why not?

23 A Because again, if it was Dignity related to five
24 facilities, it was pretty clear to me what the scope of the
25 contract covered. So I was a little perplexed as his to



1 interpretation of that versus our interpretation.

2 Q I'd like you to turn to Defense Exhibit Number 3.
3 And no, it's not 3. It's 33 now. So it's 3 in front of you.
4 And that's the department's response to AMR's motion for
5 intervening party status. Do you remember seeing that when
6 that was filed?

7 A I --

8 Q That's a pretty uniform position when somebody moves
9 to intervene, correct?

10 A Pretty much.

11 Q And what does this state and what is their consistent
12 position?

13 MR. GORDON: Here objection -- I object, Your Honor.
14 This witness' understanding of what ADHS is filing and why they
15 filed is not relevant.

16 THE COURT: Ms. Fickbohm, your response, please? It
17 does seem speculative.

18 MS. FICKBOHM: The public policy that really is at
19 issue here is whether or not the director's going to get the
20 information that the regulation R9-25-903 requires her to
21 consider in evaluating the RBR application. And that includes
22 the impact on this provider and on the public it serves. And
23 the bureau's consistent position in this filing and in every
24 other proceeding that Mr. Kasprzyk has been involved in is we
25 aren't going to represent your interests. You have to come in



1 and do that information yourself. I just want to demonstrate
2 that the AMR CON holders are the only ones who can really
3 provide that information.

4 MR. GORDON: I don't object to that question, but
5 she's asking about what the ADHS position is and what they
6 meant. And --

7 THE COURT: Yeah, if you can phrase the question as to
8 what the practice of the bureau has been, then that is
9 acceptable.

10 BY MS. FICKBOHM:

11 Q In any of the CON proceedings you have been involved
12 in, has the bureau ever taken the position that it can
13 represent the interests of an intervening party?

14 A No.

15 Q And in the RBR proceeding, did the bureau say don't
16 worry if you're excluded. We'll cover the impact on you in
17 your public?

18 A The bureau would not say that.

19 Q Are Maricopa Ambulance or ABC Ambulance situated so
20 that they can provide information about the impact on the AMR
21 CON holders and the entities they -- the public they serve?

22 A They know we know each other's intimate operational
23 details. So they would not be able to provide nor would we be
24 able to provide for them for us.

25 Q I'd like to real quickly address this notion that



1 allowing AMR to participate in the RBR CON proceeding will
2 create irreparable injury to Dignity Health. If a CON
3 applicant proposes to cover a service area that's already
4 covered by multiple CON holders, who are doing a good job
5 complying with their CONs, is getting a CON as easy as simply
6 filling out an application and giving DHS that information?

7 A It is not that easy.

8 Q Beyond the fact that an applicant might be
9 financially stable and have the operational expertise to
10 provide ambulance transport services, what's the Department of
11 Health Services regulations and statutes require them to look
12 at in a proceeding to decide whether somebody else gets to come
13 into a system that's already covered?

14 A A myriad of things and impact on the existing service
15 that the providers -- that the existing providers are providing
16 is certainly core to that process and the decision.

17 Q Is there any DHS regulation, statute, or policy
18 saying what we really favor here is competition and we think
19 competition is good for the system?

20 MR. GORDON: Your Honor, I object. What the statutes
21 provide --

22 THE COURT: The objection is sustained, counsel.

23 Ms. Fickbohm, let's finish up on this line of
24 inquiry, please.

25 BY MS. FICKBOHM:



1 Q Okay. Are rates and charges regulated by the
2 Department of Health Services?

3 A Yes, they are.

4 Q Is there any competition in that arena from the real
5 estate perspective of Maricopa County?

6 A No.

7 Q If AMR is excluded from the RBR CON proceeding, does
8 this clear RBR's path to receiving a CON or other objectors?

9 A Other objectors.

10 Q Will there be any hardship to AMR if it can't
11 participate?

12 A There could be significant hardship, not only to AMR,
13 but to the greater service area that we're required to provide
14 service under a certificate.

15 Q And would you be able to fulfill your promise to the
16 Department of Health Services as made in paragraph 2 of the
17 contract to comply with Arizona regulations if you're not there
18 to participate?

19 A No, they approve the contract.

20 Q And when you signed off on the amendment to the
21 contract, did you have any reason not to believe that paragraph
22 18 didn't mean exactly what it says?

23 A No, I knew what it meant.

24 Q Those are all the questions that I have, Mr. Kasprzyk
25 So thank you for patience.



1 about today is whether AMR has contractually agreed with
2 Dignity that will it not appear (indiscernible), correct?

3 A Yes.

4 Q Okay. And you said you're the guy who's responsible
5 for administrating this contract Exhibit 1?

6 A I am responsible, yes.

7 Q And you were one of the people responsible, even
8 though you said signature's not on it for reviewing and
9 improving?

10 A Yes.

11 Q Ultimately?

12 A Yes.

13 Q Now you were not in on any of the emails that were
14 identified earlier going back and forth between Dignity Health
15 and AMR regarding the various terms, right?

16 A Yes.

17 Q So you can testify as to what you think the contract
18 says, but you don't know what was in Dignity Health's mind,
19 right?

20 A Yes.

21 Q You do or you don't know?

22 A I wouldn't know what's in their mind.

23 Q Uh-huh. Okay. So Glen, get in front of you Exhibit
24 1, which is the agreement. And turn to the page Bates number
25 007, if never noticed that before?



1 A Yeah.

2 Q Section 18.

3 A Yes.

4 Q Which is ultimately what we're talking about?

5 A Yes.

6 Q So let's look at it for a second, because your
7 counsel asked you a lot of questions about what you thought it
8 meant, but you never actually in those question and answers,
9 you never actually read the language, did you?

10 A I did not, no.

11 Q Okay. So let's look at it. The third sentence,
12 which begins the part that's important to us says, "In
13 addition, provider," and that's you -- you understand that to
14 be AMR and its related entities?

15 A Yes.

16 Q Right. "The provider shall not do anything or cause
17 any other person to do anything that interferes with customer's
18 efforts to engage any other person or entity for the provision
19 of some or all of the services, right?"

20 A Yes.

21 Q That's what that clause says?

22 A Yes, sir.

23 Q And customer here is Dignity Health?

24 A Yes.

25 Q And Dignity Health wants to contract with RBR to



1 provide services that you're currently providing?

2 A That's my understanding, yes.

3 Q And RBR can't provide those services unless it has a
4 CON, correct?

5 A That's correct.

6 Q So your efforts to oppose RBR's certificate of
7 necessity is interfering with Dignity Health's ability to
8 contract with RBR, right?

9 A No.

10 Q Why not?

11 A Because they're not a certificated provider. The
12 intent of that is to enter an agreement with a provider that's
13 here.

14 Q Where does it say that?

15 A That's --

16 Q Where do those words appear?

17 A It's my interpretation of --

18 Q That's exactly right.

19 A -- how that is, right.

20 Q It's your interpretation, but those words are not
21 here?

22 A Those words are not here, yes.

23 Q It doesn't say anything about certificated provider,
24 does it?

25 A No, it does not.



1 Q And it says provider, that being you --

2 A Yes.

3 Q -- shall not do anything or cause any other person to
4 do anything that interferes with customer's efforts to engage
5 any other person or entity for provision, right?

6 A Yes.

7 Q I've read that correctly?

8 A Yes.

9 Q And at no time prior to the execution of this
10 agreement did you ever pick up the phone and call anyone at
11 Dignity Health and say, "Hey, guys, this is only limited to
12 people who already have certificate of needs or this is only
13 limited to you Dignity Health providing services for customers
14 interfacility," right?

15 A No, there was dialogue around that.

16 Q Okay. And it's your position despite the breath of
17 that language, that all this permits is or all this prevents
18 you guys AMR from interfering with is if Dignity itself rather
19 than one of its subsidiaries, applies for a certificate of
20 need, that it is limited only to interfacility transports
21 between Dignity facilities?

22 A Could you please just restate that for me again?

23 Q It's your understanding, I think this is what you
24 testifying to --

25 A Okay.



1 Q -- and I don't -- Glen, if I'm putting words in your
2 mouth, stop me.

3 A Sure.

4 Q Well, don't answer. You can't stop me, but don't
5 answer. It's your position that all this contract restricts is
6 AMR's ability to appear and impose a certificate of necessity
7 sought by Dignity, corporate Dignity, not one of its multiple
8 subsidiaries or related entities for interfacility transports
9 between Dignity facilities?

10 A Yes, for Dignity only.

11 Q And you you'll agree with me that narrowing language
12 doesn't appear anywhere in this agreement?

13 A But to the tie in paragraph 1, it doesn't acknowledge
14 subsidiary. So if Dignity's the entity, the --

15 Q Well, let's stop. It says --

16 A Okay.

17 MS. FICKBOHM: Well, I'm going to object, Your Honor.

18 MR. GORDON: I'm sorry.

19 MS. FICKBOHM: He's not letting the witness answer
20 the question.

21 MR. GORDON: Yeah, I --

22 THE COURT: Sustained.

23 MR. GORDON: -- I apologize.

24 THE COURT: No.

25 MR. GORDON: It's late in the afternoon and we're all



1 a little angry. I apologize.

2 THE WITNESS: Angry, right Snickers. No, it -- you
3 know, paragraph 1 doesn't talk about subsidiaries or
4 affiliates. So if Dignity itself wanted to get a CON to
5 provide the services that we provide to the facilities
6 identified, there's no objection from us. That language in 18
7 is pretty clear to me that what the intent is. And then the
8 noninterference, if they wanted to go with ABC or Maricopa to
9 provide an agreement, because we're nonexclusive, we would not
10 interfere with that as well.

11 Q Okay, but let's look at the language again.

12 A Okay.

13 Q It says, "In addition, provider shall not do anything
14 or cause any other person to do anything that interferes with
15 customer's efforts to engage any other person or entity for the
16 provision of some or all services, correct? It doesn't say
17 currently certificated?

18 A Its language, yes.

19 Q And then if we look at -- go down to the last three
20 lines, it says and shall not. And that's referring to AMR
21 "shall not initiate legal action or take any other action to
22 challenge the right of customer to enter in a service agreement
23 with another organization." It's not limited to Dignity, right
24 the contract with another organization?

25 A The contract and the scope of services that we



1 provide for Dignity is pretty clearly outlined. So if Dignity
2 had a CON and entered into a contract or went and entered into
3 a contract with another provider, we wouldn't interfere, but
4 Dignity is not the applicant for the certificate. It's a whole
5 other entity.

6 Q Let me ask you?

7 MS. FICKBOHM: I'm going to object again, counsel.

8 MR. GORDON: I thought he was finished that time.

9 MS. FICKBOHM: You keep talking over him.

10 MR. GORDON: I apologize. Go ahead.

11 THE WITNESS: Okay.

12 MS. FICKBOHM: Can he answer the -- finish answering
13 the question for the record? The record's not going to pick up
14 people talking over each other.

15 THE COURT: Mr. Kasprzyk, if you wish. Or if you
16 need the question again? But also that's fine.

17 THE WITNESS: The bottom line is I go back to my
18 relationship, the agreement is with Dignity and AMR for those
19 five facilities.

20 BY MR. GORDON:

21 Q Despite the part for the language in 18?

22 A Despite the noninterference. It's not another entity
23 that they choose. That's not a provider here in Arizona. RBR
24 Management and the reason we intervened is they're not Dignity.

25 Q Well, it says, "And shall not initiate legal action



1 or take any other action to challenge the right of customer to
2 enter into service agreements with another organization or to
3 develop its own capacity or authority." So if it's referring
4 to another organization, the prior two words, and then it
5 refers to Dignity, doesn't that mean somebody that's not
6 Dignity?

7 A The Arizona Department of Health reviews and approves
8 the contract. And therefore, an entity that doesn't have any
9 ability to provide service can't enter into an agreement. So
10 an existing provider, if Dignity chose to do that, there was no
11 interference from us on that.

12 And again, if it said affiliates or something in the first
13 paragraph as I stated, if Dignity itself applied for a
14 certificate for those five facilities, I clearly understood
15 they had that ability to do that with us in -- without us
16 intervening in that proceeding.

17 Q Go back to the very first page of the exhibit?

18 A Sure.

19 Q Exhibit 1. And it lists various facilities Chandler
20 Regional Medical Center, Mercy Gilbert Medical Center, St.
21 Joseph's Hospital Medical Center, St. Joseph's Westgate Medical
22 center and Dignity Health Group Arizona. Do you see that?

23 A I do.

24 Q What's Dignity Health Group Arizona?

25 A Don't know what business entity that is of theirs.



1 Q Do you know that that's -- it's doctor entity with
2 offices throughout Maricopa County?

3 A I do now, thank you.

4 Q You testified about in October, I think it's 2nd,
5 2016 meeting, it's Exhibit 40 or notes from that meeting I
6 think that's the --

7 A Okay.

8 Q October 4th, 2016 meeting you were at.

9 A Okay.

10 Q When Mr. O'Malley -- and Mr. O'Malley told you during
11 that meeting, told the various members of the meeting that he
12 believed Section 18 precluded AMR from intervening and imposing
13 the RBR application, right?

14 A He did, yes.

15 Q And we've got some pretty colorful notes down here to
16 reflect that?

17 A Yes, those are not my notes, but they're colorful.

18 Q Okay. You guys didn't -- no one from your side said,
19 wait a second, Jeff, that's not what the contract says. Wait a
20 second, Jeff that's not what the contract? I mean, you just
21 ended the meeting?

22 A Yes, the meeting had gotten to a point that it was
23 not warm. And it was surprising to me that he made that
24 comment, but I clearly understood the language and felt that
25 the position of us intervening hadn't changed because it was



1 not Dignity applying for a CON. It was something entirely
2 different at that point.

3 Q Well, it was a -- Dignity is all over the CON
4 application, right?

5 A There's references to Dignity, but the initial
6 application doesn't -- it doesn't say they own it. I mean,
7 it's pretty standard in a CON application. You know, you talk
8 about your lines of business or relationships that you have.
9 So you know, we have relationships all over the country. So we
10 use references to other facilities. So it wasn't overly
11 surprising. They were trying to illustrate their capabilities.

12 Q Well, do you have Exhibit 9 in front of you?

13 A Your Exhibit 9?

14 Q Yeah.

15 A Yes, sir.

16 Q Plaintiff's Exhibit 9?

17 A Okay, go ahead.

18 Q And this is the RBR application submitted June 10th,
19 2016?

20 A Yes.

21 Q And if you didn't find about it on June 10th, you
22 found out about it pretty quickly?

23 A Yes.

24 Q Within a week or so, you had it and read it, right?

25 A Yes.



1 Q Because this is of interest to you?

2 A It sure is.

3 Q And that's in part because you think if this
4 certificate of necessity is granted to RBR, it's going to hurt
5 your business?

6 A Yes.

7 Q And you want to protect that business, that's your
8 job?

9 A Yes.

10 Q Okay. If you look at the -- what is here the third
11 page bearing Bate number 55, you got it?

12 A Yes.

13 Q It's starts out, "At the foundation of Dignity Health
14 in Arizona or six outstanding hospitals." It starts out
15 talking about the Dignity, right? Dignity Health.

16 A Yes.

17 Q And in these next four or so introductory pages, they
18 talk about the importance of this certificate of necessity to
19 Dignity, right?

20 A It doesn't talk about any other providers or I'm
21 sorry I've been a hospital lawyer for so long, I think of the
22 hospital as the provider.

23 A Sure.

24 Q But it doesn't talk about any other health care
25 providers?



1 A No, it talk -- in essence, it talks about their
2 relationship, the community's relationship, but yeah.

3 Q And it says that communities -- community, Your
4 Honor, RBR are the same. That RBR community is a joint
5 venture?

6 A In Henderson, Nevada.

7 Q With Dignity?

8 A Yes, in Henderson, Nevada.

9 Q You're currently doing about 8,000 transports a year
10 for Dignity under this agreement?

11 A To those five facilities, yes.

12 Q To those five facilities?

13 A Yes.

14 Q And the RBR application projects about 11,000?

15 A Somewhere in that range, yes.

16 Q So it's a pretty modest increase, something you could
17 certainly absorb?

18 A No, because what you don't know is that is a year 1
19 proforma, but that doesn't mean that long-term in the
20 environment that they've applied for that that impact can go
21 beyond -- north of 11,000.

22 Q And you don't want that competition, do you?

23 A What we don't want to have is the system be
24 deteriorated that it harms the communities that are needing the
25 service that other providers have under the CON.



1 Q Oh.

2 A There's nothing in the CON process that talks about
3 competition.

4 MR. GORDON: One moment, Your Honor.

5 THE COURT: Sure.

6 MR. GORDON: No further questions, Your Honor.

7 THE COURT: Thank you, Mr. Gordon.

8 Ms. Fickbohm, back to you for redirect?

9 REDIRECT EXAMINATION

10 BY MS. FICKBOHM:

11 Q Mr. Kasprzyk, I really just have one question. Is
12 Dignity the applicant in the RBR community ambulance
13 application by any stretch of the imagination?

14 A No.

15 Q Thank you.

16 MS. FICKBOHM: No questions?

17 THE COURT: Thank you, counsel. Thank you, Mr.
18 Kasprzyk for your testimony. You may step down. If I could
19 have just a moment, please. All right, Ms. Fickbohm?

20 MS. FICKBOHM: I don't have nothing further, Your
21 Honor.

22 THE COURT: All right, thank you.

23 (Designation of Record ends at 4:05 p.m.)

24

25



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/s/

CHRIS HWANG
Transcriber

October 4, 2017

