UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEAM SCHIERL COMPANIES and HEARTLAND FARMS, INC., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ASPIRUS, INC. and ASPIRUS NETWORK, INC.,

Defendants

No. 3:22-cv-00580-jdp

Hon. James D. Peterson, U.S.D.J.

Hon. Anita M. Boor, U.S.M.J.

PUBLIC VERSION - REDACTED

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE

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DEFINED TERMS FROM CLASS CERT BRIEF (ECF NO. 186)		
Abbreviations/Terms	**Description**	**Location in ECF No. 186**
ANI	Aspirus Network, Inc.	1
ANI Providers	Aspirus Providers and Co-Conspirators, collectively	2
Anthem	Anthem Blue Cross/Blue Shield of Wisconsin, Inc.	7
Aspirus	Aspirus, Inc.	2

Aspirus Providers	Aspirus-owned facilities and providers	2
CIN	Clinically Integrated Network	9
Challenged Conduct	Joint price setting and exclusivity provisions	2
Class	All Payors whose funds were used to pay Defendants and/or their Co-Conspirators for in-network outpatient professional services provided in North-Central Wisconsin, during the Class Period.	3
Class Period	From October 11, 2018, up to and including June 30, 2023	3
Co-Conspirators	Providers who, in the absence of Defendants' alleged scheme, would compete with Aspirus on price for outpatient professional services	2
Defendants	Aspirus and ANI	1-2
Network Vendors	Companies that assemble healthcare provider networks	2
Payors	Those who pay for the medical services consumed by members of their health insurance plans	1
Plaintiffs	Team Schierl Cos. and Heartland Farms, Inc.	1
Security Health Plan	Security Health Plan of Wisconsin, Inc.	3
UMR	United HealthCare Management Resources	3
United Healthcare	United HealthCare Services, Inc.	3

INTRODUCTION

Defendants are fixing prices for outpatient professional services across North-Central Wisconsin. Plaintiffs, two Wisconsin businesses that pay for healthcare provided to their employees, sued Defendants for violating the Sherman Act and moved for class certification. Plaintiffs proffered reports from Dr. David Dranove and Dr. Jeffrey Leitzinger, two highly qualified economists, who between them opined that the price-fixing scheme is anticompetitive and inflated prices for outpatient professional services provided by Defendants and their Co-Conspirators and that these anticompetitive effects injured all or virtually all Payors in the proposed Class.

Defendants now move to exclude Dr. Leitzinger's testimony under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). *See* ECF No. 196 ("Def. Br."). The focus of the *Daubert* inquiry is "whether the expert is qualified in the relevant field and whether the methodology underlying the expert's conclusions is reliable." *Zelinski v. Columbia 300, Inc.*, 335 F.3d 633, 640 (7th Cir. 2003). Defendants, however, do not dispute that Dr. Leitzinger is qualified and do not meaningfully dispute that his methodologies—a yardstick regression, a difference-in-differences model, and an "in-sample" analysis—are widely accepted, reliable, and used routinely in econometrics and antitrust litigation. Instead, Defendants quibble with Dr. Leitzinger's choice of comparators and control variables, and with the conclusions he draws from his analyses. Those arguments are outside *Daubert*'s ambit: "[A]rguments about how the selection of data inputs affect the merits of the conclusions produced by an accepted methodology should normally be left to the jury." *Manpower, Inc. v. Ins. Co. of Pa.*, 732 F.3d 796, 808 (7th Cir. 2013).

Defendants' arguments also fail on their own terms. Dr. Leitzinger's yardstick regression analysis compared the prices charged by Defendants and their Co-Conspirators to the prices charged for the same services during the same time period from outpatient providers located in

Wisconsin but outside North-Central Wisconsin (the "yardstick" areas), controlling for numerous variables that might have affected prices. His analysis found an overcharge during the Class Period of 18.9 percent, with his results statistically significant at the 99 percent confidence level. Defendants first take issue with Dr. Leitzinger's choice of yardstick, asserting that other providers in the yardstick area also engaged in the Challenged Conduct. Arguments like this one—that the yardstick is "tainted" by the presence of the same conduct being challenged—are routinely rejected where, as here, the effect of such a "taint" would be a *conservative* damages estimate.

Defendants also argue that Dr. Leitzinger did not control for the right variables when isolating the effects of the Challenged Conduct, and that he should have included separate variables called "market share" and "quality." This is a prototypical jury argument about an expert's inputs, and it is wrong anyway: Dr. Leitzinger accounted for market share and quality in the ways that matter to this case. Indeed, none of Defendants' three experts even argued, much less *showed*, that Dr. Leitzinger should have added additional controls for market share or quality or that doing so would have made any difference. This critique appears only in Defendants' brief, with no empirical or analytical foundation.

Defendants challenge the "in-sample" analysis Dr. Leitzinger relied on as evidence of widespread impact. Other than a brief attack on the methodology itself—an attack that courts have unanimously and repeatedly rejected—Defendants principally argue that Dr. Leitzinger drew the wrong conclusions, finding common impact from what Defendants insist was just statistical "noise." This, too, is not a proper *Daubert* argument, and the linchpin of Defendants' attack—so-called "placebo tests" showing a "100% error rate"—are based on a flawed understanding of how the analysis works and what the results mean.

Finally, Defendants take issue with Dr. Leitzinger's extrapolation from his [redacted] dataset to estimate damages for Class members whose claims are not within the dataset. But extrapolating from a sample to a broader population is one of the most basic uses of statistics, and Dr. Leitzinger explained why he would expect the claims not in his data set to have the same or higher overcharges as the claims within the data set. And when he received new data between his opening and rebuttal reports, replacing the corresponding portion of the extrapolated data changed his topline numbers by just [redacted]—making the overcharge slightly higher—confirming the extrapolation's reliability and conservative nature.

In sum, Dr. Leitzinger presents reliable methodologies, using well-accepted statistical techniques based in the facts of this case, that will be helpful to the jury in deciding the questions of impact and aggregate damages. That is all that is required to admit his testimony. Defendants' motion should be denied.

BRIEF SUMMARY OF DR. LEITZINGER'S OPINIONS

Plaintiffs offer Dr. Leitzinger's testimony as part of their classwide evidence capable of proving that the Challenged Conduct caused overcharges; that all or virtually all Class members suffered impact (*i.e.*, paid overcharges); and that Plaintiffs and the Class suffered aggregate damages in the amount of $[redacted] million.[1] Defendants do not dispute that Dr. Leitzinger is qualified

[1] Defendants insinuate that Plaintiffs failed to find evidence to support their claims and have now constructed a new case. That is irrelevant, but also not true. The Complaint alleges a scheme to inflate prices for healthcare in North-Central Wisconsin consisting of four pieces of conduct: (1) Defendants jointly contract with Network Vendors on behalf of their own providers and those employed by the Co-Conspirators; (2) Defendants and the Co-Conspirators agree to exclusivity clauses that prevent the Co-Conspirators from competing against Defendants and against each other; (3) Defendants' all-or-nothing contracting prevents Network Vendors from selectively contracting with the cartel members; and (4) Defendants and the Co-Conspirators trap patient referrals within the ANI network ("referral trapping"). Compl. ¶ 13(a)-(d). Discovery has confirmed that Plaintiffs' allegations are remarkably accurate.

to offer these opinions—nor could they, as Dr. Leitzinger is a highly accomplished econometrician, with more than 40 years of experience testifying in antitrust cases, LR1 ¶ 2, including as the damages expert in a challenge to anticompetitive conduct by a hospital system that settled for more than $575 million dollars shortly before trial, *see UFCW & Employers Benefit Trust, et al. v. Sutter Health*, Case No. CGC-14-538451 (Cal. Super. Ct.). Courts have relied on Dr. Leitzinger's testimony to certify classes in dozens of cases across numerous industries.[2] It is undisputed that the statistical tools used here are widely accepted in econometrics and antitrust litigation, and that Dr. Leitzinger relied on documents, testimony, and transactional data produced by the parties and numerous nonparties as inputs to his analyses and to support his conclusions.

I. Dr. Leitzinger Used Well-Accepted Econometric Methodologies in Concluding That the Challenged Conduct Inflated Prices by More Than 18 Percent.

There is ample classwide evidence capable of proving that Defendants and the Co-Conspirators engaged in the Challenged Conduct to prevent competition; that the Challenged Conduct was intended to increase ANI's bargaining leverage and raise rates for outpatient services; and that Defendants and others in the market recognized that Defendants and the Co-Conspirators charge high prices. *See generally* Class Cert. Br. at 8-14, 18-23. Part of Dr. Leitzinger's assignment was to determine whether the prices charged for outpatient professional services were inflated above the competitive level (*i.e.*, supracompetitive), and if so, by how much. LR1 ¶ 8.

Dr. Leitzinger began by reviewing some of the extensive record evidence and public documents showing that Defendants' prices were extraordinarily high throughout the Class Period.

[2] Defendants assert that Dr. Leitzinger "is not an expert in healthcare economics," Def. Br. at 2, 5, but they do not challenge that he is an expert in econometrics, and specifically in analyzing impact and damages in antitrust cases. And as he testified, he has consulted on economic matters involving healthcare providers and health insurers, including providing analyses of impact and damages. Leitzinger Dep. at 45:1-55:16.

LR1 ¶¶ 22-27. This includes Defendants' own analyses showing that their prices were high compared to local, regional, and national benchmarks, and a RAND Corporation study of 4,000 hospital systems finding that Aspirus was the eleventh most expensive hospital system in the country. LR1 ¶¶ 22, 27. Dr. Leitzinger also reviewed record evidence showing that market participants, including consultants, Network Vendors, and Co-Conspirators, recognized that Defendants' and the Co-Conspirators' prices were high and that the Challenged Conduct is connected to those high prices. LR1 ¶¶ 23-26.[3]

Dr. Leitzinger then performed statistical analyses that corroborated and quantified the qualitative evidence of supracompetitive prices. The input for these statistical analyses was claims data produced in discovery by the five largest Network Vendors doing business with Defendants.[4] This robust data set included granular transaction data on [redacted] individual claim lines, representing over $[redacted] in claim reimbursement over the Class Period for outpatient professional services. LR1 ¶ 29; SLR (updating LR1 ¶ 29). "[T]hese data include, among other information, the allowed amount [*i.e.*, the negotiated price for a service], the nature of the services provided, the date of the claim, and the entity responsible for paying those claims." *Id.*

[3] Defendants assert that they actually charge patients "low[] overall costs," Def. Br. at 1, but the evidence shows otherwise and that Defendants engaged in the Challenged Conduct with the purpose and effect of increasing bargaining leverage and raising rates. *See*, *e.g.*, Class Cert. Br. at 9-13, 18-23. Indeed, Defendants' internal analyses, and publicly available studies like those by the RAND Corporation, show that Defendants' prices were high relative to local and national benchmarks. LR1 ¶¶ 22-23, 27; DR1 ¶¶ 131-133; DR2 ¶¶ 48-59. Moreover, Dr. Dranove rebutted Defendants' expert's argument that the Challenged Conduct somehow lowered the total cost of care for patients. DR2 ¶¶ 206-220.

[4] These are United Healthcare, Anthem Blue Cross Blue Shield ("Anthem"), United Medical Resources (a United Healthcare subsidiary that is an administrator for self-insured plans) ("UMR"), The Alliance, and Security Health Plan. This list does not include the health plan Aspirus owns, even though it is a major source of commerce, because those purchases are excluded from the Class. *See* Class Cert. Br. at 3.

Dr. Leitzinger first conducted an event study that simply examined whether providers' prices increased after joining ANI. LR1 ¶ 28; SLR (updating LR1 ¶ 28). He compared providers' prices for outpatient services in the 22 months before they joined ANI to the prices they charged in the 22 months after they joined. *Id.* The study showed unequivocally that providers' prices jumped by over [redacted] after joining ANI. *Id.* This is not Dr. Leitzinger's measure of overcharges, but it is empirical evidence, consistent with the documentary evidence, that joining ANI is associated with a significant increase in prices.

Dr. Leitzinger then used a statistical model called a "yardstick" regression to determine the extent to which ANI's inflated prices were attributable to the Challenged Conduct. LR1 ¶¶ 29-35. A regression analysis isolates the effects of a particular cause (here, the Challenged Conduct) on the "dependent variable" (here, the price for each outpatient professional service provided by Defendants and their Co-Conspirators), while holding constant other "control variables" that might affect the dependent variable. LR1 ¶ 30. A yardstick regression accomplishes this by comparing the prices being studied to prices in a different market in which the defendant does not transact and/or does not engage in the Challenged Conduct. LR1 ¶ 31. "After taking account of controls, the differences in outcomes are then used within the model to estimate the effects of the Challenged Conduct." *Id.* Defendants do not dispute that regression analysis in general, and yardsticks in particular, are standard methodologies for measuring overcharges in antitrust class actions. *See infra* at 14.

Since Dr. Leitzinger was studying prices charged by Defendants and the Co-Conspirators for outpatient professional services in ANI's service area in North-Central Wisconsin, Dr. Leitzinger chose as his yardstick the "prices charged for the same services from other

outpatient providers located in Wisconsin but outside North-Central Wisconsin" during the Class Period. LR1 ¶ 34.

Contrary to Defendants' mischaracterizations, Def. Br. at 12, Dr. Leitzinger explained his numerous reasons for choosing this yardstick. First, "by limiting the analysis to the state of Wisconsin, [he] control[led] for any pricing considerations that may be state specific." LR1 ¶ 34. Second, record evidence and FTC guidance suggested that the rest of Wisconsin is relatively free of the Challenged Conduct. *See id.* (citing deposition testimony from [redacted], as well as FTC guidance prohibiting the Challenged Conduct). Third, Dr. Leitzinger performed a statistical analysis of pricing and observed far more variation in pricing among outpatient providers in the rest of Wisconsin than among Defendants and the Co-Conspirators (which have essentially zero variation because of the price-fixing scheme), again suggesting absence of the Challenged Conduct in the yardstick. *Id.* & n.53. Fourth, Dr. Leitzinger's yardstick excludes other providers *within* ANI's service area in North-Central Wisconsin because they "may have prices that were inflated to some extent by the umbrella effects of ANI-CIN's pricing." *Id.* & n.50.

Dr. Leitzinger employed numerous control variables to control for important factors that might affect prices other than the Challenged Conduct. Several of these variables control for differences in bargaining power that might affect the ability to negotiate prices, such as whether the provider is part of a larger health system, the number of providers associated with a particular practice, and the identity of the Network Vendor. LR1 ¶¶ 32(a), 32(f), 33(c). Others control for differences in local conditions that might affect prices, such as urbanicity (*i.e.*, whether rural, urban, or in between), local wages, and local household incomes. LR1 ¶¶ 32(e), 33(a), 33(b). And still more relate to how services are provided, including the place of service (*e.g.*, whether provided

in a hospital or urgent care center), the complexity and cost of a service, and whether a service is provided by a specialist. LR1 ¶ 32(d), (g), (h).

The dependent variable in the regression was the price charged for each outpatient service provided by Defendants and the Co-Conspirators during the Class Period, which was drawn from the [redacted] insurance claims produced by Network Vendors during discovery. LR1 ¶¶ 29, 32; SLR (updating LR1 ¶ 29). The model thus looked at pricing effects at the level of each individual claim for an outpatient procedure (corresponding to a standard code, called a "Current Procedural Terminology" or "CPT" code, developed by the American Medical Association and used by providers and Payors for medical billing). LR1 ¶ 32.

The overcharge model works well as a statistical matter. It calculates an 18.9 percent overcharge and is highly statistically significant, at the 99 percent level of confidence. LR1 ¶ 35 & Ex. 5; SLR ¶ 2 (updating LR ¶ 35). The model also contains a very high "adjusted R-squared" of 0.897 (measured on a scale of 0 to 1). Ex. 5. An adjusted R-squared is a statistic that measures how much of the variation in the dependent variable (here, price) is explained by the control variables—*i.e.*, how well the regression isolates the effects of the conduct being analyzed. LR2 ¶ 35. Here, the regression's high R-squared means that there is very little variation in price not accounted for by the variables chosen for the regression.

Dr. Leitzinger also ran a second regression that corroborated his yardstick regression's overcharge findings. The second regression, called a "difference-in-differences" ("DiD") model, analyzed the prices of outpatient practices that Aspirus acquired from the major health system Ascension, both before and after those practices became part of ANI. LR1 ¶ 40. A DiD model measures the effect of an event (providers joining ANI) on a particular variable (prices for outpatient services) by comparing a "treatment group" (the Ascension practices acquired by ANI

during the Class Period) to a control group (practices in Wisconsin outside of North-Central Wisconsin who did not join ANI), while holding constant variables that might affect the prices being studied. LR1 ¶¶ 40-42. Dr. Leitzinger's DiD model used the same variables as the overcharge regression, plus three additional variables unique to the DiD model. LR1 ¶ 43.

The DiD model showed that simply joining ANI was associated with a 27 percent increase in Ascension providers' prices for outpatient professional services, after controlling for other factors affecting those prices. LR1 ¶ 44 & Ex. 7; SLR (updating LR1 ¶ 44). Importantly, in addition to the control variables, the DiD by its nature controls for any characteristics of the treatment and control groups that remain static during the event, including, the size and quality of the provider practices. The result of the DiD was highly statistically significant, at the 99 percent confidence level. *Id.* The DiD model thus corroborates Dr. Leitzinger's finding of an 18.9 percent overcharge and, indeed, shows that this overcharge is likely a conservative estimate of the overcharge damages in this case.

II. Dr. Leitzinger Relied On Record Evidence and Well-Accepted Econometric Methodologies in Concluding That All or Nearly All Class Members Suffered Impact.

After finding highly statistically significant evidence of a large overcharge, Dr. Leitzinger sought to determine whether there is evidence that these overcharges were broadly experienced across the proposed Class. Dr. Leitzinger examined evidence about the Challenged Conduct, as well as record evidence and econometric analysis regarding the scope of the Challenged Conduct's effect. He concluded that all or virtually all Class members were harmed. LR1 ¶¶ 45-59.

First, Dr. Leitzinger noted that the theory of this case lends itself to classwide impact. The Co-Conspirators delegate pricing authority to ANI and agree not to compete with ANI or each other for inclusion in networks offered by Network Vendors. LR1 ¶ 46. This means that there would be no way that a Network Vendor could negotiate lower rates with Defendants or any

Co-Conspirator, and thus, all prices charged by Defendants and the Co-Conspirators would be uniformly affected by the Challenged Conduct. LR1 ¶¶ 46-47. This widespread effect would apply regardless of whether the ultimate rates in the Network Vendor contracts were expressed as fixed prices or as a percentage of list prices set by the providers, and regardless of whether the health plan product was a broad or narrow network plan. LR1 ¶¶ 48-49.

Second, Dr. Leitzinger noted that the design of the payment system for healthcare lends itself to widespread impact. Prices paid to Defendants and the Co-Conspirators were dictated by contracts negotiated and entered into by a relatively small number of Network Vendors. LR1 ¶¶ 50-52. "This means that every Class member paying for the same service at the same [Defendant or Co-Conspirator] through a given product from a health plan [*i.e.*, through a broad or narrow network plan] would pay the same amount." LR ¶ 50. As Dr. Leitzinger explained, "there is little or no opportunity for a Class member to somehow negotiate around" any of the inflated prices in the Network Vendor contracts. *Id.* Thus, harming competition at the Network Vendor level would naturally cause widespread impact across the proposed Class.

Third, Dr. Leitzinger cited record evidence supporting the conclusion that inflated prices, and thus overcharges, would be broadly felt across the proposed Class. This included documents and testimony from ANI and from Network Vendors confirming that all ANI Providers—Defendants and the Co-Conspirators alike—charged the same rates under the contracts that ANI negotiated with Network Vendors. LR1 ¶¶ 53-55. In short, there is no reason to doubt that the inflated prices Dr. Leitzinger found would be broadly experienced across the Class.[5]

[5] Dr. Dranove, whose opinions Defendants do not challenge, similarly noted that the nature of the alleged scheme would be to spread overcharges across the range of healthcare services offered by Defendants and the Co-Conspirators. DR2 ¶ 20 ("Thus, even though head-to-head competition occurs at the level of a specific service or specialty, a lessening of head-to-head competition ultimately affects pricing for the 'bundle' of services.").

Finally, Dr. Leitzinger conducted an "in-sample" analysis to see whether there is empirical evidence that overcharges were broadly experienced across the Class. LR1 ¶¶ 56-58. In-sample analysis is commonly used for analyzing classwide impact in antitrust class actions. *See infra* at 32-33. This methodology uses the overcharge regression to compare the prices paid by Class members with the regression's prediction of the price that would have been charged but-for the Challenged Conduct. A "but-for" price that is lower than the actual price is evidence that the Class member was impacted (*i.e.*, paid an overcharge). Notably, this methodology is inherently conservative because it assumes that any price discounts a consumer received while the Challenged Conduct was restraining competition would be the same (and not higher) in the more competitive "but-for" world without the Challenged Conduct. LR2 ¶ 25. In fact, it is likely that in a more competitive marketplace—*i.e.*, one without the Challenged Conduct—any discounts would have been larger than in the actual world. *Id*.

Dr. Leitzinger's in-sample analysis generated empirical evidence that at least 98 percent of the Class suffered impact in the form of an overcharge. LR1 ¶ 56. As Dr. Leitzinger noted in his Rebuttal Report, and as discussed below, these results are robust across a number of statistical dimensions. Dr. Leitzinger's analysis shows that 90 percent of Class members paid overcharges on nearly one-half of their transactions. LR2 ¶ 28. Further, Dr. Leitzinger performs additional econometric tests, in response to criticism from Dr. Baker, demonstrating that 97 percent of Class members have at least one statistically significant overcharge, which shows that the model is picking up actual effects and not simply "noise." LR2 ¶ 35; *see also* LR2 ¶¶ 37-38 (explaining other statistical analyses supporting a finding of classwide impact through the in-sample analysis).

III. Dr. Leitzinger Used Standard Methodologies to Calculate Class Damages.

Dr. Leitzinger calculated aggregate Class damages of $[redacted] million. LR1 ¶ 39; SLR ¶ 2 (updating LR1 ¶ 39). Dr. Leitzinger first multiplied the 18.9 overcharge percentage by the total amount paid by Class members in the data he received, which showed approximately $[redacted] million in overcharges. LR1 ¶ 10(b).

As discussed below and in Plaintiffs' brief in support of class certification, not every Network Vendor produced claims data, and one Network Vendor (Anthem) did not produce all of its claims data. *See* Class Cert. Br. at 27. To calculate the additional damages for Class members whose claims are not included in the data, Dr. Leitzinger performed three additional steps. First, using Defendants' own documents reflecting how much business they do with each Payor, he calculated the amount of payment *not* reflected in the claims data. LR1 ¶ 37. Second, he determined that applying his overcharge estimate to this additional data makes sense and is likely a conservative estimate of damages. LR1 ¶ 38. Among other things, the Network Vendors that did not produce claims data represent fewer Payors than the ones that did, and they therefore likely paid even higher overcharges due to their weaker bargaining power. *Id.* Third, Dr. Leitzinger applied the overcharge to the additional amount of commerce, resulting in a total aggregate damages figure of $[redacted] million dollars. LR1 ¶ 39; SLR ¶ 2 (updating LR1 ¶ 39).

The accuracy and conservative nature of this extrapolation was confirmed when Anthem made its supplemental data production. When Dr. Leitzinger replaced his extrapolated values for that data set with the actual values, the overcharge increased by only [redacted] percent and the total aggregate damages figure barely changed, increasing from $[redacted] million to $[redacted] million. *See* SLR ¶ 2 (updating LR1 ¶ 39).

ARGUMENT

Federal Rule of Evidence 702 allows admission of expert opinions based on "scientific, technical, or other specialized knowledge" if they would "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Expert opinions are admissible if they are relevant and reliable. *Daubert*, 509 U.S. at 589. Rule 702 should be applied with a "liberal thrust" favoring admission. *Loeffel Steel Prods. v. Delta Brands, Inc.*, 372 F. Supp. 2d 1104, 1114 (N.D. Ill. 2005) ("*Loeffel I*"). "[T]he rejection of expert testimony is the exception rather than the rule." Fed. R. Evid. 702 advisory committee's note to 2000 amendment. For all but the most egregious of junk science, "[v]igorous cross-examination," and the "presentation of contrary evidence"—not exclusion—are the "appropriate means of attacking" expert testimony. *Daubert*, 509 U.S. at 596.

Accordingly, the role of the Court at the *Daubert* stage "is to determine [1] whether the expert is qualified in the relevant field and [2] to examine the methodology the expert has used" to ensure that it is accepted in the relevant field. *Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000). "It is not the trial court's role to decide whether an expert's opinion is correct. The trial court is limited to determining whether expert testimony is pertinent to an issue in the case and whether the methodology underlying that testimony is sound." *Id.* at 719. "The reliability of data and assumptions used in applying a methodology is tested by the adversarial process and determined by the jury." *Manpower, Inc.*, 732 F.3d at 808.[6]

[6] Although unclear, to the extent Defendants argue that the 2023 amendments to Rule 702 raised the substantive legal standards, that is not the case. *See*, *e.g.*, *Polycon Indus., Inc. v. R&B Plastics Mach., LLC*, 2025 WL 906296, at *10 (N.D. Ind. Mar. 26, 2025) ("Having conducted additional research, I am not convinced . . . that the 2023 Amendment is a sea change to the Rule 702 analysis of the sufficiency of an expert's facts or data. At best, the case law in this Circuit post December 2023 suggests a ripple on the surface.").

I. Dr. Leitzinger's Yardstick is Properly Constructed and Reliable.

Defendants do not dispute that "the yardstick approach is a well-established methodology" in antitrust actions. *See In re Dealer Mgmt. Sys. Antitrust Litig.*, 581 F. Supp. 3d 1029, 1073 (N.D. Ill. 2022). Instead, they take issue with the market Dr. Leitzinger selected as his yardstick, arguing that it improperly "includes healthcare providers that also supposedly engaged in the Challenged Conduct" and that he "fail[ed] to meaningfully evaluate" the appropriateness of his yardstick. Def. Br. at 10-14. These arguments are legally unsound and factually unsupported.

First, Defendants' contention that a yardstick must be completely free of the Challenged Conduct is contradicted by both Dr. Leitzinger's testimony and case law holding otherwise. Dr. Leitzinger testified in his deposition that while it is "ideal[]" for the yardstick to "not be affected in any way" by the Challenged Conduct, all that is required is that the yardstick is not affected "to the same degree by the conduct in question." Leitzinger Dep. 141:10-142:12. Any presence of the Challenged Conduct in the yardstick, he explained, would only render the overcharge estimate conservative, as it would raise the prices in the benchmark against which Defendants' and Co-Conspirators' prices were measured: "[W]here there's the potential that there is still some conduct, it doesn't . . . ruin the estimation process or create numbers that create results that don't have any meaning; it just means that they're going to be understated." *Id.* at 143:4-11. Sure enough, when Dr. Leitzinger re-ran his analysis without one provider in the yardstick who might have engaged in the Challenged Conduct, the overcharge *increased* to 20 percent. LR2 ¶ 65.

Courts have repeatedly recognized a plaintiff's yardstick need not be entirely free of the challenged conduct, as the existence of the challenged conduct in the yardstick would only make the overcharge estimate conservative, which helps the defendant. For example, in *In re Linerboard Antitrust Litigation*, 497 F. Supp. 2d 666 (E.D. Pa. 2007), the defendant sought to exclude an expert because he "incorrectly assumed that his benchmark period was free of collusion." *Id.*

at 673. The court rejected the argument, holding that this would not support exclusion because "if there was in fact collusion during the benchmark period, [the expert's] but-for price estimate would be too high, causing his estimate of the overcharge [] to be too low." *Id.* at 684. Many other courts have held the same. *See*, *e.g.*, *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, 2025 WL 354671, at *34 (S.D.N.Y. Jan. 30, 2025) ("The overarching effect of this would be to make Dr. Johnson's overcharge damages estimate somewhat more conservative. Permitting the use of this benchmark thus aligns with the prevailing legal trends in benchmark selection." (citation omitted)); *In re Packaged Seafood Prods. Antitrust Litig.*, 332 F.R.D. 308, 327 (S.D. Cal. 2019) ("[E]ven if the Court were to assume that the benchmark period was not perfectly competitive, Dr. Mangum's damages calculation actually becomes a more conservative estimate." (internal quotation marks and alterations omitted)); *Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co.*, 2016 WL 3579953, at *9 (E.D. Wis. June 24, 2016) (finding predominance where the expert's regression model included "some anti-competitive conduct [that] occurred in the benchmark period" because "it would only render his overcharge estimate conservative"); *In re Processed Egg Prods. Antitrust Litig.*, 312 F.R.D. 171, 195 (E.D. Pa. 2015) ("[I]f anything, any anticompetitive activity during the benchmark period would make [the] results conservative."); *Allen v. Dairy Mktg. Servs., LLC*, 2013 WL 6909953, at *15 (D. Vt. Dec. 31, 2013) (finding that the fact that plaintiffs' expert's benchmark market was "not wholly competitive . . . would merely render [the] calculation of damages more conservative").

Defendants do not acknowledge this directly relevant precedent. They instead rely on inapposite caselaw, like *CMFG Life Insurance Company v. Credit Suisse Securities (USA) LLC*, 2017 WL 4792253 (W.D. Wis. Oct. 23, 2017), which held that the defendant could not use a tainted benchmark to exonerate itself. In *CMFG*, the plaintiff was suing to rescind the purchase of

residential mortgage-backed securities ("RMBS") based on alleged misrepresentations about the quality of the underlying loans, which allegedly caused excessive default rates. *Id.* at *1. The defendant's expert tried to use a regression to disprove causation, but he "made *no* effort to ensure that the [] comparison sample contained loans that did not have underwriting errors." *Id.* (emphasis in original). That is, the expert could not establish a normal default rate by reference to a control group that might or might not represent a normal default rate. *Id.*; *see also Nat'l Credit Union Admin. Bd. v. UBS Sec., LLC*, 2016 WL 7373857, at *5-8 (D. Kan. Dec. 20, 2016) (rejecting the same analysis in a case alleging the same conduct as in *CMFG*). Importantly, that error not only undermined the entire purpose of the regression, but it also biased the result in favor of the defendant who put forward the analysis.

Here, unlike in *CMFG* and *National Credit Union*, the existence of any of the Challenged Conduct in Plaintiffs' expert's yardstick would only bias the model *against* Plaintiffs and create a conservative estimate of damages. *See In re Keurig*, 2025 WL 354671, at *34 (holding that "[p]ermitting the use of [an overly conservative] benchmark [] aligns with the prevailing legal trends in benchmark selection"). Moreover, Dr. Leitzinger used his yardstick regression to estimate damages, not to establish liability. Courts grant wide latitude to antitrust plaintiffs trying to measure damages in a market tainted by anticompetitive conduct, especially where a yardstick renders the damages estimate conservative. *See*, *e.g.*, *Fond Du Lac Bumper Exch., Inc.*, 2016 WL 3579953, at *9.

Defendants also cite *City of Rockford v. Mallinckrodt ARD, Inc.*, 2024 WL 1363544 (N.D. Ill. Mar. 29, 2024), but the court there did not address or discuss a yardstick containing aspects of challenged conduct. The case alleged anticompetitive conduct that inflated the cost of a prescription drug, but instead of identifying another prescription drug to use as a yardstick, the

plaintiff's expert just "designate[d] the pharmaceutical industry as a whole as the relevant comparison market." *Id.* at *6. He then assumed that but for the challenged conduct in that case, the prices of the defendant's drug would have precisely followed "a monthly metric produced by the Bureau of Labor Statistics," *id.*, without controlling for *any* other factor that might have inflated the price of the drug at issue, *id.* at *8 (finding that the plaintiff's expert "makes no effort to control for any other factors that might have affected [the defendant's product's] price"). In contrast, Dr. Leitzinger did not use a price index or an average of national healthcare prices. He used actual outpatient prices in the voluminous claims data produced in discovery, comparing prices at the level of the individual procedure and controlling for numerous other conditions affecting pricing. *See supra* at 5-8. This obviates the court's main concern in *Mallinckrodt*, which was that it was unreasonable to assume that the demand conditions for other products was a good proxy for demand for the defendant's product.[7]

Second, Defendants' contention that Dr. Leitzinger "fail[ed] to meaningfully evaluate" the appropriateness of his yardstick, Def. Br. at 12, is incorrect. Dr. Leitzinger explained exactly why he chose the yardstick he did: it includes many providers, which offers a rich store of data for his regression; using Wisconsin providers controls for any state-specific issues; using only Wisconsin providers outside of ANI's service area ensures that the yardstick is not infected by the "umbrella

[7] Defendants cite *Zenith Electronics Corp. v. WH-TV Broadcasting Corp.*, 395 F.3d 416 (7th Cir. 2005), but that case did not involve a regression, much less the question of what an acceptable yardstick is. Indeed, the court's main criticism was that the expert did not use a regression analysis, and instead that the expert "preferred intuition to the empirical toolkit of the social sciences." *Id.* at 419. Defendants also cite *Zamecnik v. Indian Prairie School District No. 204*, 636 F.3d 874 (7th Cir. 2011), but that, too, is inapposite. There, the expert's 38-page report included 29 pages of curriculum vitae, and "less than two and a half pages" for "analysis and opinions." The report contained just seven numbered paragraphs with nothing but mere conclusions. *Id.* at 880-81.

effects" of ANI's price-fixing scheme;[8] the Challenged Conduct was likely not widespread in the yardstick because a major statewide Network Vendor testified that it was not and antitrust authorities recommend against the conduct; and his statistical analysis of price dispersion further supported the conclusion that the Challenged Conduct was not widespread in the benchmark. LR1 ¶ 34 & nn. 50-53; *see supra* at 7. Defendants appear to suggest that Dr. Leitzinger was required to analyze the precise extent to which the yardstick contained the Challenged Conduct, Def. Br. at 14, but they cite no authority requiring that, and indeed, there is no reason why that would be necessary when Dr. Leitzinger has already explained why he believes the Challenged Conduct is not widespread in the yardstick and any presence of such conduct would only render the overcharge estimate conservative.

Defendants' citation to *Loeffel Steel Prods., Inc. v. Delta Brands, Inc.*, 387 F. Supp. 2d 794 (N.D. Ill. 2005) ("*Loeffel II*"), only confirms the rigor of Dr. Leitzinger's analysis. In *Loeffel II*, the defendant's expert sought to measure the plaintiff's lost profits by comparing the plaintiff's business to a random selection of other businesses generally in the same industry, but he could not in any way "explain how the [benchmark] companies were selected for inclusion in the sampling." *Id.* at 811. It turned out several of the companies in the comparison group were not even in the same business as the plaintiff, and the expert did not run a regression or do *anything* to control for

[8] Umbrella effects are a well-known phenomenon: "[W]hen many suppliers engage in a conspiracy to raise prices, non-conspirators may raise their prices to supra-competitive levels." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 675 (9th Cir. 2022) (en banc). Dr. Leitzinger determined that it was appropriate to exclude from his yardstick providers in North-Central Wisconsin (other than Defendants and the Co-Conspirators) to avoid biasing the model. LR1 ¶ 34 n.50; Leitzinger Dep. 171:21-177:7. While Defendants imply in a footnote that there was some malfeasance in excluding other North-Central Wisconsin providers from the yardstick, Def. Br. at 6 n.3, neither they nor their experts argue that Dr. Leitzinger's modeling decision was improper as an econometric matter, and they do not even assert, much less show, that this decision affected the overcharge in a way that made it unreliable or biased against Defendants.

any other differences—he simply compared those eight companies' total profits to the plaintiff company's total profits to argue the plaintiff was not harmed. *Id.* at 812-13.[9] By comparison to this "facile, and under-inclusive methodology," *id.* at 813, Dr. Leitzinger's yardstick providers were not only all involved in the same field, but the regression was run at the level of the individual procedure code, meaning that the regression was comparing pricing for *identical* procedures. And, of course, Dr. Leitzinger's regression included numerous control variables.[10]

In short, Dr. Leitzinger's yardstick was an appropriate and targeted comparison: it included the same types of healthcare providers, performing the same procedures during the same period, for insured patients in Wisconsin, and it compared them at the level of millions of individual transactions. He explained why he chose the yardstick and why it appeared to be relatively free of the Challenged Conduct. To the extent the yardstick contains a provider who engaged in aspects of the Challenged Conduct, it would only render the overcharge estimate conservative; it would not warrant exclusion under *Daubert*.

[9] It is also clear that the court in *Loeffel II* felt that the expert's work was otherwise barely passable, stating that the purported analysis "has no textual elaboration or explanation, and the reader is left to divine its meaning from the headings, captions, and the figures on its charts and spreadsheets." *Id.* at 799.

[10] Defendants also rely on an unpublished Fifth Circuit opinion, *El Aguila Food Products, Inc. v. Gruma Corporation*, 131 F. App'x 450 (5th Cir. 2005), that is similarly inapposite. There, a group of 17 tortilla manufacturers sued for lost profits, an inherently individualized measure of damages, due to alleged monopolization of a downstream retail market. The plaintiffs' expert offered a damages model that simply compared the profits made by the plaintiffs to the average profit margin of the national tortilla market, as calculated by a national tortilla manufacturer trade association. The plaintiffs' expert then simply assumed that absent the defendant's conduct, the plaintiffs' profits would have been identical—to each other and to the national market average. *Id.* at 453. The plaintiffs' expert did not control for any differences between the plaintiffs' businesses and the businesses in the benchmark. Dr. Leitzinger is not measuring lost profits, is not using an average as his yardstick, and ran a regression using numerous variables to control for differences.

II. Defendants' Arguments Regarding Dr. Leitzinger's Purported Exclusion of Certain Variables Do Not Justify Excluding His Report.

Defendants argue that Dr. Leitzinger's regression analysis should be excluded as unreliable because, according to Defendants, it did not properly control for "market share" and "quality." Def. Br. at 16. This argument is flawed three times over. First, it is not a proper *Daubert* argument, as "the selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than to its admissibility." *Manpower*, 732 F.3d at 808. Second, Defendants' critique is unsubstantiated: their three experts never suggested, let alone tried to show, that Dr. Leitzinger improperly omitted "market share" or "quality" controls. Third, Defendants' critique is factually mistaken, as Dr. Leitzinger's analysis accounted for the elements of market share and quality relevant to this case.

A. Defendants' Critiques Go To Weight, Not Admissibility.

Defendants' contention that Dr. Leitzinger should have used two additional unspecified control variables is a jury argument, not a *Daubert* argument. The reliability of expert testimony for *Daubert* purposes "is primarily a question of the validity of the methodology employed by an expert, not the quality of the data used in applying the methodology or the conclusions produced." *Manpower*, 732 F.3d at 806. Defendants, however, do not question "the validity of [Dr. Leitzinger's] methodology." *Id.* To the contrary, they expressly *disclaim* any argument "that regressions, in general are unreliable." Def. Br. at 15.[11] Instead, they attack only the control

[11] Defendants criticize Dr. Leitzinger's regression on the basis that it "controls only for those variables that he chose to include in the model and—by design—must assume that the remaining observed price differentials are due to the Challenged Conduct." Def. Br. at 15. This is just a description of regression models generally: every regression controls for "only" the variables the person building the regression includes. Further, no regression definitively proves causation; regressions provide evidence that support inferences about causation. Nevertheless, regressions are commonly used to measure overcharges in antitrust cases. *See*, *e.g.*, *Kleen Prods. LLC v. Int'l Paper*, 2017 WL 2362567, at *3-4 (N.D. Ill. May 31, 2017).

variables that Dr. Leitzinger used for his regression analysis, arguing that he should have added some other control variables for provider "market share" and "quality," alongside his many other controls.

This kind of argument is ill-suited for *Daubert* motions: "the Supreme Court and [the Seventh] Circuit have confirmed on a number of occasions that the selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than to its admissibility." *Manpower*, 732 F.3d at 808; *see also*, *e.g.*, *Bazemore v. Friday*, 478 U.S. 385, 400 (1986) (Brennan, J., for a unanimous Court, concurring) ("[F]ailure to include variables will affect the analysis' probativeness, not its admissibility."); *Cullen v. Ind. Univ. Bd. of Trs.*, 338 F.3d 693, 701-02 & n.4 (7th Cir. 2003) ("[T]he propriety of controlling for particular variables in a regression analysis goes to weight rather than admissibility." (internal quotation marks and citation omitted)); *SEC v. SBB Research Grp., LLC*, 2024 WL 4894315, at *7 (N.D. Ill. Nov. 26, 2024) ("The determination of what variables should be included in an analysis normally affects its probativeness, not its admissibility.").While a court may exclude a regression if it is "so incomplete as to be inadmissible as *irrelevant*," disagreements about variables are fodder for cross-examination, not cause for exclusion. *Bazemore*, 478 U.S. at 400 n.10 (emphasis added); *see also Manpower*, 732 F.3d at 808 ("[A]rguments about how the selection of data inputs affect the merits of the conclusions produced by an accepted methodology should normally be left to the jury.").

In *Bazemore*, for example, the district court excluded an expert's regression model because it "did not include all measurable variables thought to have an effect." 478 U.S. at 400 (internal quotation marks omitted). The Supreme Court reversed, holding that a "failure to include variables will affect the analysis' probativeness, not its admissibility," and that "a regression analysis that

includes less than 'all measurable variables' may serve to prove a plaintiff's case." *Id.* Countless cases have followed this guidance, rejecting arguments that expert opinions based on well-accepted methodologies should be excluded over disagreements about which variables to use. For example, in *In re Allstate Corporation Securities Litigation*, 2022 WL 842737 (N.D. Ill. Jan. 10, 2022), *report & recommendation adopted*, 2022 WL 17683310 (N.D. Ill. Feb. 22, 2022), the defendant argued that an expert's regression was "incorrectly specified" because he included the wrong "explanatory variables." 2022 WL 842737, at *8. The court rejected the argument, explaining that "[r]esolution of this debate is not the province of a *Daubert* motion." *Id.* at *9. Likewise, in *Moehrl v. National Association of Realtors*, 2023 WL 2683199 (N.D. Ill. Mar. 29, 2023), the court rejected an argument that the expert's model "does not control" for the proper variables because "[t]hose arguments . . . implicate the probative weight of his opinions not their admissibility." *Id.* at *9.[12]

[12] *See also In re Turkey Antitrust Litig.*, 2025 WL 264021, at *16 (N.D. Ill. Jan. 22, 2025) ("His choice to include cold turkey inventory as part of supply in his production regression goes to the weight of his testimony rather than its admissibility."); *Ploss v. Kraft Foods Grp., Inc.*, 637 F. Supp. 3d 561, 572 (N.D. Ill. 2022) ("Disputes over [the expert's] selections go to the probative weight of the analysis rather than to its admissibility." (alterations and quotation marks omitted)); *Chi. Teachers Union, Local 1 v. Bd. of Educ. of Chi.*, 2020 WL 914882, at *7 (N.D. Ill. Feb. 25, 2020) ("It is for the trier of fact to determine whether Walker's failure to account for academic performance in his regressions renders them less probative."); *Jordan v. Dominick's Finer Foods*, 115 F. Supp. 3d 950, 963 (N.D. Ill. 2015) ("[O]bjections as to whether an expert considered certain factors that the opposing side deems irrelevant generally go to the weight of the expert's opinion, not its admissibility."); *In re Steel Antitrust Litig.*, 2015 WL 5304629, at *10 (N.D. Ill. Sep. 9, 2015) ("While it is likely true that some of the external factors raised by Defendants also had an impact on the cost and price of steel, the Supreme Court and this Circuit have confirmed on a number of occasions that the selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than to its admissibility." (internal quotation marks and citation omitted)); *CMFG Life Ins. Co. v. RBS Sec. Inc.*, 2014 WL 3696233, at *14 (W.D. Wis. July 23, 2014) ("[T]he selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than to its admissibility."), *rev'd in part on other grounds*, 799 F.3d 729 (7th Cir. 2015).

Defendants ignore this authority entirely and instead try to cast this as the rare case in which an expert's regression is "so incomplete as to be inadmissible as irrelevant." *Bazemore*, 478 U.S. at 400 n.10. That position is irreconcilable with the facts. Dr. Leitzinger applied a well-specified regression analysis to a robust data set encompassing nearly [redacted] million claim lines and representing over $[redacted] in charges. LR1 ¶ 29; SLR (updating LR1 ¶ 29). To isolate the effects of the Challenged Conduct from other variables that might impact the price of given service, Dr. Leitzinger controlled for the identity of the Network Vendor, the type of health plan, the type of facility where the service was provided, the location of the service provider, the size of the service provider, the type of procedure, the provider's specialty, the quarter and year of the claim, the cost of labor, the number of providers at the practice providing the service, and other relevant aspects of the marketplace. LR1 ¶¶ 32-33. These variables were well chosen: Dr. Leitzinger's model has an adjusted R-squared of 0.897, meaning that the regression model's variables account for ***89.7%*** of all variation in the price data. LR2 ¶ 35.[13]

That is nothing like the extreme examples in Defendants' cases, *see*, *e.g.*, Def. Br. at 16 & n.6, where the experts did not control for *anything* or made basic errors. In *Mallinckrodt*, the expert did not "distinguish[] the effect of the unlawful conduct taken as a whole against *any* other factors that may have affected the price." 2024 WL 1363544, at *9 (emphasis added). In *Doctor's Data, Inc. v. Barrett*, 2017 WL 11885711 (N.D. Ill. Mar. 31, 2017), the expert "describe[d] no methodology at all" and "may have just eye-balled [his estimates] according to his gut feeling." *Id.* at *8. In *CDW LLC v. NETech Corporation*, 906 F. Supp. 2d 815 (S.D. Ind. 2012), the expert

[13] *See generally EEOC v. DHL Express (USA), Inc.*, 2016 WL 5796890, at *4 (N.D. Ill. Sept. 30, 2016) ("The R-squared value ranges from 0 to 1. A value of 0 means that the explanatory variables . . . explain none of the variation of the dependent variable . . . , while a R-square[d] of 1 means that the explanatory variables explain all of the variation." (internal quotation marks omitted)).

did not use a regression and "made no (and did not rely on any) economic analysis." *Id.* at 824. And in *Conrad v. Jimmy John's Franchise, LLC*, 2021 WL 718320 (S.D. Ill. Feb. 24, 2021), the expert made a basic data entry error, "lump[ing] . . . together" per-hour wage data and per-shift wage data, making the results obviously unreliable. *Id.* at *18.

Finally, *Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 152 F.3d 588 (7th Cir. 1998), discussed in more detail below, *infra* at 26-28, is not to the contrary. Like the other cases cited by Defendants, the plaintiff's expert in *Marshfield* submitted expert reports that were "worthless" because they made "no correction for any other factor [affecting prices] except differences in the treatment mix." *Id.* at 593. Here, in contrast, Dr. Leitzinger used many control variables and explained why they are relevant to the analysis of prices in this case. *Supra* at 7-8.[14] Moreover, unlike in *Marshfield*, Defendants and their experts offered *no* evidence—despite ample opportunity—to call Dr. Leitzinger's regression into question. *See In re Dealer Mgmt. Sys.*, 581 F. Supp. 3d at 1054 (rejecting argument about omitted variables because, unlike in *Marshfield*, the defendants had not demonstrated through their own evidence that the purported omission "skewed [the expert's] calculations in any material way").

B. Defendants' Critiques Are Unsubstantiated.

Apart from being improper under *Daubert*, Defendants' criticism rings hollow because their own experts never once suggested that "market share" or "quality" variables were necessary,

[14] It was important to control for treatment mix in *Marshfield* because the plaintiff's expert calculated the damages on a per-patient basis. 152 F.3d at 594. Thus, in *Marshfield*, while the plaintiff's expert had shown that the defendant clinic charged a "higher average price per patient," other record evidence conclusively showed "that all there is to the higher average price per patient charged by the clinic was that the clinic had referred to it patients who are sicker than average and so require longer treatment." *In re Dealer Mgmt. Sys.*, 581 F. Supp. 3d at 1054 (internal quotation marks omitted) (discussing *Marshfield*). Here, Dr. Leitzinger avoids this problem by measuring damages for each procedure, not per patient, so the number of procedures per patient will not affect the overall damages.

much less critical, to a reliable analysis. Defendants proffered three experts who submitted lengthy reports, yet they "made no attempt . . . – statistical or otherwise – to demonstrate that when [the supposedly omitted variables] were properly organized and accounted for," the outcome of Dr. Leitzinger's regression would have changed. *Bazemore*, 478 U.S. at 403 n.14. The fact that this critique is made only in the briefs, with no supporting evidence, is reason enough to reject it.

Despite Defendants' insistence that market share and quality are "critical factors" without which a hospital-pricing model could not be reliable, Def. Br. at 16, none of Defendants' three experts mentioned these variables, let alone controlled for either one.[15] Dr. Baker was the only one of Defendants' experts to even suggest Dr. Leitzinger's model might be affected by "omitted variable bias," and, even then, asserted only that Dr. Leitzinger "does not include controls for some patient-specific demographic or socioeconomic factors." BR1 ¶¶ 109-113.[16] Notably, neither "market share" nor "quality" are "patient-specific … factors"; they are *provider*-specific factors. It is implausible that "market share" and "quality" are the "most important" factors and yet Defendants' experts ignored them entirely.

With respect to "quality" in particular, Defendants do not explain in their brief what variables (beyond those already employed by Dr. Leitzinger) would be relevant, much less *necessary*, to include in the overcharge model. "Courts generally do not strike an expert's testimony when his counterparty complains that the expert's analysis suffers from omitted variable

[15] Dr. Baker raises a quality argument in the context of Dr. Leitzinger's separate DiD model. *See infra* at 29-30. His argument is that *changes* in provider quality caused by joining ANI might explain the jump in prices caused by joining ANI, but Dr. Leitzinger thoroughly rebuts that argument, LR2 ¶¶ 82-83 & Table 1, and Defendants do not raise it in their *Daubert* motion.

[16] Within this nebulous category, Dr. Baker gives only one example—patient co-morbidities—which Dr. Leitzinger explained in his rebuttal report may affect a population's total cost of care (*i.e.*, because patients would need more procedures) but would not affect the prices of individual procedures, which was the focus of Dr. Leitzinger's analysis. *See* LR2 ¶ 59. Tellingly, Defendants do not even raise this purported omitted variable in their *Daubert* motion.

bias but goes no further to identify those specific omitted variables." *Kleen Prods. LLC*, 2017 WL 2362567, at *11 (citing *Bazemore*, 478 U.S. at 400-01). Defendants do not indicate whether they mean quality of a physician, a facility, or an entire system, nor do they articulate whether the variable should have controlled for actual quality metrics or a hospital system's (or individual clinician's) reputation for quality.[17]

Lacking any support in their own experts' analysis, Defendants nevertheless insist that "market share" and "quality" variables must be necessary here because they were necessary in *Marshfield*, a different case involving different conduct and different expert analyses. The comparison is inapt. *See Bazemore*, 478 U.S. at 400 ("Whether . . . a regression analysis does carry the plaintiffs' ultimate burden will depend in a given case on the factual context of each case."). In *Marshfield*, the court's concern regarding the lack of a quality variable—specifically, a system-wide reputation for quality—stemmed from the expert's use of "average price per patient" to compare prices across systems. 152 F.3d at 594. The court reasoned that because a system with a higher reputation for quality would likely draw sicker patients, "the average price per patient will be higher simply as a function of the more extensive or protracted care required on average by a sicker patient." *Id.* The court concluded that, based on the record before it, "this [effect] is all there is to the higher average price per patient charged by the Marshfield Clinic." *Id.*

Here, in contrast, Dr. Leitzinger compared systems based on their average price *per procedure*, entirely obviating the *Marshfield* court's concern: a sicker patient population may have a higher total cost of care but would not have a higher average cost per procedure. LR2 ¶ 59. And unlike in *Marshfield*, there is no evidence that inclusion of some undefined "quality" variable

[17] Defendants mention HEDIS data, Def. Br. at 16, but do not explain what aspects of quality would be controlled for by that data, and whether any of those aspects are critical inputs into the regression. As explained below, *infra* at 31, HEDIS data would not be appropriate here.

would affect Dr. Leitzinger's analysis. Exclusion on this ground is not warranted. *See*, *e.g.*, *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1188 (9th Cir. 2002) ("[A] defendant may not rest an attack on an unsubstantiated assertion of error. Rather, the defendant must produce credible evidence that curing the alleged flaws would also cure the statistical disparity." (internal quotation marks and citation omitted)).

With respect to market share, such a control was important in *Marshfield* because of how it related to plaintiff's market-allocation claim, which was all that survived of a larger set of theories previously rejected by the Seventh Circuit. 152 F.3d at 590. The plaintiff's theory was that Marshfield agreed jointly with its competitors to reduce output to enable them to raise prices. *Id.* at 591. But the evidence showed that, given Marshfield's size, it could raise prices by reducing output without unlawful coordination because a unilateral reduction could not be immediately filled by its competitors, even if they wanted to. *Id.* at 593. Thus, Marshfield Clinic could "all by itself, *without dividing markets with its competitors*, [] charge a price somewhat above the average for the state." *Id.* (emphasis added). Because controlling for market share was central to evaluating the effects of the challenged allocation of the market, the failure to control for market share (or anything even approximating market share) was fatal.

Plaintiffs' claims are different. Plaintiffs' theory is that by banding together, Defendants and the Co-Conspirators can extract higher prices from Network Vendors. The Complaint and record evidence show that ANI and the Co-Conspirators *did* jointly and exclusively contract with Network Vendors via negotiations that Defendants controlled. *See* Class Cert. Br. at 11-13. As explained below, Dr. Leitzinger controlled for factors (like the size of the provider practice and whether it was part of a health system, among others) relevant to the harm from increased

bargaining leverage. Thus, Dr. Leitzinger's model controls for the factors relevant to this case. He did not need to control for factors relevant to another.

In the end, Defendants' reliance on *Marshfield* ignores "the factual context of each case." *Bazemore*, 478 U.S. at 400. *Marshfield* does not impose an absolute rule about which variables the model must include, nor does it alter the general rule that "the propriety of controlling for particular variables in a regression analysis goes to weight rather than admissibility." *Cullen*, 338 F.3d at 701-02 & n.4 (citation omitted).

C. Defendants' Critiques Are Factually Unfounded

Dr. Leitzinger's analysis accounts for both market share and quality as they are relevant to this case. As for market share, while Dr. Leitzinger did not have a specific variable called "market share," his variables control for the specific aspect of market share that is relevant to analyzing the Challenged Conduct—namely, its effect on bargaining leverage.

Dr. Leitzinger's regression accounts for the characteristics affecting the relative bargaining power of providers and their counterparties, Network Vendors. On the provider side, the regression includes a control for "System Type," which controls for "whether the entity is a multi-hospital or practice system, a stand-alone hospital, or stand-alone private practice." LR1 ¶ 32(f). Dr. Leitzinger frames this control explicitly in the language of bargaining power: "This variable controls for provider characteristics (*e.g.*, size) that influence their ability to negotiate prices with Network Vendors." *Id.* Dr. Leitzinger also included a control variable for "NPIs per Provider per Year," which "measures the number of healthcare professionals" billing under a given system's name. *Id.* ¶ 33(c). Like the "System Type" control, this variable encompasses the key effect of a hospital system's market share: its "bargaining capacity." *Id.*

Dr. Leitzinger also controlled for the other side of the ledger: he included a separate "Network Vendor" variable that "controls for the identity of the network vendor" and thereby

"captures the difference in prices across claims that is attributable to the bargaining capacity of the network." *Id.* ¶ 32(a). Thus, Dr. Leitzinger has gone far beyond mere "market share" by directly controlling for bargaining leverage, which is what is relevant to Plaintiffs' theory of harm due to the Challenged Conduct. *See generally Ball Mem'l Hosp., Inc. v. Mut. Hosp. Ins., Inc.*, 784 F.2d 1325, 1336 (7th Cir. 1986) (holding that "[m]arket share is just a way of estimating market power," which is "the ability to control output and prices").

Dr. Leitzinger's analysis also accounts for quality, in two ways. First, his DiD model showed that providers' prices increased "nearly immediate[ly]" upon joining ANI. LR2 ¶ 82. This rules out quality as the cause, since provider quality does not change overnight. A DiD model measures "the effect of an event—here, the providers' switch to ANI-CIN—by comparing a treatment group's price changes to a control group's price changes before and after the event occurs." LR1 ¶ 40; *see generally Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 818 (7th Cir. 2012) (approving use of difference-in-differences model to measure hospital price changes). Specifically, Dr. Leitzinger studied how the prices for services rendered by Ascension providers changed once they became members of ANI, by comparison to price changes among a control group of providers that did not join ANI. LR1 ¶¶ 40-41.

The difference-in-differences test corroborated Dr. Leitzinger's overcharge calculations, showing that "prices for outpatient professional services from providers that switched to [ANI] during the Class Period increased relative to the control group." LR1 ¶ 44. Most relevant here, the price effects for those providers were "nearly immediate" upon joining ANI, confirming that the overcharges resulted from the conspiracy rather than provider quality. LR2 ¶ 82 & n.95. As Dr. Leitzinger explained, any supposed "improved quality . . . resulting from investments . . . that Aspirus made at Ascension facilities after acquiring them" would have "take[n] significant time"

and therefore could not explain the "nearly immediate price increases for Ascension providers." LR2 ¶ 82. Even over time, Dr. Leitzinger "d[id] not find evidence of broad quality improvement" in the years after Ascension joined ANI. LR2 ¶ 83. According to data provided by the Centers for Medicare and Medicaid Services, "the Quality Star measure declined or stayed the same in two of the three Ascension hospitals (where data are available)" and "[t]he mortality rating increased in three of the five hospitals (where data are available) post-acquisition." *Id.* In sum, the difference-in-differences model confirmed that overcharges were caused by membership in the conspiracy, not differences in quality.[18]

Second, while Dr. Leitzinger's regression model does not include a variable called "quality," it does include control variables associated with provider quality that might be relevant to payer negotiations. As Dr. Leitzinger explained at his deposition, the control variables for urbanicity (whether the provider's location is metropolitan, micropolitan, small town, or rural area), system type (whether the entity is a multi-hospital or practice system, a stand-alone hospital, or standalone private practice), NPIs (number of healthcare professionals associated with the provider), place of service (whether provided in a hospital, office, emergency room, urgent care, ambulatory surgical center, etc.), and Network Vendor all "might pick up differences in quality or perceived quality." Leitzinger Dep. at 208:14-211:14. To the extent Defendants disagree that these variables are associated with quality, "the proper way for Defendants to challenge [Dr. Leitzinger]

[18] The difference-in-differences model's conclusion that ANI providers' price increases are not attributable to changes in quality is corroborated by other record evidence. Multiple ANI Private Practices testified that the quality of their services did not change when they joined ANI, putting the lie to Defendants' suggestion that Dr. Leitzinger's overcharges reflect only differences in quality. For example, the CEO of Bone & Joint testified that it had always been a high-quality provider even before joining ANI and does not attribute its high quality to ANI. DR2 ¶ 210(b). Similarly, the COO of GI Associates stated that they were already a high-quality healthcare provider prior to joining ANI. DR2 ¶ 210(c).

is through cross-examination showing that [his] assumptions are in error and through the presentation of their own witnesses." *Harris v. City of Chi.*, 2017 WL 2436316, at *13 (N.D. Ill. June 5, 2017); *see also Manpower*, 732 F.3d at 808. But importantly, Defendants have no evidence that other control variables related to quality might be critical to the regression because Defendants' own experts do not even address Dr. Leitzinger's variables, much less propose others.

Defendants briefly mention the Healthcare Effectiveness Data and Information Set ("HEDIS") as a possible source of control variables. Def. Br. at 18. But once again, Defendants have no record support for this assertion and even their own experts do not suggest using it in a regression. Indeed, only one of Defendants' experts—Dr. Meyer, who is not an economist—discusses HEDIS at all, but it is in a separate context, *see* GM1 ¶ 42 n.57, not in relation to whether Dr. Leitzinger should have incorporated HEDIS data into his analysis. Moreover, as explained by the very source on which Dr. Meyer relies, HEDIS is used to measure *health plan* quality: "HEDIS . . . measures the performance of health plans on member satisfaction and delivery of chronic and preventative care for the purpose of accreditation and certification." INSTITUTE OF MEDICINE, REWARDING PROVIDER PERFORMANCE: ALIGNING INCENTIVES IN MEDICARE 215, (Washington, DC: The National Academies Press, 2007) (cited at GM1 ¶ 42 n.57).[19] There is no evidence that any HEDIS measure would be appropriate to include in Dr. Leitzinger's regression.

[19] *See also* OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, DEP'T OF HEALTH AND HUMAN SERVICES: HEALTHCARE EFFECTIVENESS DATA AND INFORMATION SET, https://odphp.health.gov/healthypeople/objectives-and-data/data-sources-and-methods/data-sources/healthcare-effectiveness-data-and-information-set-hedis (last visited July 28, 2025) (explaining that HEDIS is used to measure health plans' "performance on important dimensions of care and service" and to "make comparisons among plans").

III. Dr. Leitzinger's "In-Sample" Methodology Is Reliable Evidence of Common Impact.

Dr. Leitzinger's opinion that all or nearly all Class members were impacted by the Challenged Conduct is based on multiple streams of evidence, including the results of an empirical study called "in-sample" analysis. *See supra* at 11. As discussed above, the other evidence of widespread impact includes the nature of the Challenged Conduct itself, the nature of how payment systems operate for healthcare services, and record evidence showing that Defendants and Network Vendors knew that the Challenged Conduct would create uniform pricing across the providers employed by Defendants and the Co-Conspirators. *Supra* at 9-10. This industry is uniquely likely to create widespread impact from the Challenged Conduct, which fixed the prices for *all* ANI Providers, in *all* Network Vendor contracts, and paid by *all* Payors in the Class.

Defendants nevertheless ask the Court to exclude Dr. Leitzinger's in-sample analysis so that a jury cannot even hear about it. Defendants appear to offer three arguments for exclusion. All of them should be rejected.

First, Defendants argue that in-sample analysis, *by its nature*, can never be used as evidence of impact. *See* Def. Br. at 20-23. This can be rejected for the simple reason that courts routinely approve in-sample prediction as evidence of common impact in antitrust class actions. *See*, *e.g.*, *Turkey*, 2025 WL 264021, at *9 ("[The] in-sample prediction approach is the type of market-wide economic analysis that has been accepted by many courts to show predominance as to antitrust impact." (cleaned up)); *In re Broiler Chicken Grower Antitrust Litig. (No. II)*, 2024 WL 2117359, at *30 (E.D. Okla. May 8, 2024) ("The in-sample prediction method is a standard technique used

to test whether the impact of an antitrust conspiracy is widespread.").[20] To Plaintiffs' knowledge, no court has excluded the methodology.

Second, Defendants assert that the cases endorsing in-sample analysis are inapposite because those cases involved commodity products, whereas the services at issue here are "obviously not commoditized." Def. Br. at 22. This is an inaccurate characterization of the caselaw. The in-sample methodology has been used to analyze prices paid for everything from air cargo rates to the labor of chicken farmers and mixed martial arts competitors. *See Air Cargo*, 2014 WL 7882100, at *8; *Le*, 2023 WL 5085064, at *40; *Broiler Chicken Grower*, 2024 WL 2117359, at *19. More fundamentally, Defendants do not explain why in-sample prediction can work only in the context of a "commodity product." The in-sample model uses the same controls as the overcharge regression, so it accounts for the kinds of differences that affect pricing for non-commodity products. Defendants' comment that "primary care, pediatrics, radiology, and orthopedic surgery, are obviously not . . . direct competitors with one another," Def. Br. at 22, is irrelevant because Dr. Leitzinger's comparisons are at the individual transaction level—that is, by comparing the price for each individual service in the real versus "but-for" worlds, not comparing across services or practice areas. *See supra* at 17.

Third, Defendants take issue with Dr. Leitzinger's conclusions, arguing that any transaction he concluded was an overcharge could be the product of statistical "noise" in the data.

[20] *See also*, *e.g.*, *Olean*, 31 F.4th at 676-82; *In re Pork Antitrust Litig.*, 665 F. Supp. 3d 967, 1003 (D. Minn. 2023); *Le v. Zuffa, LLC*, 2023 WL 5085064, at *8-9 (D. Nev. Aug. 9, 2023); *In re Packaged Seafood*, 332 F.R.D. at 323-24; *In re Capacitors Antitrust Litig. (No. III)*, 2018 WL 5980139, at *7-9 (N.D. Cal. Nov. 14, 2018); *In re Domestic Drywall Antitrust Litig.*, 322 F.R.D. 188, 217 (E.D. Pa. 2017); *In re Korean Ramen Antitrust Litig.*, 2017 WL 235052, at *6 (N.D. Cal. Jan. 19, 2017); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2014 WL 7882100, at *8 (E.D.N.Y. Oct. 15, 2014), *report & recommendation adopted*, 2015 WL 5093503, at *1 (E.D.N.Y. July 10, 2015).

Def. Br. at 23-24. There is very little "noise" in the data given that the overcharge regression has a high R-squared of 0.897, meaning that roughly 90 percent of the price variation is explained by the control variables. *Supra* at 8. But that aside, this is an improper *Daubert* argument: "[T]he correctness of the expert's conclusions based on [his] analysis are factual matters to be determined by the trier of fact." *Manpower*, 732 F.3d at 806. Defendants are not arguing that Dr. Leitzinger misapplied in-sample analysis, but only that he drew the wrong conclusions from it, supposedly misdiagnosing "why th[e] actual price was higher than the model's predicted price." Def. Br. at 23. But "[i]t is not the trial court's role to decide whether an expert's opinion is correct." *Smith*, 215 F.3d at 719. Rather, it is "for the jury to determine after opposing counsel has been provided the opportunity to cross-examine the expert regarding his conclusions and the facts on which they are based." *Id.* Dr. Leitzinger believes that instances in which the actual price exceeded the predicted price reflect overcharges; Defendants' expert believes they reflect "noise." The jury can decide which expert has drawn the right conclusion.

In any event, Defendants are wrong about the accuracy of Dr. Leitzinger's conclusions. Dr. Leitzinger explains that looking under the hood of the econometric analysis confirms that the in-sample analysis is picking up overcharge and not just noise. Dr. Leitzinger's overcharge regression has a high R-squared of nearly 90 percent, which in econometric terms means that the variables chosen for the model explain 90 percent of the variation in prices. As Dr. Leitzinger notes, "that unexplained variation [of approximately 10 percent] is low compared with the size of the overcharges [of nearly 19 percent] (which explains the high degree of statistical significance associated with the overcharge indicator in that model)." LR2 ¶ 35. Dr. Leitzinger also notes that "97 percent of Class members have at least one . . . statistically significant overcharge and . . . nearly 60 percent of the claim lines overall have overcharges that are statistically significant,"

meaning that his impact findings are "highly unlikely to reflect simply 'noise'" in the data. *Id.* Dr. Leitzinger concludes that "it is unreasonable to argue . . . that the results of [his in-sample] impact analysis are explained by random chance variation, rather than [] the large statistically significant overcharge being experienced broadly across the Class." *Id.*

Further rebutting this idea that his common impact empirical work might only reflect "unexplained price variation," Dr. Leitzinger notes the high presence of statistically significant overcharges across the Class, with at least 90 percent of the Class members having more than one-third of their purchases showing a statistically significant overcharge, and more than 95 percent of the Class showing a quarter of their purchases with a statistically significant overcharge. LR2 ¶¶ 37-38. In short, one would not expect to see such high prevalence of statistically significant overcharges if the in-sample analysis were merely picking up noise in the data, rather than the presence of overcharges. Defendants do not discuss *any* of these points from Dr. Leitzinger.

Dr. Baker purports to run "placebo tests" showing a supposed "100% error rate," but the tests are faulty. LR2 ¶¶ 39-47. Indeed, given the strong statistically significant evidence of overcharges—both in the aggregate and at the Class member level—it is simply not plausible that any legitimate placebo test could return such an error rate. In his first test, Dr. Baker creates a set of hypothetical purchase data that would reflect there being no overcharge, and then he runs a highly simplified regression as an in-sample test. He found that 100 percent of the Class would show overcharges under this test. Dr. Baker contends that his placebo test is designed to "replicate[] the primary analysis," BR1 ¶ 76 n.88, but as Dr. Leitzinger notes, it does not replicate Dr. Leitzinger's methodology—and does not conform to the literature on placebo tests—because it is highly simplified, containing only two variables (versus Dr. Leitzinger's numerous control

variables), and it is run over an invented data set (versus the actual data used by Dr. Leitzinger), LR2 ¶¶ 41-42.

In his second test, Dr. Baker creates a dataset based on actual purchase data from Dr. Leitzinger's yardstick that is designed to show no overcharge when regressed against the remaining yardstick data. LR2 ¶ 40. He then performs an in-sample analysis over that data and finds evidence of overcharges for 97 percent of the hypothetical Class members, concluding from these results that in-sample analysis is unreliable. But as Dr. Leitzinger notes, this is a misuse of the in-sample methodology, as "it ignores the key predicate behind [Dr. Leitzinger's] impact analysis—the yardstick regression results." LR2 ¶ 43. Testing whether individual Class members experienced an overcharge makes sense only for a data set *in which there is an overcharge*. Dr. Leitzinger found a large and highly statistically significant overcharge in the first instance, and only then did he conduct the in-sample analysis to test for widespread impact. *Id.* Dr. Baker, in contrast, used a dataset with no overcharge and then nonsensically tested to see whether a nonexistent overcharge was widespread. That fundamental misuse of the methodology is not a test of the usefulness of in-sample analysis. *See* LR2 ¶¶ 43-47.

Unsurprisingly considering Dr. Baker's faulty analysis, the results of his placebo tests differ from Dr. Leitzinger's results in multiple ways that are consistent with Dr. Leitzinger's finding of widespread overcharges across the Class. LR2 ¶¶ 48-52 (detailing these differences). For example, Dr. Leitzinger offers two charts to show why his in-sample results are clearly different than unexplained price variation. In the first chart, which reflects the results of Dr. Baker's "test," the unexplained price variation and "impact" findings are identical, showing that Dr. Baker's results are all "noise." LR2 ¶ 51 & Fig. 3A. In the second chart, with Dr. Leitzinger's results, the line showing the impact findings is markedly different than the line showing the

unexplained price variation, showing that Dr. Leitzinger's model is picking up the effects of the large and statistically significant overcharge he found in Step One of his analysis, and not simply "noise." LR2 ¶ 52 & Fig. 3B.

At bottom, Defendant's argument is that in-sample analysis *on its own* cannot prove impact as to any specific transactions. Def. Br. at 24. But Dr. Leitzinger does not rely on the in-sample analysis on its own, and Defendants' argument is premised on a fundamental misunderstanding of the two-step analysis from the caselaw. Defendants assert that "step one" involves "going line-by-line through the claims data, using the yardstick model to calculate a predicted price," and that "step two" requires "comparing the predicted price against the actual price." Def. Br. at 3. This is wrong, and it elides all the other evidence supporting impact.

Step One involves determining whether the Challenged Conduct inflated prices generally. *See* Class Cert. Br. at 18-23. Dr. Leitzinger looks at wide range of qualitative and quantitative evidence in concluding that there is evidence of inflated prices. *Supra* at 4-9. As part of Step One, he performs a regression analysis over a massive body of transactional data with numerous control variables and finds a large and highly statistically significant overcharge, which is consistent with record evidence that the Challenged Conduct was intended to and did inflate prices. Step Two involves determining whether the overcharges were likely to have been broadly experienced across the Class. Class Cert. Br. at 23-26; *supra* at 9-11. Dr. Leitzinger again relies on both qualitative and quantitative evidence of widespread impact. The in-sample analysis, including its high levels of statistical significance, is the quantitative evidence. He also reviews evidence consistent with uniform pricing practices and a lack of individualized price negotiations. *Supra* at 10. After considering all the evidence, Dr. Leitzinger concludes that where the in-sample analysis shows a Class member paid a higher price than the predicted price, it is reasonable to conclude that the

result is further evidence—*empirical evidence*—of an overcharge and not merely statistical noise. LR1 ¶¶ 45-59; LR2 ¶¶ 30, 35. This is the two-step methodology relied upon by many courts.[21]

In short, Dr. Leitzinger uses a commonly accepted statistical methodology, grounded in the facts of the case, to support his conclusion that all or nearly all Class members paid overcharges. That is a more than sufficient basis for the jury to hear that evidence.

IV. Dr. Leitzinger's Extrapolation of Aggregate Damages from the Available Claims Data is Reliable.

Defendants' final argument is meritless. Because Dr. Leitzinger's [redacted] data set did not include every single claim paid by every single Class member during the Class Period, he extrapolated—using straightforward math—from the data he had to estimate damages for the entire Class. It is common for experts to estimate classwide damages based on data drawn from a subset of the class. *See*, *e.g.*, *In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1251-52 (10th Cir. 2014) (permitting expert's estimate of aggregate damages in antitrust case by extrapolating overcharge estimate using "sample data from roughly 50% of class sales"); *Jones v. Varsity Brands, LLC*, 2024 WL 967653, at *11-12 (W.D. Tenn. Mar. 6, 2024) (refusing to exclude expert's estimate of aggregate overcharges in an antitrust case simply because the expert extrapolated from

[21] Defendants appear to criticize Dr. Leitzinger's econometric authority, arguing that the cited textbook does not describe Dr. Leitzinger's two-step methodology. Def. Br. at 21 (citing LR2 ¶ 31). But the Wooldridge textbook describes the in-sample analysis—where an economist can analyze whether a value (here, actual price) is above or below a predicted value (here, the "but-for" price)—and notes that such analysis "plays a role in legal decisions." LR2 ¶ 31 (quoting J.M. WOOLDRIDGE, INTRODUCTORY ECONOMETRICS 910 (6th ed. 2015)). Defendants also dismiss out-of-hand a citation to an article by two economists in Antitrust Magazine because it is "non-peer-reviewed," but the article is recounting the experience of two prominent economists who testify regularly in litigation and employ in-sample analysis. LR2 ¶ 32. "Moreover, 'lack of peer review will rarely, if ever, be the single dispositive factor that determines the reliability of expert testimony.'" *Loeffel I*, 372 F. Supp. 2d at 1116 (quoting *Smith*, 215 F.3d at 720-21). Defendants also do not even address the other sources cited by Dr. Leitzinger that discuss the use of an in-sample analysis to predict but-for prices. *See* LR2 ¶ 33 n.46.

data of only some purchases and finding challenges to the expert's reliance on only some data to be a trial question).[22]

Defendants accordingly do not challenge the general reliability of extrapolating from a sample to estimate aggregate damages, nor do they challenge the manner in which Dr. Leitzinger extrapolated from the available data—*i.e.*, by using Defendants' own payor mix information to estimate the amount of claims that do not appear in the data set and multiplying it by the overcharge percentage.[23] Defendants instead challenge only Dr. Leitzinger's decision to apply the 18.9 percent average overcharge he calculated from the available data to the claims for which he did not have data, contending that did so based on "untested assumptions." Def. Br. at 25-26. Defendants' arguments should be rejected.

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[22] Plaintiffs in antitrust cases are permitted wide latitude in proving damages. "This is because an antitrust plaintiff is given an exceedingly difficult task: quantifying the difference between what actually happened and what would have happened in a hypothetical free market." *Fishman v. Estate of Wirtz*, 807 F.2d 520, 550 (7th Cir. 1986). Thus, "[i]t is certainly acceptable through expert economic testimony to make a reasonable estimation of actual damages through probability and inferences." *Loeb Indus., Inc. v. Sumitomo Corp.*, 306 F.3d 469, 490 (7th Cir. 2002) (citing *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931) ("[I]t will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.")).

[23] Defendants assert in passing that Dr. Leitzinger had additional claims data available that he "chose" not to analyze, suggesting something nefarious. Def. Br. at 7-8 (citing BR ¶ 195). In reality, Dr. Leitzinger had data from three small (in terms of ANI's business) [redacted] —and, as Dr. Leitzinger explained, the time and labor-intensive process of getting claims data ready for processing does not "ma[k]e economic sense for smaller payers" given their small share of the claims. Leitzinger Dep. at 279:14-16; *see also*, *e.g.*, Ex. 1, TEAM-SCHIERL-ASPIRUS-0091927 at 941-43 [redacted]; Ex. 2, TEAM-SCHIERL-ASPIRUS-0009770 at -787 [redacted]; Ex. 3, TEAM-SCHIERL-ASPIRUS-0194912 ([redacted]). Moreover, Defendants do not even suggest that other data, if rendered usable, would change the results of the extrapolation.

First, by their own admission, Defendants attack only "assumptions" on which Dr. Leitzinger relied in applying the 18.9 percent overcharge to the broader Class, not the methodology he used to do so. For this reason alone, Defendants' challenge fails, because "[t]he reliability of . . . assumptions used in applying a methodology is tested by the adversarial process and determined by the jury; the court's role is generally limited to assessing the reliability of the methodology—the framework—of the expert's analysis." *Manpower*, 732 F.3d at 808; *see also Stollings v. Ryobi Techs., Inc.*, 725 F.3d 753, 764, 767 (7th Cir. 2013) (reversing district court that "intruded too far into the province of the jury" and noting that the defendant was "free to use cross-examination to attack the [expert's] assumption").

Second, Defendants are simply wrong that Dr. Leitzinger based his extrapolation on "untested assumptions." Dr. Leitzinger explained that he found it "reasonable (and likely conservative)" to apply the 18.9 percent average to all claims, not just those for which he had data, based on several factors. LR1 ¶ 39. He found that his claims data set was likely representative of the whole because 1) the conspiracy involves all ANI providers and a single set of prices negotiated on their behalf with each Network Vendor, and 2) the claims data that Dr. Leitzinger used includes data from Network Vendors who did not produce full sets of data. LR1 ¶ 38; LR2 ¶¶ 88-89; Leitzinger Dep. at 278:1-279:16. And he found that applying the 18.9 percent overcharge to all claims was likely conservative because the Network Vendors for whom Dr. Leitzinger did not have data were relatively small Network Vendors (in terms of business with Defendants) with weaker bargaining power, likely resulting in even greater overcharges than those found in the available data. LR1 ¶ 39. Dr. Leitzinger identified a clear rational basis, therefore, grounded in evidence from this case, to apply his calculated overcharge to the entire Class. That is all that is required to send his opinions to the jury. *Kleen Prods.*, 2017 WL 2362567, at *9 ("The Seventh

Circuit has made clear that unless there was no rational connection between the data used and the conclusion arrived at, 'arguments about how the selection of data inputs affect the merits of the conclusions produced by an accepted methodology should normally be left to the jury.'" (quoting *Manpower*, 732 F.3d at 808-09)).

Defendants call all three of Dr. Leitzinger's explanations "untested assumptions," but Defendants say nothing at all about the first two (other than listing them), never explaining what makes them "untested" or even claiming that they are incorrect. Nor could they. The first—that the conspiracy involves all ANI providers and a single set of prices negotiated on their behalf with each Network Vendor—is not an assumption at all but an accurate description of record evidence. Class Cert. Br. at 9-11 (citing record evidence); *see also* LR1 ¶¶ 46, 50-55; LR2 ¶ 19(a). The second—that existing claims data already includes substantial activity from the Network Vendors who did not produce data—is again not an assumption but a fact. LR2 ¶ 88. The same data were produced to both parties, yet Defendants tellingly cite nothing suggesting that Dr. Leitzinger's statement was incorrect.

With respect to the third supposedly "untested assumption," Defendants quarrel with the basis on which Dr. Leitzinger concluded that the Network Vendors for whom he did not examine data represent fewer Payors than those for whom he did, and thus that they would have less bargaining power and likely pay even higher overcharges. LR1 ¶ 39. Defendants do not deny that these other Network Vendors are, in fact, smaller than the ones for whom Dr. Leitzinger had claims data, nor that they had less bargaining leverage. Defendants' own documents support Dr. Leitzinger. *See*, *e.g.*, Ex. 2, TEAM-SCHIERL-ASPIRUS-0009770 at -787 (showing that [redacted]); Ex. 4, TEAM-SCHIERL-ASPIRUS-0141219 at -220 (noting [redacted]

[redacted]); Ex. 3, TEAM-SCHIERL-ASPIRUS-0194912 (noting [redacted]). More to the point, Defendants and their experts do not argue, much less show, that including the data of any the additional Network Vendor(s) would change the results of the extrapolation.

Defendants' real beef seems to be with the fact that Dr. Leitzinger relied on his support staff to identify which Network Vendors were largest and to tell him which ones had or had not produced data. *See* Def. Br. at 26 (claiming that Dr. Leitzinger's understanding was based "on the untested say-so of folks who have been involved in the data discussions" (internal quotation marks and citation omitted)). But it is black-letter law that experts can rely on the work of staff and others to form their opinions, and that doing so does not render their opinions unreliable or improperly speculative. *See*, *e.g.*, Fed. R. Evid 703; *NutraSweet Co. v. X-L Eng'g Co.*, 227 F.3d 776, 789-90 (7th Cir. 2000); *Southwire Co. v. J.P. Morgan Chase & Co.*, 528 F. Supp. 2d 908, 934 (W.D. Wis. 2007). Furthermore, as Dr. Leitzinger explained in his deposition—some directly relevant parts of which Defendants do not cite—the information came from the data work and collection his employed staff did over the course of years. *See* Leitzinger Dep. at 17:3-18:1, 280:2-9, 290:13-22. There is no basis to conclude this work was insufficiently reliable to form the basis of Dr. Leitzinger's opinions. Moreover, "[a]s a general rule, questions relating to the . . . sources of an expert's opinion affect only the weight to be assigned that opinion rather than its admissibility." *Loeffel I*, 372 F. Supp. 2d at 1119-20.[24]

[24] The only cases Defendants cite to oppose the extrapolation is this Court's opinions in *Rogers by Rogers v. K2 Sports, LLC*, 348 F. Supp. 3d 892 (W.D. Wis. 2018), and *Milligan by Thomas v. Rock on the River*, 2017 WL 6734190 (W.D. Wis. Dec. 29, 2017). But neither addresses extrapolation at all, let alone in the antitrust context. In *Rogers*, a product liability lawsuit, the Court excluded an expert's opinions as to the positioning of the plaintiff's helmet at the time of an accident because there was no evidence of several aspects of the accident and how it occurred. 348 F. Supp. 3d

Finally, any doubts about the extrapolation should have been laid to rest when Dr. Leitzinger received updated data from Anthem between his initial report and his rebuttal report. When he replaced his extrapolation-based estimates of the missing Anthem data with actual Anthem data in his Supplemental Report, it confirmed the accuracy of the extrapolation: the average overcharge was essentially unchanged, increasing by only [redacted]. LR2 ¶ 89; SLR ¶ 2 (updating LR1 ¶ 35). Defendants ignore this entirely in their motion, and yet it is undeniable evidence that Dr. Leitzinger's extrapolation is accurate and reliable. Moreover, the upward trajectory of the average overcharge with the addition of previously unavailable data verifies Dr. Leitzinger's opinion that his extrapolation is conservative, *i.e.*, that the unavailable data likely shows higher overcharges. Defendants ignore this, too.[25]

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at 900-01. In *Milligan*, a negligence lawsuit, the Court excluded an expert's testimony as to the proper security standards applicable to a camp area next to a concert venue because the expert did not point to any applicable standards of care. 2017 WL 6734190, at *5.

[25] Defendants tuck an undeveloped argument into a footnote at the end of their brief, asserting that "Dr. Leitzinger's opinions and analysis regarding purported overcharges and impact also should be excluded because he made no attempt to limit his findings to any properly-supported, relevant product market." Def. Br. at 26 n.13. This is an improper way to raise an argument. *See Niazi v. Merit Med. Sys., Inc.*, 2023 WL 4198675, at *3 (W.D. Wis. June 27, 2023) (Peterson, J.) ("[A]rguments raised in passing in a footnote are forfeited." (citing *Long v. Teachers' Ret. Sys. of Ill.*, 585 F.3d 344, 349 (7th Cir. 2009)). Defendants do not cite any legal principle or caselaw supporting their argument, so it is unclear what legal basis there would be to exclude Dr. Leitzinger's opinions. Moreover, Defendants incorrectly argue that Dr. Dranove did not define a market that includes "non-physician services." By this, they are presumably talking about outpatient professional services being delivered by non-physician professionals, like physician assistants or nurse practitioners. But Dr. Dranove defines several markets, including "the sale of healthcare services that ANI offers in North-Central Wisconsin," as well as "outpatient services in North-Central Wisconsin," among others. DR1 ¶¶ 19-20, 99; DR2 ¶ 44 ("Not only are my market definitions relevant for identifying where the Challenged Conduct harms competition, they are also relevant for determining ANI's market power in the overall market for the sale of healthcare services that ANI offers in North-Central Wisconsin."). He supports these market definitions with extensive analysis. DR1 ¶¶ 99-127. These markets cover all services that Dr. Leitzinger analyzed, regardless of the type of professional providing them.

CONCLUSION

Dr. Leitzinger relied upon well-accepted methodologies that are supported by the facts of this case. His testimony will help the jury understand the scope of the impact and damages. Plaintiffs respectfully request that Defendants' motion be denied.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 30, 2025, a true and correct copy of the foregoing was filed via email and this Court's CM/ECF system, which will send notification to all counsel of record.

Dated: July 30, 2025

/s/ Timothy W. Burns
Timothy W. Burns