IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897

IN RE: CAMP LEJEUNE WATER LITIGATION This Document Relates to: ALL CASES	))))))	**MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE THE DAMAGES OPINIONS OF MARJORIE HACKETT-WALLACE [D.E. 856]**

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INTRODUCTION

Defendant's motion to strike Ms. Hackett-Wallace's opinion should be denied. Ms. Hackett-Wallace is a Certified Professional Medical Auditor, Certified Document Expert – Outpatient, and Certified Professional Coder with over nineteen years of experience analyzing, auditing, and reconciling medical billing data. Here, Ms. Hackett-Wallace accepted assumptions for the medical conditions of the bellwether Plaintiffs supplied by counsel and supported by physician opinions, and then applied her expertise to determine whether the billing charges corresponded to the treatments reflected in their records. She is eminently qualified to offer opinions within the scope of her retention, and her function as a rebuttal expert, both of which Defendant misapprehends.

Defendant's motion mischaracterizes her opinion. [D.E. 857] ("Def.'s Mem."). *First*, it characterizes her opinion as a medical opinion and then asserts she is not qualified to offer a medical opinion. But Ms. Hackett-Wallace's billing-and-record-reconciliation work does not provide independent opinions on medical causation or the reasonableness or appropriateness of medical treatment. Indeed, she expressly relies on clinical assumptions properly provided to her by counsel.

Second, Defendant faults Ms. Hackett-Wallace for not performing her own calculations of Defendant's claimed offsets. But for her opinions on offsets, Ms. Hackett-Wallace is a rebuttal expert. It is Defendant's burden to prove the amount of its claimed offsets. Ms. Hackett-Wallace challenges the reliability of those calculations by, for example, identifying duplicate entries across systems, inconsistent coding fields, missing details, unsupported assumptions, and documentation insufficiency. This testimony is precisely in the wheelhouse of a rebuttal expert who specializes in medical billing, coding, auditing, and payment-integrity, like Ms. Hackett-Wallace.

Third, Defendant criticizes Ms. Hackett-Wallace for failing to perform tasks outside the scope of her assignment, such as independently verifying and/or auditing all of the data she considered. However, Defendant fails to establish that any of these tasks were necessary in light of Ms. Hackett-Wallace's explanation of the reliability of her methodology. These criticisms, though meritless, go to the weight of Ms. Hackett-Wallace's testimony at trial.

Finally, Defendant is wrong that Ms. Hackett-Wallace offers any legal conclusions.

For these reasons and as detailed further below, Ms. Hackett-Wallace was qualified to perform the assignments described in detail in her reports and used appropriate and reliable methodologies to do so. Defendant's motion to exclude Ms. Hackett-Wallace's opinions should be denied.

LEGAL STANDARD

Federal Rule of Evidence 702 governs the admissibility of expert testimony. Courts may admit such testimony where it is more likely than not to assist the trier of fact in understanding evidence or determining a disputed fact, so long as that testimony is based on sufficient facts and results from reliable principles applied faithfully to those facts. Fed. R. Evid. 702. The rule "was intended to liberalize the introduction of relevant expert evidence." *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999).

The Rule 702 standard obliges courts to exercise a gatekeeping role for the jury by screening testimony for "relevance and reliability." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993); *see also Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 851 (6th Cir. 2004) (under *Daubert*, "district courts must act as 'gatekeepers' to protect juries from misleading or unreliable expert testimony" (citation omitted)). Screening for relevance involves assessing the "fit" between the proffered testimony and the facts in dispute to ensure that the expert's testimony has "a valid scientific connection to the pertinent inquiry." *Daubert*, 509 U.S.

at 591-92.

Where, as here, the court itself acts as fact finder, its gatekeeper role is relaxed. *United States v. Wood*, 741 F.3d 417, 425 (4th Cir. 2013) ("[B]ecause the district court was also the trier of facts, the district court's evidentiary gatekeeping function was relaxed, and the district court was in the best position to decide the proper weight to give the expert opinions."); [D.E. 818] at 7 (this Court recognizing the same).

BACKGROUND

Ms. Hackett-Wallace was retained to quantify past medical expenses for the bellwether plaintiffs using her expertise in medical billing, coding, documentation, auditing, and payment-integrity analysis. She reviewed itemized billing records, coding data, and corresponding medical documentation to determine whether billed services corresponded to treatment reflected in the records for the plaintiffs' assumed Track 1 conditions and related conditions identified by counsel. Consistent with standard medical coding and auditing practices, she correlated billing records with clinical documentation, including ICD-9 and ICD-10 diagnostic coding, to verify that the charges, paid amounts, and patient payments she quantified were supported by the underlying records. She did not independently determine medical causation, diagnose conditions, or render clinical relatedness opinions; rather, she relied on relatedness assumptions supplied by counsel and supported by physician opinions and applied those assumptions in her billing analysis.

In addition, Ms. Hackett-Wallace was asked to review the government-payor data relied upon by Defendant in support of its claimed offsets and evaluate its reliability, consistency, and ability to be validated through standard medical billing, coding, and auditing practices. Drawing on her experience in medical auditing, coding compliance, documentation, and payment-integrity review, she analyzed the CMS, VHA, TriWest/CCN, and TRICARE data relied upon

by Defendant and identified concerns regarding duplicate entries, coding ambiguities, incomplete claim-level information, missing diagnostic detail, and the inability to reliably reconcile portions of the extracted data to underlying medical records. Her opinions do not address the legal availability of offsets; rather, they address the reliability and forensic auditability of the billing data on which Defendant's offset calculations are based.

These assignments fall squarely within Ms. Hackett-Wallace's expertise as a Certified Professional Medical Auditor, Certified Document Expert – Outpatient, Certified Professional Coder, Certified in Healthcare Compliance, Certified Fraud Examiner, Registered Health Information Administrator, and Certified Program Integrity Professional, and do not require independent medical causation opinions, clinical judgment, or legal determinations regarding offsets.

ARGUMENT

I. Defendant's *Daubert* challenge mischaracterizes Ms. Hackett-Wallace's assignment, methodology, and opinions.

A. Defendant falsely characterizes Ms. Hackett-Wallace's opinions as "medical relatedness" opinions.

1. Ms. Hackett-Wallace reconciled billing records with medical documentation.

Ms. Hackett-Wallace was retained to apply her expertise in medical billing, coding, documentation, auditing, and payment-integrity analysis to quantify past medical expenses, and more specifically, to reconcile billing records with medical documentation using the relatedness assumptions supplied to her by counsel, each of which were supported by physician medical opinions and/or expert reports.

Her report expressly defines the scope of her assignment:

> I was retained by Plaintiff Leadership Group to: (1) use my training, expertise, and experience to quantify past medical expenses claimed by all twenty-two (22) of the

> remaining bellwether plaintiff, to include patient payments, related to the Track 1 diagnosis and those injuries or conditions stemming from a Track 1 illness or its treatment.
> . . .
> My analysis was based on a comprehensive review of the documentation provided to me for each plaintiff. I was provided medical and billing records for each plaintiff **and a list of the Track 1 conditions for each plaintiff and other conditions that I was to assume are related to the Track 1 condition or its treatment.** In making relatedness determinations, I then reviewed the available medical records and billing information **to confirm that the billing records included charges related to the Track 1 condition or its treatment or to the other conditions and/or treatments identified.** The source materials are documented in my Materials Considered List. My findings are contained in the attached Appendices for each Plaintiff.

Hackett-Wallace Rep. at 2-3 (JA Ex. 760, D.E. 840-24) (emphasis added).

That exercise – correlating billing records, coding data, and medical documentation – is squarely within her expertise as a Certified Professional Medical Auditor ("CPMA"), Certified Professional Coder ("CPC"), Certified Document Expert – Outpatient ("CDEO"), Registered Health Information Administrator ("RHIA"), Certified in Healthcare Compliance ("CHC"), Certified Fraud Examiner ("CFE"), and Certified Program Integrity Professional ("CPIP"). Courts routinely hold that medical coding experts such as Ms. Hackett-Wallace are qualified to perform similar analyses. For example, in *United States v. Sharp*, 400 F. App'x 741 (4th Cir. 2010), the Fourth Circuit affirmed the district court's decision to admit a non-physician coding expert's testimony about medical billing fraud. It found that "a coding expert…routinely determines whether services billed by a provider are appropriately coded and if a provider documents a certain level of medical decision making, then the documentation is factored into the coding," and "coding experts have routinely testified about whether services a provider billed were appropriate" where the "case did not involve questions of medical necessity." *Id.* at 746-47. That is precisely what Ms. Hackett-Wallace does here, and her testimony is admissible for the same reason. Other courts have admitted similar testimony. *See, e.g.*, *United States v. Thaller*, 2016 WL 6441548, at *5 (allowing testimony of non-physician coding expert whose "opinions

relate to the quality of the codes and to whether the procedures coded were covered according to the payers' criteria, and not to whether the procedures were necessary medically"); *Horizon Blue Cross Blue Shield of New Jersey v. Transitions Recovery Program*, 2015 WL 8345537, at *6 (D.N.J. Dec. 8, 2015) (explaining that certified professional coder "did not attempt to make an independent diagnosis based on the medical records but was instead reviewing the records along with the ICD-9 codes … to verify whether the two matched"); *Counts v. Pollack*, 2020 WL 5534444, at *2-3 (M.D. Fla. Aug. 21, 2020); *Burch v. Cracker Barrel Old Country Store, Inc.*, 2024 WL 4351647, at *11 (M.D. Ga. Sept. 30, 2024); *United States ex rel. Armfield v. Gills*, 2012 WL 12918274, at *1-2 (M.D. Fla. Jul. 6, 2012); *Williams v. B&B Elec. & Utility Contractors, Inc.*, 2022 WL 6610128, at *2 (S.D. Tex. Feb. 8, 2022).

2. Ms. Hackett-Wallace offered no medical opinions.

Throughout its motion, Defendant repeatedly mischaracterizes Ms. Hackett-Wallace's billing-and-record-reconciliation work as medical-causation and medical-relatedness testimony. However, the activities Defendant identifies in its Memorandum that Ms. Hackett-Wallace actually performed fall squarely within her professional expertise as a medical billing, coding, auditing, and payment-integrity specialist. Defendant criticizes Ms. Hackett-Wallace for reviewing "medical documentation," evaluating whether services were rendered for treatment of compensable conditions, analyzing diagnosis coding, and determining whether a condition represented the "primary clinical driver of the encounter," Def.'s Mem. at 7, but those are core functions routinely performed by experienced medical coding, documentation, auditing, utilization-review, and payment-integrity professionals. Ms. Hackett-Wallace's credentials and professional experience specifically include reviewing CPT, HCPCS, ICD-9, and ICD-10 coding; reconciling billing records against clinical documentation; identifying unsupported or miscoded claims; and evaluating whether billed services correspond to the documented purpose

of the encounter. Hackett-Wallace Rep. at 4-7 (JA Ex. 760, D.E. 840-24). In the billing-and-coding context, determining whether a diagnosis is primary, secondary, historical, incidental, or treatment-driving is part of standard documentation-correlation and payment-integrity analysis.

Defendant's argument therefore improperly conflates two distinct concepts: (1) physician-driven medical causation or clinical-relatedness determinations, and (2) billing-and-coding correlation analysis performed by a medical auditing expert. Ms. Hackett-Wallace expressly accepted litigation-relatedness assumptions supplied by counsel and supported by physician opinions (as experts routinely do, including experts of the Defendant in this litigation[1]), and then applied her expertise in billing, coding, and medical-record reconciliation to determine whether the billing charges corresponded to treatment reflected in the records for those assumed-related conditions. As explained in her initial report, she "was provided medical and billing records for each plaintiff and a list of the Track 1 conditions for each plaintiff and other conditions that [she] was to assume are related to the Track 1 condition or its treatment." Hackett-Wallace Rep. at 3 (JA Ex. 760, D.E. 840-24). The list of assumed-related conditions, which was produced on January 20, 2026 along with Ms. Hackett-Wallace's other reliance materials, is attached hereto as Exhibit A.[2]

In other words, when Ms. Hackett-Wallace used the term "related" in the context of her billing review and reliance files, she was not rendering an independent medical-causation or

[1] Defendant's own expert employed the same layered expert-reliance methodology Defendant now criticizes. Mr. Russo, who is not an MD, expressly relied upon both Ms. Hackett-Wallace's identification and reconciliation of the relevant medical services, which was based on Plaintiffs' and Defendants' medical causation experts and Defendants' medical causation experts, in conducting his valuation analysis. Russo explained that he was asked to "[r]eview and validate the amounts billed for past medical services claimed by [plaintiff] in the report of [plaintiff's] expert Marjorie Hackett-Wallace" and to determine the reasonable value of services "identified as related to [plaintiff's] condition by Dr. Wang Ji." Russo Rep. (Tukes) at 3 (JA Ex. 685, D.E. 838-25). Thus, like Ms. Hackett-Wallace, Russo relied upon the work and assumptions of other experts in areas outside his own specialization and then applied his own subject-matter expertise to perform the analysis within his field.

[2] Plaintiffs' names have been redacted from Exhibit A.

clinical-relatedness opinion.[3] Rather, she was performing a billing-and-record-correlation analysis to confirm that the billed services, diagnosis coding, and treatment documentation corresponded to care reflected in the records for the conditions she was instructed to assume were related. As Defendant's case law itself recognizes, these determinations do not constitute medical opinions and are squarely within the scope of her expertise. *See Maluff v. Sam's E., Inc.*, 2017 WL 5290879, at *1–2 (S.D. Fla. Nov. 9, 2017) (cited by Defendant, finding it proper that a non-physician coding expert testify on the reasonableness of billing charges and coding).

Defendant's rebuttal process itself further demonstrates that Ms. Hackett-Wallace did not independently render medical-relatedness opinions. Ms. Hackett-Wallace initially quantified medical expenses based upon relatedness assumptions supplied by counsel and supported by physician opinions. Defendant then retained physicians Drs. Ji and Hasan to perform independent medical-relatedness analyses and retained Gregory Russo, who is not a physician, to independently review and validate Ms. Hackett-Wallace's billing quantifications. After reviewing those experts' reports, Ms. Hackett-Wallace refined her calculations. She incorporated the defense experts' billing reconciliations and relatedness determinations where appropriate, but did not do so where her review did not confirm Russo's billing reconciliation or where contrary physician opinions supported her original billing analysis. Significantly, Defendant's experts' review of Ms. Hackett-Wallace's initial report confirmed approximately $5.29 million of the $5.45 million in private-pay and TRICARE charges initially quantified by Ms. Hackett-Wallace, or approximately 97% of the charges.[4]

[3] *See* Hackett-Wallace Rep. at 5 (JA Ex. 760, D.E. 840-24) ("I am not a clinician and do not purport to make clinical determinations throughout the course of my analysis.").

[4] See Expert Report of Syed A. Hasan, M.D. (JA Ex. 651, D.E. 837-15); Expert Report of Wang Ji, M.D. (JA Ex. 653, D.E. 837-17); Expert Reports of Gregory Russo (JA Exs. 671–686, D.E. 838-1 to 838-26) (reviewing and validating amounts billed for past medical services identified by Ms. Hackett-Wallace); and Rebuttal Expert Opinion Report of Marjorie Hackett-Wallace (JA Ex. 764, D.E. 840-28) (summarizing revisions made in response to the opinions of Ji, Hasan, and Russo and reflecting that Defendant's experts confirmed approximately $5,285,723.47 of

Where disputes remained concerning the small percentage of charges not confirmed by Defendant's experts, Ms. Hackett-Wallace did not substitute her own clinical judgment. Instead, where she maintained a disputed charge in her calculations, she sought additional physician review and incorporated physician-supported opinions into her rebuttal analysis. Specifically, her rebuttal report relied upon physician opinions from Dr. Thomas Longo, Dr. Richard Barbano, and Dr. Schwarz concerning disputed relatedness issues. Hackett-Wallace Rebuttal Rep. at 8, 21, 23 (JA Ex. 764, D.E. 840-28). Those physician submissions confirm that Ms. Hackett-Wallace deferred disputed medical-relatedness questions to qualified clinicians rather than independently rendering medical causation or clinical relatedness opinions. Her role remained limited to applying her expertise in billing, coding, auditing, and record reconciliation to the relatedness assumptions and physician opinions supplied in the litigation materials.

As a legal matter, none of Defendant's cases stand for the proposition that non-physician medical experts' testimony on billing constitutes an improper medical opinion. In *Norman v. Leonard's Express, Inc.*, the court noted that while "physician endorsement is not necessarily required for admission of a life care plan," the plaintiff's expert rendered a medical opinion "by selecting *which* medications, treatments, therapies, or modalities *she* believed [plaintiff] would require in the future." 2023 WL 3034606, at *3-4 (W.D. Va. Apr. 21, 2023) (emphasis in original). Here, Ms. Hackett-Wallace offers no opinions on what type of medical care Plaintiffs will require in the future. In *Maluff v. Sam's E., Inc.*, the court explained that plaintiff's non-physician coding expert could "opine on whether [the p]laintiff's treating physicians double-billed for a certain procedure or incorrectly charged for a certain injury," using the example of whether "they coded a broken leg as opposed to a compound fracture"—supporting Ms. Hackett-

the $5,451,197.70 in private-pay and TRICARE charges initially quantified by Ms. Hackett-Wallace, which is 96.96%, rounded to 97%).

Wallace's work here. 2017 WL 5290879, at *1–2 (S.D. Fla. Nov. 9, 2017). The *Maluff* court prohibited the expert there from testifying as to "Plaintiff's injuries or the appropriateness of certain treatments," such as, for example, whether "this was a severe injury" or "if I treated X person I would have done this and the charge would have been this." *Id.* Ms. Hackett-Wallace offers no opinions on the medical *appropriateness* of treatments, nor does she ever testify as to what *she* would do in a clinical setting, as she does not hold herself out to be a clinician. Finally, in *Esteban-Garcia v. Wal-Mart Stores E. LP*, the court excluded a non-physician coding expert's testimony because she held "no medical qualifications that would support her testimony *as to the reasonableness of the medical procedures themselves*, and *the reasonableness of medical bills is not at issue in this case*." 2022 WL 15493702, at *3 (S.D. Fla. Oct. 14, 2022) (emphasis added).[5] Here, medical bills *are* the subject of Ms. Hackett-Wallace's opinions, and the medical reasonableness of procedures are not.

B. Ms. Hackett-Wallace properly assessed the reliability of Defendant's claimed offsets in light of Defendant's unreliable data sets.

As Ms. Hackett-Wallace explained in her reports, Defendant's claimed offsets are based on agency-generated data extractions. Hackett-Wallace Rep. at 10-11 (JA Ex. 760, D.E. 840-24); Hackett-Wallace Rebuttal Rep. at 4-5 (JA Ex. 764, D.E. 840-28). Her assignment was therefore to evaluate whether those agency datasets were sufficiently reliable to support forensic medical-expense conclusions. Her opening report expressly identified numerous reliability concerns regarding the Government's CMS and VHA/TriWest (CCN) data extractions, particularly before a medical record reconciliation was performed. Hackett-Wallace Rep. at 11-20 (JA Ex. 760, D.E.

[5] These cases are further distinguishable because the jury, rather than the court, served as the fact finder, creating a risk that the expert might confuse a jury that is absent here. *See Norman*, 2023 WL 3034606, at *7; *Esteban-Garcia*, 2022 WL 15493702, at *3; *cf. Maluff*, 2017 WL 5290879 at *1 (individual personal injury claim, which would presumably be tried to a jury).

840-24). As Ms. Hackett-Wallace explained, the datasets were vulnerable to:

> . . . (i) upcoding or miscoding and documentation insufficiency, (ii) diagnosis-position ambiguity (secondary, history, or rule-out), (iii) incomplete fields (missing CPT/HCPCS line details or diagnostic pointers), (iv) double counting across systems or administrators, and (v) pipeline artifacts.

Hackett-Wallace Rep. at 11 (JA Ex. 760, D.E. 840-24).

Ms. Hackett-Wallace further explained that the Government-produced datasets lacked sufficient reliability because they did not consistently permit validation of whether the billed service was actually rendered for treatment of the alleged condition at issue, whether diagnosis codes reflected active treatment, historical conditions, rule-out diagnoses, or secondary conditions, whether entries were duplicative across programs or administrators, or whether the extracted data could be reliably reconciled to underlying clinical documentation and claim-line detail. *See id*. at 10-21. She additionally identified concerns regarding unsupported coding assumptions, incomplete diagnostic pointers, missing CPT/HCPCS detail, documentation insufficiency, and the inability to independently verify portions of the extracted data against underlying medical records. *Id.*

Defendant argues these opinions should be excluded for two reasons, but they are wrong on both accounts.

1. <u>Ms. Hackett-Wallace's Expertise Is Medical Billing, not Offsets.</u>

First, Defendant argues that Ms. Hackett-Wallace's "opinions regarding offsets must be excluded because she unequivocally disclaimed expertise on offsets." Def.'s Mem. at 13. But Plaintiffs do not contend that Ms. Hackett-Wallace is an "offset expert," nor did she purport to independently calculate or adjudicate statutory offsets. Defendant bears the burden to prove any offsets, and determining whether the Defendant has met that burden is a task for the Court at trial. Rather, her opinions – which are consistent with her expertise and background – concern

the reliability, completeness, coding integrity, and methodological limitations of the government-generated *data* that Defendant relies upon to prove its asserted offsets. There is no contradiction between Ms. Hackett-Wallace offering expert opinions about medical billing data and how the Defendant's experts purport to use it, while appropriately not asserting expertise on the ultimate legal issue of the offsets permitted by the CLJA.

Defendant's rebuttal process confirms this distinction. In response to Ms. Hackett-Wallace's initial report critiquing Defendant's data extractions, Defendant retained Drs. Ji and Hasan, both internal medicine physicians, to conduct the precise medical record correlation and reconciliation that Ms. Hackett-Wallace identified as absent from Defendants' prior presentation of offsets. Yet, as Ms. Hackett-Wallace clearly states in her rebuttal report, those physician reviews did not resolve or eliminate other reliability concerns identified by Ms. Hackett-Wallace regarding the Government's offset datasets themselves. Hackett-Wallace Rebuttal Rep. at 4-5 (JA Ex. 764, D.E. 840-28). Rather, her reports identified broader forensic reliability concerns involving duplicate entries, diagnosis-position ambiguity, missing diagnostic pointers, incomplete CPT/HCPCS detail, lack of chart correlation, unsupported coding assumptions, and pipeline inconsistencies. Hackett-Wallace Rep. at 10-20 (JA Ex. 760, D.E. 840-24). How these reliability concerns affect the weight of the Defendant's offset evidence is a matter for trial.

Defendant's motion therefore attacks opinions Ms. Hackett-Wallace never actually offered. She did not purport to serve as an "offset adjudicator," independently calculate statutory offsets, or opine on the ultimate legal application of offsets under the CLJA. Instead, she identified significant reliability concerns in the government-produced datasets and explained why additional validation would be necessary before those datasets could reliably support offset calculations. That work falls squarely within her expertise in medical billing, coding, auditing,

and payment-integrity review. *See, e.g.*, *United States ex rel. Taylor v. Healthcare Assocs. of Tex., LLC*, 2024 WL 4508961, at *10 (N.D. Tex. Oct. 15, 2024) (expert with certified professional coder and certified professional medical auditor credentials qualified to testify as to "Medicare coding and billing best practices and compliance" and "Medicare claims auditing").

2. Defendant's criticism that Ms. Hackett-Wallace did not undertake a full reconciliation of all data sets misunderstands her role as a rebuttal expert.

Defendant asserts that Ms. Hackett-Wallace was required to "perform testing or analysis to verify whether the United States' offset data was reliable." Def.'s Mem. at 14. But for her opinions on Defendant's offsets, Ms. Hackett-Wallace is a rebuttal expert. Defendant bears the burden of proving the amount of its asserted offsets. *See Vanhoy v. United States*, 2006 WL 3093646, at *8 (E.D. La. Oct. 30, 2006); *Silong v. United States*, 2007 WL 2580543, at *17 (E.D. Cal. Sept. 5, 2007).

In rebutting Defendant's asserted offsets, it was proper for Ms. Hackett-Wallace to critique the reliability of Defendant's calculations without providing her own, independent calculations. *See, e.g.*, *Person v. Ford Motor Co.*, 2011 WL 10501606, at *12-13 (N.D. Miss. Oct. 13, 2011). In *Person*, the court found the plaintiffs' objection that defendant's life care planning expert "simply critiques and criticizes the expert opinion of…Plaintiffs' expert" without offering an alternative life care plan "to be lacking in substance," explaining that "plaintiffs have the burden of proof regarding the issue of damages, and, as such, [defendant] was well within its rights in electing to adopt a defensive posture as it relates to its own expert testimony regarding the issue of damages." *Id.*; *see also Boden v. United States*, 2019 WL 6883813, at *5 (W.D. Va. Dec. 17, 2019) ("Further, no weight is given to the fact that the United States' expert provided a life-care critique rather than a life-care plan, because the critique is intended to rebut [plaintiff's] life-care plan."); *Carter v. Johnson & Johnson*, 2022 WL 4700575,

at *3 (D. Nev. Sept. 29, 2022) (explaining that "an expert can criticize another expert's methodology without affirmatively disproving the matter himself").

The only case Defendant cites in support of its position, *Sardis v. Overhead Door Corp.*, 10 F.4th at 268, 291 (4th Cir. 2021), does not say that rebuttal experts must affirmatively establish the other party's burden of proof. In *Sardis*, the plaintiff's expert "employed no identified methodology to reach his conclusion" that the design of a shipping container's handholds was the proximate cause of the plaintiff's injuries—an element of the *plaintiff's* products liability claim. *Id.* at 276-77, 291. Here, because Defendant bears the burden of proving its own claimed offsets, Ms. Hackett-Wallace was not required to prove the proper amount of such offsets in order to offer admissible testimony critiquing the reliability of Defendant's calculations. Nor does *Sardis*'s principle—that testing or other objective proof supporting a plaintiff's expert's opinion seeking to establish a defect in a products liability case—have much relevance to the context of a medical billing expert in a CLJA toxic torts case. *See* 10 F.4th at 290 (limiting discussion to products liability cases and even there noting "lack of testing is not dispositive"); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999) (emphasizing that *Daubert* reliability analysis is "flexible," and that not every *Daubert* factor (such as testing) "necessarily nor exclusively applies to all experts or in every case").

II. Ms. Hackett-Wallace reliably quantified the amounts Plaintiffs were billed and paid.

A. Ms. Hackett-Wallace's methodology for quantifying and reporting amounts billed and paid is standard in the industry.

In Section II of its Memorandum, Defendant attacks Ms. Hackett-Wallace's methodology for quantifying billed and paid medical expenses. Defendant's criticism fundamentally mischaracterizes both the nature of the underlying records and the work Ms. Hackett-Wallace actually performed.

Ms. Hackett-Wallace's methodology with respect to billed, paid, adjusted, and patient-responsibility amounts was straightforward, transparent, and entirely record-based. For each Plaintiff, she reviewed the underlying medical records together with the corresponding billing and payment records produced in discovery. Hackett-Wallace Rep. at 7-10 (JA Ex. 760, D.E. 840-24). Those billing records expressly identify the amounts billed, amounts paid, contractual adjustments, write-offs, and patient-responsibility amounts associated with each encounter. Ms. Hackett-Wallace did not create or estimate those figures; she extracted them directly from the records themselves, and in the case of TRICARE, from the Defendant's own TRICARE data extractions.

She prepared a detailed Appendix for each bellwether plaintiff, which further demonstrates the reliability and transparency of that methodology. *See, e.g.*, Hackett-Wallace 1st Amend. App'x (Amsler) (JA Ex. 831, D.E. 843-1). For each Plaintiff, the appendices organize the records by provider and encounter, identify the supporting Bates-numbered medical and billing records, and tabulate the amounts reflected in those records. In other words, the numerical amounts were not subjective judgments requiring independent analysis; they were the amounts expressly stated in the billing and payment records produced by the parties.

The expertise Ms. Hackett-Wallace applied involved reviewing and reconciling the billing, coding, and medical documentation associated with particular treatment categories and encounters to determine which charges should be included within her analysis. That work falls squarely within her decades of experience in medical billing, coding, auditing, and payment-integrity review. Once those related charges were identified, the corresponding billed and paid amounts were directly traceable from the face of the billing records themselves.

B. Defendant's criticism of Ms. Wallace for failing to validate patient payments is not a grounds for exclusion.

Defendant claims Ms. Hackett-Wallace's calculations of amounts billed and paid are unreliable because she "transcribed the billed charges and failed to conduct analysis on the same" and "failed to validate any of the patient payments." Def.'s Mem. at 9-10. For instance, Defendant faults her methodology because she did not "review credit card records from plaintiffs" or "interview plaintiffs to verify that they made payment on billed charges." *Id.* at 10.

But expert testimony is "not subject to exclusion … solely because the expert did not … personally review or verify the underlying data." *Bailey v. Comcast of Louisiana/Mississippi/Texas, LLC*, 671 F. Supp. 3d 730, 734 (S.D. Miss. 2023); *Perez v. Boecken*, 2020 WL 3074420, at *11 (W.D. Tex. June 10, 2020) (finding medical auditor expert's testimony reliable in face of objection that she "was not involved with developing the program, has no idea how billing data is submitted to the database, and '[could not] personally vouch for the accuracy of the raw data collected and entered' by [the program]."); *Avocent Redmond Corp. v. Rose Elecs.*, 2013 WL 12121578, at *2 (W.D. Wash. Mar. 8, 2013) (denying motion to exclude where defendant did "no more than speculate" that underlying facts "could be faulty because [expert] is unable to prove that they are accurate" and explaining that experts have no "fact-finding obligation, such that the expert must investigate the accuracy of all facts presented to him before he can opine regarding related matters").

Defendant's criticism confuses the role of a medical billing expert with that of a forensic accountant or private investigator. Ms. Hackett-Wallace relied upon the billing and payment records produced in discovery and quantified the amounts reflected in those records. Defendant cites no authority requiring a medical billing expert to independently obtain plaintiffs' personal credit-card statements or conduct witness interviews to verify payments already documented in

the underlying billing records. It is telling that Defendant cites no authority requiring a medical billing expert to independently verify each recorded patient payment through bank records or personal interviews before relying on the provider's own payment records. Defendant is free to challenge the accuracy of particular billing amounts at trial, but that is a separate issue from whether Ms. Hackett-Wallace was entitled to rely on the billing amounts reflected in the records. Having relied on records that the Court has deemed admissible evidence, and clearly identifying the records she relied upon, Ms. Hackett-Wallace employed precisely the type of methodology experts routinely use in forming their opinions. Defendant identifies no authority requiring her to disregard medical billing information contained in those records or independently verify each amount through separate financial documentation before relying on it.

At most, Defendant's objections concern the weight Defendant believes should be afforded to her conclusions, not the admissibility or reliability of her methodology. *See, e.g.*, *Garvin v. TransAm Trucking, Inc.*, 2024 WL 1998515, at *12 (S.D. Ga. May 6, 2024) (explaining that "any perceived weakness in the data [defendant's coding expert] relied upon in conducting her methodology is appropriately addressed on cross-examination"); *Univ. Surveillance Corp. v. Checkpoint Sys., Inc.*, 2015 WL 6082122, at *8 (N.D. Ohio Sept. 30, 2015) (finding that defendant's "dispute regarding the reliability of [its] own data" did not require exclusion of plaintiff's expert's report based on it because "the accuracy of data underlying a reliable methodology normally goes to the weight of the opinion and not its admissibility").

III. Ms. Hackett-Wallace employed an appropriate methodology for the assignment that she was retained to perform.

In Section III of its Memorandum, Defendant again criticizes Ms. Hackett-Wallace for failing to perform work she was never retained to perform. Defendant faults Ms. Hackett-Wallace for not conducting a comprehensive provider coding-compliance audit designed to

analyze how providers coded treatment to identify potential "upcoding," "unbundling," or other provider billing errors. Def.'s Mem. at 11-12. But Ms. Hackett-Wallace was not retained to audit hospitals or healthcare providers for regulatory billing compliance or to opine regarding whether healthcare providers themselves engaged in improper coding practices. As she expressly testified, "my scope was … not to validate: [D]id Dr. Smith bill level 5 versus a level 3[?]" Hackett-Wallace Dep. Tr. at 89:20-89:23 (JA Ex. 775, D.E. 841-6).

Rather, Ms. Hackett-Wallace's assignments were far more limited and targeted. With respect to TRICARE and private payers, she was retained to review the medical and billing records produced in discovery, correlate those records to the treatment categories and assumptions she was provided, and quantify the billed amounts, paid amounts, patient-responsibility payments, and adjustments reflected in those records for purposes of assessing past medical damages. With respect to CMS and VHA/TriWest/CCN, she was retained to evaluate the reliability, completeness, and forensic auditability of the Government's extracted offset datasets. Those assignments required expertise in medical billing, coding, auditing, and medical-record reconciliation. She was not assigned to perform a separate provider fraud or coding-compliance investigation.

Nor did Ms. Hackett-Wallace ignore the coding-related concerns Defendant identifies. Rather, her methodology was specifically designed to minimize the risk that unsupported, miscoded, or auto-populated billing entries would improperly inflate the claimed damages, while remaining focused on the litigation assignment she was actually retained to perform. As she explained in her report:

> This methodology eliminates assumptions inherent in coding-only analyses. By requiring each billed service to be substantiated by contemporaneous clinical documentation, using the corresponding billing and medical record Bates numbers, it ensures that billing codes are not misinterpreted as evidence of related treatment. **It also mitigates the effects of**

> **upcoding, unbundling, miscoding, or auto-populated codes common in electronic health record systems.** In the litigation setting, this method produces a defensible, audit-ready analysis that links each dollar of claimed or offset medical expense to documented treatment for the compensable condition, satisfying both evidentiary and methodological standards of reliability.

Hackett-Wallace Rep. at 8-9 (JA Ex. 760, D.E. 840-24) (emphasis added).

Thus, contrary to Defendant's assertion that "Ms. Hackett-Wallace plainly admitted that she does not employ the same standard of review that she articulated is required of an expert in her field," Def.'s Mem. at 12, her reports expressly explain that the methodology she employed here was tailored to the assignment she was actually retained to perform: forensic medical-expense quantification through medical-record and billing correlation. Ms. Hackett-Wallace explained that her "line-by-line comparison against clinical documentation, allowing each billed charge to be verified through the gold-standard process of medical-record correlation," represents "the highest degree of reliability attainable in forensic billing analysis." Hackett-Wallace Rep. at 20 (JA Ex. 760, D.E. 840-24).

Courts routinely permit experts to tailor their methodologies to the task for which they have been retained, and do not require that experts employ the exact same methodology they use to achieve different goals in other circumstances. *See, e.g.*, *Frye v. Warden, San Quentin State Prison*, 2010 WL 3210767, at *5 (E.D. Cal. Aug. 10, 2010); *Bravo v. City of Santa Maria*, 2013 WL 12224037, at *7 (C.D. Cal. July 1, 2013); *Davis v. City of Loganville, Ga.*, 2006 WL 826713, at *9 (M.D. Ga. Mar. 28, 2006).

In *Frye*, the petitioner argued that the defendant's mental health expert failed to employ the same level of intellectual rigor as an expert in the relevant field because the expert admitted that "if he were 'treating a patient,' then relying solely on historical data would 'be nonsensical and wrong, malpractice entirely.'" 2010 WL 3210767, at *5. This argument stemmed from the Supreme Court's reminder in *Kumho Tire* that *Daubert* is a flexible test that aims to ensure "the

same level of intellectual rigor that characterizes the practice of an expert in the relevant field." 526 U.S. at 152 (cited by Defendant). However, as the *Frye* court explained, "[t]he question under *Kumho Tire* is not whether [the expert] would have relied upon historical records only to treat a patient, but whether, in a non-judicial setting, he would have relied on historical records to provide an opinion about someone's mental state in the past." 2010 WL 3210767, at *5. Similarly, the relevant question here is not whether a coding expert might perform a provider coding-compliance audit in another professional context, but whether the methodology Ms. Hackett-Wallace employed was reliable for the litigation task she was retained to perform: reviewing medical and billing records, correlating those records to the treatment categories and assumptions provided, and quantifying billed and paid medical expenses reflected in those records. That is precisely what she did.

Defendant's only other citation in support of this argument is also inapplicable here. *See Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997) (expert statistical analysis was inadmissible where expert "fail[ed] to correct for any potential explanatory variables other than" the one supporting plaintiff's discrimination theory, and "equat[ed] a simple statistical correlation to a causal relation," which reflected an unreliable statistical methodology in or out of court).

Finally, even assuming *arguendo* that Ms. Hackett-Wallace should have performed a provider coding audit for coding errors, this criticism goes to the weight, rather than admissibility, of her opinions. *See Madison County Nursing Home v. Broussard Grp., LLC*, 2019 WL 3782191, at *3 (S.D. Miss. Aug. 12, 2019) (plaintiff's reliability challenge that defendant's experts "did not personally audit or review all of the Medicare billing that was performed by [defendant]" went "to the weight of evidence and not to its admissibility under *Daubert*"); *Jones*

v. Burch, 2026 WL 1067087, at *5 (M.D. Fla. Apr. 20, 2026) (objections to adequacies of medical billing and coding expert's testimony went to weight, rather than admissibility); *Mighty Enters., Inc. v. She Hong Indus. Co.*, 2017 WL 901083, at *8 (C.D. Cal. Mar. 7, 2017) ("[W]hile it may be true that [plaintiff's expert] 'could, or should, have' verified the financial figures provided to him by Plaintiff, such objections go to the weight of his testimony, rather than to its admissibility."); *Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333, 1345 (11th Cir. 2003) ("[I]n most cases, objections to the inadequacies of a study are more appropriately considered an objection going to the weight of the evidence rather than its admissibility.") (citation omitted). Defendant identifies no authority requiring a medical billing expert retained to quantify past medical damages to independently audit the billing practices of every healthcare provider reflected in the records before relying on those records in forming her opinions.

IV. Ms. Hackett-Wallace's opinions are not legal conclusions.

Whether "any government offset necessarily constitutes proof of a damage," Def.'s Mem. at 16, is not a legal conclusion, but a factual proposition.[6] Ms. Hackett-Wallace opines that if Defendant successfully proves that it has paid for a medical expense on behalf of a Plaintiff, and seeks an offset based upon that payment, then the Plaintiff necessarily incurred that underlying medical expense. This is practical and logical, and it is a proposition of fact, not of law. The Court will ultimately determine whether, as a legal matter, Defendant's proof of claimed offsets for past medical expenses also proves corresponding medical expenses incurred by Plaintiffs. Ms. Hackett-Wallace is merely stating that if the Court accepts Defendant's proof, then so does she.

[6] The *legal* argument Plaintiffs make in their motion *in limine* is that, if the Court accepts this logical conclusion, evidence of such expenses is irrelevant because it is not "of consequence in determining the action," and would cause undue prejudice to Plaintiffs. [D.E. 806] at 16-17. Ms. Hackett-Wallace does not make this or any legal argument.

As explained in detail above, applying her expertise as a medical billing, coding, documentation, and auditing expert, Ms. Hackett-Wallace identified significant reliability concerns in the data underlying Defendant's alleged CMS/Medicare and VHA/TriWest/CCN offsets. *See* Hackett-Wallace Rep. at 11-20 (JA Ex. 760, D.E. 840-24). Rather than offering the trier of fact instruction on how to interpret offsets as a legal matter, Ms. Hackett-Wallace provides opinions only on the deficiencies in Defendant's underlying data. Indeed, Ms. Hackett-Wallace expressly acknowledged that the Court will ultimately decide whether Defendant's data supports its claimed offsets. Hackett-Wallace Dep. Tr. at 122:16-122:22 (JA Ex. 755, D.E. 841-6) (Q. "But you're currently … unwilling to accept these as offsets – offset amounts; is that correct?" A. "It's – I don't believe it's my place to accept them or not accept them.") (objection omitted). The statements Defendant seeks to characterize as an improper legal conclusion are simply Ms. Hackett-Wallace's acknowledgement of the effect the Court's acceptance of Defendant's data would have on her own calculations.

For example, as Ms. Hackett-Wallace explained her deposition, "there are many inconsistencies with five different – five different, six different, I can't even keep track now – government agencies and how they pulled their data and what inconsistencies were relied upon in the data. And what I'm saying is if the Court accepts your data, then I accept your data, and it should be included based on that acceptance." Hackett-Wallace Dep. Tr. at 128:7-128:16 (JA Ex. 755, D.E. 841-6). Defense counsel then asked, "[s]o if the Court accepts this data, you indicated that an offset necessarily constitutes proof of an expense that was incurred by that plaintiff. How do you know that it constitutes proof of an expense that was incurred by a plaintiff?" Hackett-Wallace Dep. Tr. at 128:18-128:23 (JA Ex. 755, D.E. 841-6). Ms. Hackett-Wallace responded: "It goes back to your data. In your data, you got charges and payments in there. I'm merely

accepting your data." Hackett-Wallace Dep. Tr. at 128:25-129:3 (JA Ex. 755, D.E. 841-6).

This testimony is consistent with Ms. Hackett-Wallace's rebuttal report, in which she explained:

> I have already expressed concerns regarding the reliability and sufficiency of the agency datasets the Defendant is relying upon to establish past medical expenses paid or provided by those government-payor sources for purposes of obtaining offsets.
>
> If the Defendant's data and methodology are nonetheless found to be reliable and/or otherwise accepted by the Court as sufficient proof of an applicable offset for care provided through or expenses administered by CMS/Medicare, VHA, and/or CCN, then I incorporate the amounts Defendant is allowed as an offset into my report as a corresponding damage. I do so in acknowledgement that any award, payment or benefit provided to a plaintiff for medical care through a program administered by or through CMS/Medicare, VHA or CCN (TriWest) which is sufficiently validated for purposes of being allowed as an offset necessarily constitutes proof of an expense that was incurred by that plaintiff for the medical care that was provided.

Hackett-Wallace Rebuttal (Corrected) at 4-5 (JA Ex. 764, D.E. 840-28). Ms. Hackett-Wallace's acknowledgment of the logical and practical consequences of the Court's acceptance of Defendant's proof of its claimed offsets on her calculations does not amount to an impermissible legal conclusion. In the Fourth Circuit, courts "should consider first whether the question tracks the language of the legal principle at issue or of the applicable statute, and second, whether any terms employed have specialized legal meaning." *United States v. Barile*, 286 F.3d 749, 760 (4th Cir. 2002). Thus, in Defendant's cited cases, courts excluded expert testimony on whether a party's conduct met a specific legal standard and an expert's interpretation of a contract,[7] but admitted expert testimony that went beyond a mere legal

[7] *See Barile*, 286 F.3d at 761 (expert permitted to testify whether 501(k) submissions were "reasonable," but whether they contained "'materially misleading statements' arguably constitutes a legal conclusion"); *Yates v. Ford Motor Co.*, 2015 WL 3448905, at *8 (E.D.N.C. May 29, 2015) (excluding expert testimony "as to whether defendants acted 'reasonably' in using asbestos materials" and "whether a warning or instruction was 'adequate'"); *Brainchild Surgical Devs., LLC v. CPA Global Ltd.*, 144 F.4th 238, 253-54 (4th Cir. 2025) (excluding expert's interpretation of contract); *SMD Software, Inc. v. Emove, Inc.*, 2014 WL 1807809, at *2-3 (E.D.N.C. May 7, 2014) (excluding expert testimony that "there is a potential for application of presumptions of injury under the Lanham Act in cases involving comparative advertising").

conclusion, even where the expert "used terms similar to that which [the] court has employed to express the underlying issue." *United States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006) (expert's testimony that appellant's "treatment of certain patients was either illegitimate or inappropriate" was admissible "[o]n the issue of whether Appellant acted 'outside the bounds of his professional medical practice and for other than legitimate medical purposes'" because "the language [the expert] employed falls within the limited vernacular that is available to express whether a doctor acted outside the bounds of his professional practice").[8] Unlike the excluded expert opinions in those cases, Ms. Hackett-Wallace's opinion does not purport to define an offset as a legal term, Hackett-Wallace Dep. Tr. at 130:23-131:1 (JA Ex. 755, D.E. 841-6) (objection omitted), or to determine which offsets ultimately apply.

CONCLUSION

For all of the foregoing reasons, the Court should deny Defendant's Motion to exclude the opinions of Ms. Hackett-Wallace [D.E. 856].

[8] *See also United States v. Offill*, 666 F.3d 168, 176 (4th Cir. 2011) (admitting "testimony on the general operation of securities law … allowing the jury to determine the law's applicability to [defendant]").

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