

**In The Matter Of:**

*Alina Boyden and Shannon Andrews v.  
State of Wisconsin Department of Employee Trust Funds*

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*Deposition of Jeffrey E. Bogardus  
April 3, 2018*

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*Original File Bogardus Jeffrey 4-3-18.txt  
Min-U-Script® with Word Index*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF WISCONSIN

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ALINA BOYDEN and  
 SHANNON ANDREWS,

Plaintiffs,

Case No. 17-cv-264

-vs-

STATE OF WISCONSIN DEPARTMENT OF  
 EMPLOYEE TRUST FUNDS, et al.,

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Defendants.

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Deposition of JEFFREY E. BOGARDUS, taken  
 at the instance of the Plaintiffs, under and pursuant  
 to Section 804.05 of the Wisconsin Statutes, before  
 Tammy L. Uhl, RPR, CRR, CRC, a Notary Public in and for  
 the State of Wisconsin, at the Risser Justice Center,  
 17 West Main Street, Madison, Wisconsin, on  
 April 3, 2018, commencing at 9:02 a.m. and concluding at  
 12:10 p.m.

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A P P E A R A N C E S

1

2

3 AMERICAN CIVIL LIBERTIES UNION, by

4 MR. LAURENCE J. DUPUIS and Ms. Asma Kadri,

5 207 East Buffalo Street, Suite 325,

6 Milwaukee, Wisconsin 53202,

7 appeared on behalf of the Plaintiffs.

8 STATE OF WISCONSIN DEPARTMENT OF JUSTICE, by

9 MR. COLIN T. ROTH,

10 17 West Main Street,

11 Madison, Wisconsin 53707-7857,

12 appeared on behalf of the Defendants.

13

14 Also present: Dan Hayes

15 Steven C. Kilpatrick

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15	Eileen K. Mallow dated February 7, 2017,	
16	and an e-mail from Jeff Bogardus dated	
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19	(The original exhibits were attached to the original	
20	transcript and PDFs were provided to counsel)	
21		
22		
23		
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25		

(The original transcript was filed with  
 Attorney Nicholas E. Fairweather)

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1 JEFFREY E. BOGARDUS, called as a  
2 witness, being first duly sworn, testified on  
3 oath as follows:  
4 EXAMINATION  
5 BY MR. DUPUIS:  
6 Q Good morning, Mr. Bogardus. My name, as we've  
7 already talked about off the record, is Larry  
8 Dupuis. I'm a lawyer with ACLU of Wisconsin  
9 Foundation, and we represent the plaintiffs in the  
10 fcase of Alina Boyden and Shannon Andrews versus  
11 Department of Employee Trust Funds and a whole  
12 bunch of other defendants.  
13 A Right.  
14 Q So I'd like to start by asking you to again state  
15 your name for the record.  
16 A Sure. My name is Jeffrey E. Bogardus.  
17 Q And can you spell the last name?  
18 A B-o-g-a-r-d-u-s.  
19 Q Okay. And you go by Jeff?  
20 A Jeff. Correct.  
21 Q Have you ever been -- has your deposition ever  
22 been taken before?  
23 A No.  
24 Q Have you ever given testimony in a court case?  
25 A Just administrative law.

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1 Q So what sorts of administrative law cases?  
2 A It would be cases where we had appeals with the  
3 department.  
4 Q The department being --  
5 A The Department of Employee Trust Funds.  
6 Q And was that -- that was before Wisconsin  
7 administrative law judges or hearing officers?  
8 A It was both.  
9 Q When's the last time you did that?  
10 A Wow. It's been a long time. Yeah. I'd say it  
11 was probably back in 2001 when I worked on the  
12 retirement side of the business.  
13 Q Okay. So Mr. Roth may have already gone over this  
14 with you, but I'm going to just go over some of  
15 the ground rules for depositions, in part, so, you  
16 know, we understand one another.  
17 A Sure.  
18 Q And in part -- the main thing about all of these  
19 rules is we got to remember that somebody is  
20 trying to write down everything you say.  
21 A Correct.  
22 Q And so things like verbal answers, that's  
23 essential that you actually answer yes or no if  
24 it's a yes or no question. Nodding is okay, but  
25 you also have to say yes or no.

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1 Avoid crosstalk so try to wait until I'm  
2 finished with the question. Sometimes I pause  
3 and, you know, usually the pause means it's okay  
4 to answer the question, but try to wait for the  
5 end of the question, and I'll try to make sure I  
6 give you a chance to finish your answer.  
7 If at any point you don't understand a  
8 question, let me know, and I can repeat it or  
9 rephrase it. But if you understand the question,  
10 I'm going to assume that -- or if you answer the  
11 question, I'm going to assume that you understand  
12 it; is that fair?  
13 A Yes. Yes.  
14 Q And you're represented by Mr. Roth in this matter;  
15 is that right?  
16 A That's correct.  
17 Q Okay. And so Mr. Roth might at various times  
18 raise objections to questions that I ask you. In  
19 general, if you understand the question, you can  
20 go ahead and answer it unless he actually  
21 instructs you not to answer; okay?  
22 A Yes.  
23 Q Is there any reason you can think of today that  
24 you would not be able to answer my questions fully  
25 and accurately?

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1 A No.  
2 Q And you understand that you're under oath?  
3 A Yes.  
4 Q Did you meet with your attorneys in preparation  
5 for this deposition?  
6 A Yes.  
7 Q When was that?  
8 A Yesterday.  
9 Q And for how long?  
10 A Boy, I don't even remember. Three and a half  
11 hours.  
12 Q Was that yesterday morning?  
13 A Yesterday morning.  
14 Q Did you review documents?  
15 A Yes.  
16 Q Okay. And what documents did you review?  
17 A There were e-mail messages, and I'm trying to  
18 think what else. Mostly it was e-mail messages.  
19 Q Did you do anything else to prepare for the  
20 deposition besides meeting with Mr. Roth or other  
21 counsel?  
22 A I did clarify a couple things with co-workers when  
23 I returned to work.  
24 Q That was yesterday?  
25 A Yesterday.

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1 Q And what things were those that you clarified?  
2 A Certain things were the length of a prior  
3 authorization. Just confirmed what we had already  
4 discussed in the deposition.  
5 MR. ROTH: I'm going to object and  
6 instruct the witness not to answer to the  
7 extent it discloses communications during our  
8 preparation session.  
9 THE WITNESS: Thank you.  
10 Q And so length of a prior authorization so is that  
11 sort of when a physician orders some sort of -- in  
12 your case probably at this point in your career --  
13 medication, and it's a medication that's not  
14 formulary or something, and they would have to  
15 give some sort of separate authorization rather  
16 than just prescribing it?  
17 A That's correct.  
18 Q And then when you say the length, what would that  
19 mean?  
20 A That would be the duration that the prior  
21 authorization is in effect.  
22 Q Okay. So is there, like, a default time?  
23 A It would depend on the drug and the situation.  
24 Q Okay. You said that you had a couple of things to  
25 clarify. What else did you speak to your

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1 co-workers about?  
2 A I was just trying to think. The other came up as  
3 to whether graduate assistants, who are members  
4 within our program, were eligible for what we call  
5 optional insurance plans.  
6 Q And what are those?  
7 A Optional insurance plans are the plans that  
8 employees pay the full premium for.  
9 Q But those are offered through ETF?  
10 A Those are offered through ETF to state employees.  
11 Q And are graduate assistants eligible?  
12 A Yes, they are.  
13 Q Are those optional insurance plans, do they follow  
14 the same uniform benefits guidelines as the other  
15 plans for the state?  
16 A No. They do not.  
17 Q How are those plans -- so private health insurers  
18 offer those plans to employees through ETF; is  
19 that how it works?  
20 A It would not be health insurers. They do offer  
21 them. It would be vision, for instance, dental.  
22 Q Okay. So the optional plans don't cover medical  
23 care?  
24 A That is correct.  
25 Q So we'll be talking about a number of documents

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1 that were produced to us in the course of  
2 discovery and they will have marked them -- many  
3 of them anyway -- with a number that was assigned  
4 to them, I believe, by the Department of Justice  
5 when they produced them to us, and those documents  
6 will have page numbers sometimes but sometimes  
7 they won't, so I will try to guide you to them as  
8 best as possible.  
9 A Okay.  
10 Q Did you have any involvement in responding to  
11 discovery requests in this case?  
12 A Explain, I guess. I don't understand what  
13 involvement would -- how do I say this?  
14 Q Well, I can rephrase. So you became aware that  
15 there was a lawsuit --  
16 A Uh-huh.  
17 Q -- against ETF and others about coverage of  
18 transition related health care; correct?  
19 A Correct.  
20 Q And did there come a time when you were asked to  
21 go through your e-mails or go through documents  
22 and try to find documents that might be relevant?  
23 A Yes.  
24 Q Who did that request come from?  
25 A That came from our legal counsel, which was --

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1 Q David.  
2 A David Nispel. Thank you.  
3 Q He'll have the pleasure of being in your chair  
4 this afternoon.  
5 A That's right.  
6 Q And did you -- how did you respond to the request  
7 for documents for Mr. Nispel?  
8 A Fulfilled -- you know, if there were documents I  
9 knew of, I provided those to them.  
10 Q So did you see, like, a list of requests for  
11 documents?  
12 A I did not see a list, no. It was more based on  
13 did you have any involvement with gender  
14 reassignment surgery or the drugs associated with  
15 those procedures, our policies with those uniform  
16 benefits, those sorts of things.  
17 Q Did you search your own e-mail using key words, or  
18 did somebody do that for you?  
19 A Somebody did that for me.  
20 Q All right. I'd like to turn to some of your  
21 personal background. Where do you live? Just the  
22 city is fine.  
23 A Waunakee.  
24 Q And where is that?  
25 A Waunakee is north of Middleton, northwest of

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1 Madison.  
2 Q And I'd like to ask you a few questions about your  
3 educational background. I think we actually  
4 established where you went to high school, but  
5 that was before we were on the record, so could  
6 you tell us again?  
7 A Yes. I went to high school in Racine, Wisconsin.  
8 Q And what school?  
9 A J.I. Case High School.  
10 Q Did you graduate?  
11 A Yes.  
12 Q When did you graduate?  
13 A 1981.  
14 Q And did you go to college?  
15 A Yes.  
16 Q Where did you go to college?  
17 A University of Wisconsin-Eau Claire.  
18 Q What did you study there?  
19 A Accounting.  
20 Q And did you graduate?  
21 A No.  
22 Q When did you -- what years were you at UW-Eau  
23 Claire?  
24 A I left -- that would have been 1981 through  
25 1985 -- '86, sorry.

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1 Q Did you have any further college level education?  
2 A No.  
3 Q And did you have any post-college education that  
4 would lead to a degree --  
5 A No.  
6 Q -- anywhere else? Have you had any specific  
7 training in health insurance administration?  
8 A Just training through different seminars and that  
9 type of thing that are offered.  
10 Q So like continuing professional education type of  
11 stuff?  
12 A Correct.  
13 Q Where have you done those trainings?  
14 A That's been through the Department of Employee  
15 Trust Funds at various --  
16 Q And you're currently the pharmacy manager for the  
17 Department of Employee Trust Funds; is that  
18 correct?  
19 A I manage the pharmacy benefit programs.  
20 Q How long have you been in that position?  
21 A Since 2006.  
22 Q How long have you been at Employee Trust Funds?  
23 A I started in April of 1993.  
24 Q What did you do before -- between college and ETF?  
25 A I was in the military.

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1 Q So that would have been from '86 --  
2 A 1987 through essentially 1994. There was an  
3 overlap.  
4 Q Okay. What branch?  
5 A Army, U.S. Army.  
6 Q Were you in the first gulf war?  
7 A Yes.  
8 Q So then in '93, you came to Employee Trust Funds.  
9 Can you tell me just basically your understanding  
10 of what the Department of Employee Trust Funds  
11 does?  
12 A Essentially, they manage or administer the  
13 Wisconsin Retirement System, and they also  
14 administer the state group health insurance  
15 program and other insurance programs.  
16 Q So is your position specifically within the Office  
17 of Strategic Health Policy at the Department of  
18 Employee Trust Funds?  
19 A Yes. That's correct.  
20 Q And what does the Office of Strategic Health  
21 Policy -- I may refer to that as OSHP, or do you  
22 have a fun pronunciation for that?  
23 A We call it OSHP. Make sure you put the P at the  
24 end. So OSHP, we are the unit within the  
25 Department of Employee Trust Funds that

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1 administers the group health insurance programs  
2 and the optional insurance programs.  
3 Q Are you also a member of the health insurance  
4 programs that ETF manages and administers?  
5 A Yes.  
6 Q As a state employee?  
7 A Yes.  
8 Q So I'd like to ask you a few questions about your  
9 prior positions with ETF. So before you were the  
10 pharmacy -- I already can't read my handwriting.  
11 You manage the pharmacy something programs?  
12 A Benefit.  
13 Q All right. Before you managed the pharmacy  
14 benefits program, what did you do?  
15 A Do you want me to start back in '93 and move  
16 forward or go backwards?  
17 Q Either way is fine.  
18 A Okay. Starting in '93, I just worked as a what  
19 they call a trust fund assistant. The dates are  
20 all kind of fuzzy between '93 and 2006.  
21 Q Okay.  
22 A Then I moved onto being a lead worker in one of  
23 the -- and this is all on the retirement side of  
24 the business.  
25 Q Okay.

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1 A Then from a lead worker, I became the supervisor  
2 of our Milwaukee office when we had a Milwaukee  
3 office. And then from that point -- so the  
4 Milwaukee office, I believe, was 1998 to 2006.  
5 And then I came back up to Madison and started  
6 working for what is now OSHP.  
7 Q Okay. And within OSHP, is the pharmacy benefit  
8 program's manager the only position you've had in  
9 OSHP?  
10 A Yes. That's the main function that I perform.  
11 Q Was there a different title for that at one point?  
12 A It may have been. I don't recall.  
13 Q Okay.  
14 A I know at one point I actually managed all of the  
15 optional programs in addition to the pharmacy  
16 benefit program and in addition to our accumulated  
17 sick leave, so there were multiple roles at the  
18 same time.  
19 Q Okay. So as supervisor of the Milwaukee office,  
20 was that also on the retirement side?  
21 A That was retirement, correct.  
22 Q So it's only been since 2006 that you've been in  
23 the group health plan side of the business?  
24 A Correct.  
25 Q And for a time you also managed the optional

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1 benefit programs or optional health programs, or  
2 what were they called?  
3 A The optional insurance programs, yes.  
4 Q In accrued leave or what was the other?  
5 A It was our sick leave program that in a very  
6 general sense members can escrow their sick leave  
7 to pay for health insurance premiums, so I managed  
8 that program -- or a portion of that program.  
9 Q So who is your supervisor?  
10 A Currently, it is Eileen Mallow.  
11 Q And what's her position?  
12 A She is -- well, she's the deputy director of OSHP.  
13 Q Okay. And during, let's just say 2015, '16, and  
14 '17, who were your supervisors then?  
15 A Bill Kox.  
16 Q And that's Bill K-o-x?  
17 A K-o-x. That's correct. And Eileen. And then  
18 Eileen. Bill retired.  
19 Q When did Bill retire, do you know, roughly?  
20 A I don't recall. I want to say the end of 2015 or  
21 2016. I should know, but the last few years have  
22 been really busy.  
23 Q Did you go to the retirement party?  
24 A I did.  
25 Q I won't tell him that you couldn't remember it.

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1 A It's like he's still there.  
2 Q Okay. And does Eileen Mallow report then to the  
3 director of OSHP?  
4 A That is correct.  
5 Q Okay. And through much of 2015 through 2017, that  
6 would have been Lisa Ellinger or is it Ellinger?  
7 A Ellinger.  
8 Q And who is the director of OSHP now?  
9 A It is vacant currently, so Eileen is the acting.  
10 Q And when did Ms. Ellinger leave OSHP?  
11 A About three months ago.  
12 Q Do you know where she went?  
13 A She went to the Wisconsin Hospital Association.  
14 Q Do you have any understanding of why she left?  
15 A Not specifically, no.  
16 Q How about not specifically?  
17 A I know it was an advancement for her.  
18 Q Do you know what her role is at the Wisconsin  
19 Hospital Association?  
20 A I believe she's the vice president of public  
21 policy.  
22 Q Did she say anything to you about why she was  
23 leaving?  
24 A Other than the move up, no.  
25 Q Are there people in OSHP that you supervise?

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1 A No.  
2 Q So management in your case is not dealing with  
3 subordinates in, like, a direct personnel  
4 reporting relationship?  
5 A That is correct.  
6 Q But I assume you work with other folks in OSHP?  
7 A Yes.  
8 Q Who do you work with most often, would you say, in  
9 your current position?  
10 A I guess I don't understand the context of it  
11 because I manage the pharmacy benefit program  
12 pretty much independently. That's mine. I do get  
13 some assistance from Arlene Larson and Renee Walk  
14 in instances where that's needed. Does that  
15 answer your --  
16 Q I think so. Are you -- outside of ETF, are there  
17 individuals or organizations you work with on a  
18 regular basis?  
19 A No.  
20 Q What about Navitus?  
21 A Oh, okay. Not me personally being employed by  
22 them; correct?  
23 Q Right. Correct.  
24 A Okay. Thank you.  
25 Q Work with in the sense of frequent interaction.

Page 21

1 A Yes. Navitus Health Solutions.  
2 Q What is Navitus?  
3 A Navitus Health Solutions is the pharmacy benefit  
4 manager that is contracted with the Group  
5 Insurance Board.  
6 Q So do you work on those contracts every year?  
7 A Yes.  
8 Q And you put them together, the contracts, based on  
9 what?  
10 A We do renewals. You know, the RFP process that we  
11 go through gives us certain extensions that we  
12 then take recommendations to the Group Insurance  
13 Board about extending the contract or going back  
14 out for another RFP, that type of thing.  
15 Q So does Navitus then, do they essentially process  
16 claims from members for pharmaceuticals?  
17 A They do. As well as a number of other things.  
18 Q Why don't you tell me what they do as the  
19 contracted pharmacy benefit manager?  
20 A Sure. Claims processing as you just indicated.  
21 But then we also rely on them for clinical  
22 formulary management, pharmacy network development  
23 and administration, clinical program management,  
24 meaning things like medication therapy management  
25 or disease management or those type of programs.

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1 Again, rely on the experts, if you will.  
2 Q So explain for me, like, if a member of one of the  
3 ETF plans has a prescription for a pharmaceutical,  
4 is that always -- do the claims always go to  
5 Navitus for processing or are they through the  
6 plan like Dean or --  
7 A They do go through Navitus.  
8 Q So the pharmacy benefit is almost independent of  
9 the health -- the group health insurance plan in  
10 substance?  
11 A That is correct. We refer to it as being carved  
12 out. So the pharmacy benefits are carved out from  
13 the medical.  
14 Q So does a member have a card -- a Navitus card in  
15 addition to whatever their plan card is?  
16 A Yes, they do.  
17 Q When I say member, I've been referring to, you  
18 know, typically a state or local government  
19 employee who is getting insurance through ETF; is  
20 that fair?  
21 A Yes.  
22 Q Are there any other entities outside of ETF and  
23 other ETF staff and Navitus that you deal with on  
24 a regular basis?  
25 A I deal with our auditor of the PBM. That would be

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1 TRICAST.  
2 Q You used the term PBM. What is that?  
3 A I'm sorry. Pharmacy benefit manager. Navitus is  
4 our pharmacy benefit manager so the acronym being  
5 PBM. That kind of refers to Navitus.  
6 Q Okay. And then I'm sorry. You said --  
7 A So they are our third-party auditor, so they audit  
8 the activities of Navitus.  
9 Q And who is that?  
10 A It's by the name of TRICAST Incorporated.  
11 Q Anyone else you deal with regularly?  
12 A Those are the main.  
13 Q Okay. So when the -- actually, I'll come back to  
14 that later. Do you have interactions with the  
15 beneficiaries of health coverage, the members  
16 directly?  
17 A Not -- no. How do I -- I do on occasion, yes, if  
18 an issue has escalated.  
19 Q And when you say an issue has escalated, what  
20 would that mean?  
21 A That would mean our other staff who deal directly  
22 with members, for instance, it goes beyond their  
23 expertise and knowledge of the pharmacy benefit  
24 program, then I would get involved at that point.  
25 Q Okay. So a member has a complaint about a

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1 prescription claim being denied, for example,  
2 might reach you if it was in some gray area that a  
3 lower level person couldn't handle?  
4 A Correct. We would -- yes. That's correct.  
5 Q What about appeals of denials of coverage? Would  
6 you be involved in those?  
7 A Only to the extent of making sure that the appeal  
8 process that Navitus runs is being handled  
9 appropriately.  
10 Q So when you say ensuring that the process that  
11 Navitus runs is handled appropriately, what do you  
12 mean by that?  
13 A Sure. So appeals of those type of things go  
14 through Navitus. They do not go through us  
15 initially. That's the first step in a person's --  
16 drawing a blank -- actions that a person can take  
17 if they're not happy.  
18 From there, they're given other rights to  
19 come back and file a complaint essentially through  
20 the department. That goes in through our  
21 Ombudsperson Services at which point I may help  
22 with a review. Our review in those cases is  
23 limited to did Navitus adhere to our contract with  
24 them.  
25 Q And when you say sort of making sure or -- I'm not

Page 25

1 sure how you put it, ensuring that Navitus's  
 2 appeal process is appropriate, are there rules  
 3 that ETF has for them in the contract about how  
 4 those appeals are supposed to be handled?  
 5 A Yes. Yes.  
 6 Q About how often do you end up dealing with an  
 7 appeal of a denial of coverages?  
 8 A Personally, very rarely.  
 9 Q Do you have a sense as manager how often the  
 10 appeals come to the level of the ETF Ombudsperson?  
 11 A I don't specifically, no. I'm sorry.  
 12 Q Do you have a general sense? Is it once a month  
 13 or once a year?  
 14 A There is a report that's produced by the  
 15 Ombudsperson Services office, but, again, I  
 16 don't --  
 17 Q Off the top of your head.  
 18 A Off the top of my head, I don't know.  
 19 Q Okay. Do you have a sense of what the most common  
 20 sorts of issues are in those appeals when it comes  
 21 to Navitus?  
 22 A Yes. Coverage of certain drugs is generally the  
 23 main issue.  
 24 Q Is that usually a formulary issue?  
 25 A Could be a formulary issue. When I refer to a

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1 formulary issue meaning, you know, do we cover the  
 2 drug on our formulary or not.  
 3 Q And just for the record, what is a formulary?  
 4 A So the formulary is basically our drug list. The  
 5 drugs that we do cover as a benefit.  
 6 Q Have you ever dealt with appeals or denials of  
 7 benefits more directly than you do now in the  
 8 group health insurance/pharmacy side of things?  
 9 A Yes. When I first started, they were a little  
 10 more -- we would -- how do I say this? I would  
 11 get involved more than our Ombudsperson Services  
 12 would. That was back in 2006 through 2008.  
 13 Q And what changed?  
 14 A The Ombudsperson Services took on that role of,  
 15 again, being that first line when it came back  
 16 through to ETF.  
 17 Q Did they exist before?  
 18 A Yes. Yes.  
 19 Q I mean, the Ombudspersons Office existed?  
 20 A Thank you. Yes.  
 21 Q So who is in the Ombudspersons Office?  
 22 A That's Dan Hayes's office or group. And did you  
 23 need the names of those?  
 24 Q So that's in the Office of Legal Services or is  
 25 that --

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1 A Yes. Yes.  
 2 Q Do you get other inquiries that are not appeals  
 3 from members, beneficiaries?  
 4 A We do, yes.  
 5 Q How does that -- can you give some examples, or is  
 6 that all across the board?  
 7 A It's pretty broad. One big one is co-pay  
 8 lowering, cost-share lowering. That's one that's  
 9 a little more prevalent.  
 10 Q Are you familiar with the term transgender?  
 11 A Yes.  
 12 Q What does that mean to you?  
 13 A It means to me someone who is moving from a  
 14 physical -- and it could be a mental state as well  
 15 but. If they were born, for instance, say a man,  
 16 their preference is more towards a female and vice  
 17 versa.  
 18 Q And how did you come to that understanding?  
 19 A Through personal knowledge as well as, you know,  
 20 research.  
 21 Q And when you say personal knowledge, do you know  
 22 people who are transgender?  
 23 A Yes.  
 24 Q Friends?  
 25 A Yes.

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1 Q Family members?  
 2 A No.  
 3 Q Are you familiar with the term gender dysphoria?  
 4 A Yes.  
 5 Q What is your understanding of that?  
 6 A That is somewhat of a conflict between those two.  
 7 More of a psychological is my understanding  
 8 between the birth -- and, again, I don't know how  
 9 to clearly explain it, but a male feeling more in  
 10 tune with a female. That conflict.  
 11 Q Are you familiar with the term hormone therapy in  
 12 the context of treating gender dysphoria?  
 13 A Yes.  
 14 Q What's your understanding of hormone therapy in  
 15 that context?  
 16 A Hormone therapy is required -- again, I don't know  
 17 clinically, but I do know it's required -- or I  
 18 shouldn't say required but helps the matters in  
 19 both gender dysphoria and --  
 20 Q When you say helps it, relieves the distress?  
 21 A Right. Correct. Thank you.  
 22 Q And those hormones are typically -- in your  
 23 understanding, are they cross gender hormones so,  
 24 for example, a man -- somebody born whose gender  
 25 identified at birth is male taking estrogen, for

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1 example?  
2 A Correct.  
3 Q And conversely, it would be somebody whose birth  
4 gender identified at birth was female taking  
5 androgens to relieve gender dysphoria?  
6 A That's my understanding.  
7 Q And, again, how did you come to that  
8 understanding?  
9 A Again, personal and then through research.  
10 Q And when you say research, what do you mean?  
11 A Just reading various articles.  
12 Q And was that in the context of your job?  
13 A In the context of my job as well as personal.  
14 Q Did you try to systematically educate yourself  
15 about it at some point?  
16 A Yes.  
17 Q When was that?  
18 A That would have been back in 2006 and 2007.  
19 Q And why did you undertake that effort in 2006 and  
20 2007?  
21 A To have a better understanding of bargaining  
22 demands.  
23 Q And when you say bargaining demands, are those  
24 demands from employee unions?  
25 A That's correct.

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1 Q So you play a role in responding to bargaining  
2 demands -- or have in the past, at least, dealt  
3 with responses to bargaining demands from state  
4 employees?  
5 A Yes.  
6 Q Do you still do that?  
7 A No.  
8 Q When did you no longer do that?  
9 A I did it twice. One was for the -- so it was --  
10 it would have been -- let's see. It would have  
11 been 2008 would have been the last time.  
12 Q Okay. So you did it in 2006 and 2008?  
13 A That's correct.  
14 Q And how did you come to be involved in that  
15 process?  
16 A Luck of the draw mostly. We had -- in our office,  
17 we had very few staff, so it was another one of  
18 the multiple functions.  
19 Q Okay. And are those bargaining demands over  
20 health care benefits something that happens every  
21 year?  
22 A It did, but it wasn't every year. It was every  
23 two years.  
24 Q Is that the length of a -- at the time, the length  
25 of a contract?

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1 A I assume so, yeah.  
2 Q And you say now it's not the same. So how does it  
3 work now?  
4 A There are no longer bargaining units.  
5 Q And that's because of Act 10?  
6 A That's correct.  
7 Q So that would have been 2012 or '13 that it ended  
8 roughly?  
9 A I don't recall. Again, the last time we did  
10 bargaining demands was for the 2009 to 2011  
11 contract year, and that would be a fiscal year.  
12 Q Is that October?  
13 A July.  
14 Q July?  
15 A It would have been July through the end of June.  
16 Q Are you familiar with the term gender confirmation  
17 surgery?  
18 A I'm not familiar with that term, no. Gender  
19 confirmation surgery, no.  
20 Q How about sex reassignment surgery?  
21 A Yes.  
22 Q And what's your understanding of that term?  
23 A That's when physically they change from male to  
24 female or female to male through a surgical  
25 procedure.

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1 Q Okay. So genital surgery is what you understand  
2 to be sex reassignment surgery?  
3 A It's part of it.  
4 Q What other parts?  
5 A For instance, the breasts, those types of things  
6 may be involved.  
7 Q Okay. Have you ever heard of the term tracheal  
8 shave?  
9 A Yes.  
10 Q What's that?  
11 A Don't know specifically.  
12 Q And what's your understanding of the reason that  
13 those surgeries are done?  
14 A It's the choice of the person.  
15 Q Is it to treat gender dysphoria?  
16 A I don't know. I can't speak to that.  
17 Q Surgical coverage isn't in your bailiwick really?  
18 A No. Contract management is.  
19 Q So do you -- what sort of interaction do you have  
20 with the Group Insurance Board?  
21 A On occasion, I will report to the Group Insurance  
22 Board regarding audits of the PBM or Navitus.  
23 Also give them recommendations on contract  
24 renewals, those type of things. If there's  
25 special topics that the Group Insurance Board is

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1 interested in that are related to the pharmacy  
2 benefit programs, I'll work with that as well.  
3 Q So when you say you report to them, do you mean  
4 you attend the meeting of the GIB when you're  
5 doing that kind of reporting?  
6 A Yes.  
7 Q Do you otherwise -- so do you attend every regular  
8 GIB meeting?  
9 A No. I do not.  
10 Q Only when there's something on the agenda that you  
11 need to talk about?  
12 A That's correct.  
13 Q Is the audit annual?  
14 A The audit is now annual, yes.  
15 Q And do you then attend at least one meeting a year  
16 of the GIB?  
17 A Yes.  
18 Q To present that audit?  
19 A Correct.  
20 Q So do you know who the board members are now?  
21 A Yes.  
22 Q If I asked you to name them -- I'm not going to.  
23 A Thank you.  
24 Q But if I asked you to name them, you could  
25 eventually come up with them?

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1 A Yes, I could.  
2 Q Do you know how they're chosen?  
3 A Not specifically. I know some of them are -- some  
4 of them are appointed. In fact, I think all of  
5 them are appointed.  
6 Q Do you know how they're appointed? Who does the  
7 appointment?  
8 A Not specifically, no.  
9 Q Do you know anything about the qualifications to  
10 be on the Group Insurance Board?  
11 A No.  
12 Q Do you know if Group Insurance Board members are  
13 paid for their work?  
14 A No. I don't know.  
15 Q Do you know if the GIB positions are full time?  
16 A I don't believe they are, but, again, that would  
17 be speculating.  
18 Q Okay. Is there a reason you don't believe that  
19 they are?  
20 A We only see them -- and I know they all have other  
21 jobs.  
22 Q Do you ever have one-on-one interactions with GIB  
23 members?  
24 A No. I do not.  
25 Q No e-mail exchanges just with GIB members?

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1 A No.  
2 Q So all of your communication with them goes either  
3 through your supervisors to the Board or you  
4 attend a board meeting and give them a report?  
5 A That would be correct. Again, I don't know how  
6 the communications specifically go through. So if  
7 I had something to communicate to the Board, I  
8 would go through my supervisor to do that.  
9 Whether the supervisor talks to the Board  
10 specifically or not, I don't know.  
11 MR. DUPUIS: Can we go off the  
12 record just real quick.  
13 (Discussion off the record)  
14 (Exhibit No. 1 marked for  
15 identification)  
16 BY MR. DUPUIS:  
17 Q Mr. Bogardus, I'm showing you what's been marked  
18 as Bogardus Exhibit 1. I'll represent to you that  
19 that's something that we pulled down just in the  
20 last few days from the Department of Employee  
21 Trust Funds website. And do you recognize it?  
22 A Yep.  
23 Q And what is it?  
24 A It's an organizational chart.  
25 Q Okay. And that's as of January 2018; is that

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1 correct?  
2 A As of January 2018; correct.  
3 Q And on that chart, it has in the center a box says  
4 Office of the Secretary, and it indicates that the  
5 Secretary, Deputy Secretary, and Assistant Deputy  
6 Secretary are in the Office of the Secretary; is  
7 that correct?  
8 A Correct.  
9 Q And that's the secretary of Employee Trust Funds;  
10 is that correct?  
11 A According to this, yes.  
12 Q And who is the secretary?  
13 A Bob Conlin.  
14 Q And is John Voelker still the deputy secretary?  
15 A Yes.  
16 Q And Pamela Henning is the assistant deputy  
17 secretary; is that correct?  
18 A That's correct.  
19 Q And then there's also a person named Tarna Hunter,  
20 Strategic Engagement and Government Relations  
21 Director, which also appears to be in the Office  
22 of the Secretary in the list of leadership below  
23 but does not appear to be in the box. Do you  
24 understand Tarna Hunter to be in the Office of the  
25 Secretary?

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1 A I believe she is in the Office of the Secretary.  
2 Q Okay. Do you have much direct interaction with  
3 folks in the Office of the Secretary?  
4 A Not regularly.  
5 Q About how often would you say you have  
6 interactions with Mr. Conlin?  
7 A Maybe once every two to three months.  
8 Q Is his office in the same building as yours? You  
9 just moved; right?  
10 A Yes. Now we are.  
11 Q But before he was not?  
12 A He was not.  
13 Q And you moved when? That was just last week?  
14 A That was just last week, yes.  
15 Q Are you on the same floor --  
16 A No.  
17 Q -- of the building? How about Mr. Voelker? How  
18 often do you --  
19 A Currently John -- Mr. Voelker is kind of stepping  
20 in and helping Eileen in Lisa's absence, so over  
21 the past couple months, we've had more  
22 interactions with him directly.  
23 Q Okay. What sorts of interactions?  
24 A Strategic planning type events and then certain  
25 day-to-day operational type things. He makes

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1 himself available to us.  
2 Q So are you involved in a regular strategic  
3 planning process or is this something --  
4 A This is something we've initiated over the last  
5 six months, yes, moving forward.  
6 Q But there wasn't, like, routine strategic planning  
7 every year?  
8 A There is. Each year we do go through certain  
9 processes for the group health insurance programs,  
10 but what I was referring to when I say strategic  
11 planning in this context was more of the five  
12 years down the road, six years down the road, but  
13 we do annual, you know, planning as well.  
14 Q And then sort of going out from the box from the  
15 Office of the Secretary at the top of this chart,  
16 there are a number of boards, the Wisconsin  
17 Retirement Board, Employee Trust Funds Board,  
18 Teachers Retirement Board, Deferred Compensation  
19 Board, and then the Group Insurance Board;  
20 correct?  
21 A Uh-huh. Yes.  
22 Q And all of those are -- are those all attached  
23 boards? Is that what those are, if you know?  
24 MR. ROTH: Object to the extent it  
25 calls for a legal conclusion.

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1 A And I don't know.  
2 Q What is your understanding of the relationship  
3 between the Office of the Secretary and the Group  
4 Insurance Board?  
5 MR. ROTH: Again, object to the  
6 extent it calls for a legal conclusion.  
7 A I don't really know the extent of involvement. I  
8 know that the Secretary and the Deputy Secretary  
9 are in attendance at the board meetings, but I  
10 don't know specifically the legal or -- yeah, I  
11 don't know.  
12 Q Would it be fair to say they staff the board  
13 meetings, the Group Insurance Board meetings?  
14 A I wouldn't know.  
15 Q You wouldn't know?  
16 A No.  
17 Q And then under the Office of the Secretary, there  
18 are a series of other offices and divisions;  
19 correct?  
20 A Correct.  
21 Q Do you know what the difference between an office  
22 and a division is?  
23 A In my opinion, it's just a -- we used to be a  
24 division, but we're now an office, but I don't  
25 know other than -- I just don't know the

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1 structure, you know, that type of a structure, if  
2 there's any significance to it. I don't know if  
3 that's the case.  
4 Q And in the Office of Strategic Health Policy, is  
5 that the office that primarily deals with the  
6 Group Insurance Board?  
7 A That is correct.  
8 Q And with the group health plans?  
9 A That's correct.  
10 Q Including the pharmacy benefit?  
11 A Programs, yes.  
12 Q And so the Secretary supervises that office;  
13 correct?  
14 A So he would be -- actually, if I remember  
15 correctly, it would be John Voelker who was Lisa's  
16 supervisor.  
17 Q Direct supervisor?  
18 A Direct supervisor, yes.  
19 Q And Mr. Voelker reports to the Secretary?  
20 A Correct.  
21 Q Are there any other of these divisions or offices  
22 that you deal with on a regular basis?  
23 A Pretty much all of them.  
24 Q Okay. Did Ms. Ellinger attend all Group Insurance  
25 Board meetings as far as you know?

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1 A As far as I know, yes.  
 2 Q She's sort of a principal liaison between ETF and  
 3 the Group Insurance Board?  
 4 A I would assume so, yes.  
 5 Q Pretty much all of the benefit programs that the  
 6 Group Insurance Board deals with are also dealt  
 7 with by the Office of Strategic Health Policy; is  
 8 that correct?  
 9 A I'm sorry. Can you repeat that?  
 10 Q All of the programs and benefits that the Group  
 11 Insurance Board is responsible for, the Office of  
 12 Strategic Health Policy is also responsible for;  
 13 correct?  
 14 A That's my understanding, yes.  
 15 Q Do you know who prepares the agendas for GIB  
 16 meetings?  
 17 A It's a group effort is my understanding. It goes  
 18 from -- it starts with Strategic Health Policy,  
 19 OSHP, and then they work with the Secretary's  
 20 office. That's internally. Externally, I'm not  
 21 sure if there's any input.  
 22 Q Do you know who takes the minutes at GIB meetings?  
 23 A Yes.  
 24 Q Who is that?  
 25 A Currently, it's a person by the name of Lisa

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1 Gurley.  
 2 Q What's her position?  
 3 A I don't know specifically.  
 4 Q Is she in OSHP?  
 5 A No. She is not.  
 6 Q Is she in the Office of the Secretary?  
 7 A I believe she is. Either that or the Division of  
 8 Management Services. I'm not sure which.  
 9 Q Do you ever get questions from GIB -- I think you  
 10 sort of alluded to this. In your position, do you  
 11 get questions from GIB that you're asked to  
 12 answer?  
 13 A During the board meetings I do, yes.  
 14 Q Do you ever get questions that you know that come  
 15 directly from GIB members to you?  
 16 A Nothing comes directly to me. It would go through  
 17 my supervisor.  
 18 Q So the office is called the Office of Strategic  
 19 Health Policy. Does OSHP do policy analysis?  
 20 A Yes.  
 21 Q Can you describe that, how that policy analysis  
 22 works?  
 23 A It's pretty extensive. But from the standpoint of  
 24 looking at insurance, you know, benefit design,  
 25 both medical and, again, the prescription drug and

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1 other vision, so on and so forth, so we do, you  
 2 know, research types of things that are out there.  
 3 An example would be value based benefit designs  
 4 that are coming on. So we do a lot of research in  
 5 that, would it fit with our situation or our  
 6 programs, or could we create new programs from  
 7 those types of things.  
 8 Q And so then the policy research is done by OSHP  
 9 staff?  
 10 A That is correct. We do bring in our actuaries and  
 11 other experts because especially in my case, I'm  
 12 not a clinical pharmacist by any means, so I could  
 13 not speak well to that.  
 14 Q So what experts do you work -- is that Navitus  
 15 primarily in your case?  
 16 A In my case, it's Navitus as well as our actuary.  
 17 Q Who is the actuary?  
 18 A That's Segal currently.  
 19 Q So Segal is involved in figuring out the costs of  
 20 the benefits essentially?  
 21 A That is correct. Or other data or trends, you  
 22 know, national trends, those types of things.  
 23 Q And Navitus would be your source of sort of  
 24 clinical expertise on what sort of medications are  
 25 being covered in various places and that kind of

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1 thing?  
 2 A That's correct.  
 3 Q And then that analysis, that goes into making  
 4 recommendations to the Board about benefit design?  
 5 A That is correct.  
 6 Q And staff make those recommendations?  
 7 A That is correct.  
 8 Q And typically it's OSHP staff under the direction  
 9 of Mr. Conlin ultimately?  
 10 A Yes.  
 11 Q And then after GIB makes decisions about benefit  
 12 design, who is ultimately responsible for making  
 13 sure those decisions are carried out?  
 14 A Can you repeat that, please?  
 15 Q After GIB makes decisions on those recommendations  
 16 for benefit design, who's ultimately responsible  
 17 for making sure that those decisions are carried  
 18 out?  
 19 A Yeah. That would be OSHP.  
 20 Q And Secretary Conlin ultimately?  
 21 A I would assume so.  
 22 Q And how does OSHP staff carry those out?  
 23 A We implement whatever programs. We utilize the  
 24 other resources within the department. You know,  
 25 when you mentioned, you know, what other units I

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1 work with here, I work with all of them. Whether  
 2 that's the IT folks, whether that's our front line  
 3 call center staff, you know, the folks who deal  
 4 with our systems for eligibility, those types of  
 5 things. We involve those people then to get the  
 6 programs or the board's approvals implemented.  
 7 Q Does that include preparing contracts with group  
 8 health insurance plans or in your case Navitus?  
 9 A Yes.  
 10 Q And those contracts embody the terms of the  
 11 benefit programs that are adopted; correct?  
 12 A Yes.  
 13 Q So does ETF consider -- or OSHP really consider  
 14 possible changes to the state employee health  
 15 benefit plans every year?  
 16 A Yes.  
 17 Q When does that process usually start?  
 18 A That usually starts in April.  
 19 Q Has it always started in April in the time you've  
 20 been --  
 21 A Yeah. March, April time frame. These days it  
 22 starts before the other plan years even begin.  
 23 Q And what's happening at that stage?  
 24 A So from my perspective from the pharmacy benefit  
 25 side, we're continuously looking at ways to make

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1 changes to the program. Of course we won't be  
 2 able to actually -- we get our approvals in May at  
 3 the May group insurance board meeting, but it's an  
 4 ongoing process. The other processes through the  
 5 health insurance side or the medical side, I would  
 6 not be able to speak to that specifically.  
 7 Q So on the pharmacy benefit side, you say you're  
 8 sort of always looking at what things to change,  
 9 what sources of information are you looking at?  
 10 A Different trade journals, different groups. I'm a  
 11 member of the Pharmacy Benefit Management  
 12 Institute. There's a very good series of web  
 13 resources that are out there. There's an  
 14 organization called Drug Channels. A gentleman by  
 15 the name of Adam Fein who -- so, you know, a lot  
 16 of resources like that. We also keep our eyes on  
 17 what other states are doing as well.  
 18 Q And when you say we, you mean OSHP staff?  
 19 A OSHP staff, correct.  
 20 Q Do you get recommendations from GIB members on  
 21 benefits that you know of?  
 22 A I have never received any recommendations outside  
 23 of the Group Insurance Board meetings from a board  
 24 member.  
 25 Q Have you at Group Insurance Board meetings?

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1 A Yeah. Again, if we come with a recommendation,  
 2 they may, in fact, say we want to do it  
 3 differently from what we recommend.  
 4 Q Okay. But typically the recommendation is coming  
 5 from ETF staff --  
 6 A That's correct.  
 7 Q -- not from the Board?  
 8 A That's correct.  
 9 Q You say it starts in March and April, and then I  
 10 think you said that the May meeting of the GIB is  
 11 when the benefit changes are adopted?  
 12 A August is actually when they're finally adopted.  
 13 May is when we take to them here's where we're  
 14 going with it. Again, a lot of those are really  
 15 geared around -- that time frame is really focused  
 16 on the medical side, the health insurance side. I  
 17 try to adhere to that as well. But a lot of times  
 18 I will try to get my pieces in there whenever I  
 19 can.  
 20 Q So the May meeting?  
 21 A For the May meeting, yes.  
 22 Q But the August meeting is where the actual  
 23 adoption occurs?  
 24 A That's where the actual adoption occurs.  
 25 Q I've seen references to a policy or study group,

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1 study group memos and so forth. Are you familiar  
 2 with that?  
 3 A I'm familiar with that. That, again, is something  
 4 more geared towards the medical side. I've only  
 5 marginally participated in those groups in the  
 6 past. If pharmacy benefit related items come up  
 7 in those meetings, the staff who work with those  
 8 mainly will bring those to me. Again, a lot of  
 9 times that has kind of replaced the bargaining  
 10 demands.  
 11 Q So the study group process is --  
 12 A Yeah. It tends to bring some of those similar  
 13 types of requests.  
 14 Q So are you familiar with requests from employer  
 15 groups, like UW, for example, making requests that  
 16 certain benefits be covered?  
 17 A Yes.  
 18 Q And does that go into the hopper of this process  
 19 of developing the benefit package?  
 20 A Yes.  
 21 Q So after this August meeting, when would any  
 22 adopted changes take effect?  
 23 A They would be effective the next plan year, which  
 24 would be January 1st of the following year.  
 25 Q When you say a plan year, is that sort of a

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1 contract term for the -- I think they're called  
2 the plans; correct? Like, what are the plans?  
3 A So we refer to plans very loosely as the  
4 participating insurers in our group health  
5 insurance program. When we refer to a plan year,  
6 that's to differentiate between a calendar year or  
7 a fiscal year. Our plan year runs from January 1  
8 through December 31st.  
9 Q Is that the same -- is that the same length of  
10 time that the contracts with the plans are for?  
11 A Yes.  
12 Q So it's January 1st is when the contract is --  
13 takes effect?  
14 A That would be the health insurers. Those carriers  
15 or plans. The contracts for dental and pharmacy  
16 tend to be longer than that in most cases. We'll  
17 usually get a two- to three-year contract. We do  
18 have a renewal process that we do with them every  
19 year, but they are still under contract for those  
20 extended periods of time.  
21 Q If those renewals involve -- well, if there's a  
22 decision to cover a new pharmaceutical product in  
23 the middle of a two-year contract, is there an  
24 opportunity for Navitus to ask for more money to  
25 help cover that?

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1 MR. ROTH: Objection. Calls for  
2 speculation.  
3 Q To the extent you know.  
4 A So we -- every year for the renewal, Navitus --  
5 this is a little complicated. So the business  
6 model we have with Navitus is we pay them an  
7 administrative fee. Because it's a self-insured  
8 program, the state pays for all of the claims.  
9 The administrative fee that we pay to Navitus each  
10 year at the renewal they have the opportunity to  
11 say we want more money in the admin fee to  
12 administer the benefits.  
13 Q So it's actually not -- unlike the group health  
14 insurance plans, which are taking some of the risk  
15 that claims might exceed the contract amount, for  
16 example, Navitus for pharmaceuticals is just a  
17 claims administrator or an administrator?  
18 A Thank you. Yes.  
19 Q But the state pays all of those claims and takes  
20 all of the risk that claims will exceed premiums?  
21 A Correct.  
22 MR. ROTH: If we're getting close  
23 to a stopping point for a break, five, ten  
24 minutes, I could use one.  
25 MR. DUPUIS: Now is fine. We can

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1 do five minutes.  
2 I should have mentioned that to you. If  
3 you need a break at any point, just ask. But  
4 I won't let you go if you're in the middle of  
5 answering a question.  
6 THE WITNESS: No. I understand  
7 that.  
8 MR. ROTH: Thanks. I appreciate  
9 that.  
10 (Recess taken)  
11 BY MR. DUPUIS:  
12 Q So in your experience, are plan benefits normally  
13 pretty stable throughout a year?  
14 MR. ROTH: Objection. Vague.  
15 A What do you mean by throughout the year?  
16 Q So in, say, the calendar -- the plan year --  
17 A Okay.  
18 Q Are the benefits pretty much set for January, and  
19 they're the same throughout the plan year?  
20 A Under normal circumstances, yes.  
21 Q But benefit changes sometimes happen in the middle  
22 of benefit years in your experience?  
23 A They can.  
24 Q How often has that happened in your time?  
25 A Once as far as I know.

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1 Q What was that?  
2 A No. That wasn't in the middle of my year. No.  
3 There are none that I can recall.  
4 Q And are you referring specifically to  
5 pharmaceutical benefits?  
6 A Correct.  
7 Q Do you know about the group health plan benefit  
8 package?  
9 A No.  
10 Q So the ETF staff come up with recommendations for  
11 changes to the benefit, the uniform benefits,  
12 every year; is that right?  
13 A That's correct.  
14 Q And then the GIB approves, denies, modifies those  
15 recommendations; correct?  
16 A Yes.  
17 Q And that's usually in August?  
18 A Yes.  
19 Q And then the ETF draws up contracts with the plans  
20 to cover those benefits; correct?  
21 A Correct. But, again, you're referring to the  
22 health plans and not --  
23 Q Both.  
24 A Again, I would avoid speaking as an expert on the  
25 health plans because, again, we go back -- to kind

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1 of backtrack to the previous question you just  
 2 asked, May is when I get my -- usually when I get  
 3 my approvals for changes to the pharmacy benefits.  
 4 Other technical changes that the health  
 5 insurance plans -- or the people who work on the  
 6 health insurance plans, they get some technical  
 7 changes done in August, and that's when the  
 8 premium rates are established, so on and so forth.  
 9 But for the most part, we get most of our  
 10 pharmacy-related benefit changes approved at that  
 11 May meeting so we can start moving forward to  
 12 implement those.  
 13 Q And by implement, part of that is a contract with  
 14 Navitus or maybe changes that you just inform  
 15 Navitus of what's covered and what's not?  
 16 A It's setting up the benefit so that it pays  
 17 correctly so that their systems adjudicate a claim  
 18 correctly, that type of thing.  
 19 Q And then as far as the health plans, to your  
 20 knowledge, there's a contract that is offered to  
 21 the plans, and they bid on that and decide whether  
 22 to join or not; is that right?  
 23 A Again, I wouldn't respond -- I mean, I'm not an  
 24 expert on that, so I don't know.  
 25 Q You've participated in the response to union

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1 demands in the past; right?  
 2 A Yes.  
 3 Q And those demands ended up going through a  
 4 process, and ETF either recommended or didn't  
 5 recommend; right?  
 6 A Yes.  
 7 Q And then GIB either adopted or didn't adopt based  
 8 on --  
 9 A Yes.  
 10 Q -- ETF recommendations; right?  
 11 A Yes.  
 12 Q And that resulted in a contract ultimately,  
 13 correct, to your knowledge?  
 14 A With the health plans?  
 15 Q Yes.  
 16 A Again, I don't know if those pieces are applied to  
 17 that contract. Again, I can't speak to specifics  
 18 on the health plan.  
 19 Q Do you know -- I've seen reference to, like, the  
 20 green uniform benefits listing, and then there's  
 21 another one that's -- I forget what the other  
 22 colors are. Do you remember that?  
 23 A The green and the blue.  
 24 Q And what are those?  
 25 A So the green uniform benefits or the guidelines as

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1 they were called is the clean -- what we refer to  
 2 as the clean copy. Whereas, the blue is the  
 3 stricken -- shows editing from the previous  
 4 version.  
 5 Q Okay. But that green document is essentially the  
 6 operative document that the plans are bid --  
 7 that's the policy -- or the benefits package that  
 8 the plans are bidding on?  
 9 A From the drug side, from the pharmacy benefit  
 10 side, any provisions within Section 4 in the  
 11 uniform benefits would apply to Navitus.  
 12 Q But Navitus isn't taking any risk on that, so  
 13 they're not --  
 14 A Correct.  
 15 Q -- bidding on the contracts?  
 16 A Correct.  
 17 Q Like the way that Dean --  
 18 A Again, I can't speak to the health medical side.  
 19 Q Do you know if the health insurance companies, the  
 20 plans on the group health side, are able to offer  
 21 benefits packages that are different from what ETF  
 22 and GIB come up with?  
 23 A Again, I can't speak to the health plan side. It  
 24 is a uniform benefit package.  
 25 Q I'm just asking for your understanding. I'm not

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1 asking you to be an expert.  
 2 A Again, my understanding is it's a uniform benefit  
 3 package, and all plans who participate must follow  
 4 the uniform benefits.  
 5 Q Okay. And you are yourself a member of one of  
 6 those plans; right?  
 7 A Yes.  
 8 Q And you get a choice of a couple of different  
 9 plans; right?  
 10 A Yes.  
 11 Q Prices might vary?  
 12 A State employees have one -- what do you want to  
 13 call it? One amount we pay for any plan depending  
 14 on the tier that that plan goes in.  
 15 Q So there's, like, gold plans and silver plans or  
 16 something along those lines?  
 17 A It's a tiered structure, yes. Tier, 1, 2, and 3.  
 18 Q So what role does ETF have in ensuring that the  
 19 plans, including Navitus, abide by the policy  
 20 decision that -- the benefit decisions that ETF  
 21 and GIB have come up?  
 22 A Can you repeat that?  
 23 Q Yeah. What role does ETF staff have in enforcing  
 24 the benefit coverage decisions that are made by  
 25 ETF and GIB?

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1 A I don't really understand kind of what you're  
2 asking.  
3 Q How do you ensure that a benefit, like a change --  
4 a new benefit is actually -- like, if somebody  
5 asks for -- makes a claim for that coverage, they  
6 actually get it?  
7 A It depends on what it is. Okay. For instance, if  
8 we add a new drug onto the formulary, the  
9 enforcement there is is it on the formulary? Yes,  
10 it is, or, no, it isn't. It's pretty  
11 straightforward.  
12 If they're not processing it correctly, we do  
13 require Navitus to go through and do periodic  
14 checks of their systems to make sure, and there  
15 have been examples where they've found, oh, we  
16 aren't processing these claims correctly, or we're  
17 applying the wrong out-of-pocket limit. So we  
18 require that in the contract that they do those  
19 periodic checks.  
20 We also get that from a member potentially  
21 who says, hey, I went to the pharmacy, and I paid  
22 \$30 instead of \$5 for my co-pay, and that would  
23 trigger, you know, our investigation of it where  
24 we inquire with Navitus.  
25 Q So ETF oversees -- you specifically for ETF

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1 oversees the administration of the pharmacy  
2 benefits for members?  
3 A Yes.  
4 Q So are there any other consultants that you're  
5 aware of that ETF uses regularly to help do  
6 analysis of potential benefit changes besides  
7 Segal and Navitus?  
8 A In the past, we've used Deloitte, which was our  
9 actuary at the time, and then there was a separate  
10 contract with Segal as a benefit consultant.  
11 Other than that, I'm not aware of any.  
12 Q Does OSHP do a fair amount -- do they do internal  
13 analysis, as well, of proposed benefit changes?  
14 A We do kind of do a check of what we get back. A  
15 reasonableness check of the information that, say,  
16 a consultant or an actuary would provide us.  
17 Q What about when you were involved in the union  
18 demands, dealing with the union demands, did ETF  
19 take a first look at those demands and do some  
20 analysis, or what was the process there?  
21 A So my role in that was when I would get the  
22 demands in, we would look and see what the demands  
23 from the prior period had been. You know, a lot  
24 of those repeated time after time. And if we did,  
25 we would provide the narrative that was done

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1 previously to the actuary. At that time it was  
2 Deloitte. And then we would ask Deloitte for an  
3 update on that. New requests or new demands that  
4 would come through would be included in there, as  
5 well, and we would indicate these have not been  
6 done. You know, give us an analysis of this.  
7 So we didn't necessarily do -- we did not do  
8 an analysis ahead of time. It was basically  
9 regurgitating information that had already been  
10 provided if it was there.  
11 Q And then the new ones would go on just to Deloitte  
12 directly, or would you do some initial analysis of  
13 them, say, compared to other state programs or  
14 anything?  
15 A If the demand didn't have enough information, for  
16 instance, or wasn't specific enough, we would look  
17 through that and indicate that. That would not  
18 move forward for an analysis by Deloitte.  
19 Q Okay. So I'm going to be talking about the  
20 "exclusion," in quotes. What we're going to be  
21 referring to is the exclusion of coverage for  
22 "procedures, services, and supplies related to  
23 surgery and sex hormones associated with gender  
24 reassignment." Okay. Are you familiar with that  
25 exclusion in the plan?

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1 A Yes.  
2 Q How did you become familiar with that exclusion?  
3 A We have to on the pharmacy side essentially follow  
4 along with those exclusions that are on the  
5 medical side. So it's there. We have to  
6 implement it on the pharmacy side as well.  
7 Q Do you know when that exclusion first came into  
8 the plans?  
9 A I do not.  
10 Q Are you aware that the language was slightly  
11 different at one point?  
12 A Yes.  
13 Q Do you know when it changed? The current version?  
14 A I want to say 2015 or 2016.  
15 Q In your view, was that change in language intended  
16 to affect the substance of what was excluded?  
17 A No.  
18 Q When did ETF first consider eliminating the  
19 exclusion, to your knowledge?  
20 A I don't know specific dates unfortunately. I want  
21 to say it's in that 2015-2016 time frame. Again,  
22 the pharmacy side is kind of reactionary to the  
23 medical side in this event. On the pharmacy side,  
24 we were just kind of waiting and seeing what's  
25 going to happen so we can make adjustments

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1 accordingly.  
2 Q Did you have any input into the consideration of  
3 eliminating the exclusion in that 2015-2016  
4 period?  
5 A No.  
6 Q Did you express any opinions at ETF about it?  
7 A I did.  
8 Q What opinions did you express about it?  
9 A Personal only.  
10 Q What was it?  
11 A That it was not a bad thing.  
12 Q That what was not a bad thing?  
13 A Taking away the exclusion.  
14 Q So providing the benefit?  
15 A Providing the benefit, yeah. But that was  
16 personal only.  
17 Q When you say not a bad thing, what do you mean by  
18 that?  
19 A It would be good to have the benefit covered.  
20 Q Why would it be good in your opinion?  
21 A That's a personal opinion.  
22 Q But there's a reason for that opinion.  
23 A That's a personal opinion. It's my opinion.  
24 Q Right. But is it because you think it's  
25 beneficial to people or because you think it --

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1 I'm just trying to get what your reasoning for why  
2 you agree with it.  
3 A Personally, I think it's a benefit to people that  
4 should be available.  
5 Q Did your -- you said you did some research on the  
6 issue at one point --  
7 A Uh-huh.  
8 Q -- back in 2006, I believe you said?  
9 A I believe it was 2006, yeah.  
10 Q Did that go into your belief of why the benefit  
11 should be available to people?  
12 A That would have been part of it. Just the general  
13 knowledge overall of gender dysphoria and --  
14 Q Do you know that people suffer if they don't get  
15 this coverage? I mean, if they don't get these  
16 services?  
17 MR. ROTH: Objection. Vague.  
18 A And that's a -- I mean, I don't know. I don't  
19 know firsthand.  
20 Q Have people told you that --  
21 A Some people have.  
22 Q -- they've suffered from not having these  
23 services?  
24 A Yes.  
25 Q In the 2015-'16 time frame when there was

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1 consideration given to eliminating the exclusion,  
2 was the exclusion eliminated at that time?  
3 A I believe it was at one point, yes.  
4 Q Okay. I'm going to actually show you -- I'm  
5 trying to decide which of these two to use. Okay.  
6 I'm going to show you what's been marked as  
7 Exhibit 2423, and then there's an attachment to  
8 that exhibit as well.  
9 MR. ROTH: Larry, I assume you mean  
10 the ETF marker is 2423, not the exhibit.  
11 MR. DUPUIS: Yes. ETF02423. This  
12 is Exhibit 2; is that right?  
13 MR. ROTH: Uh-huh.  
14 (Exhibit No. 2 marked for  
15 identification)  
16 BY MR. DUPUIS:  
17 Q I'm showing you what's been marked as Exhibit 2.  
18 And that is an e-mail. You're not on the e-mail  
19 chain, but I mostly want you to take a look at the  
20 attachment. Do you see that?  
21 A Yes.  
22 Q And the attachment, do you recognize that  
23 document?  
24 A I recognize -- yes.  
25 Q What is it?

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1 A It's a Board memo or a memo to our Board, the  
2 Group Insurance Board, regarding benefits for the  
3 2016 plan year.  
4 Q Okay. And the date on that is May 14th, 2015?  
5 A Yes.  
6 Q And Tara Pray is the author?  
7 A Yes.  
8 Q Who is Tara Pray?  
9 A Tara Pray is currently in a communications  
10 position within OSHP, but at that time, she was  
11 the manager of the alternate health plans.  
12 Q Okay. And this memo is -- is this sort of a  
13 culmination of the process that you described for  
14 recommendations that ETF makes to GIB about  
15 benefit changes for the upcoming plan year?  
16 A That's correct.  
17 Q Down in the background section, the second  
18 paragraph in the background section talks about  
19 ETF staff collected benefit change suggestions  
20 from its usual sources over the past year: health  
21 plans, members, employers, and ETF Ombudsperson  
22 Services staff; do you see that sentence?  
23 A Yes.  
24 Q Does that seem like an accurate reflection of the  
25 process --

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1 A Yes.  
2 Q -- every year. And this was a year in which there  
3 was a study group; correct?  
4 A Yes.  
5 Q So there's no specific reference to union demands;  
6 correct?  
7 A Correct.  
8 Q Because there would not have been a union  
9 bargaining over benefits at this point?  
10 A Correct.  
11 Q Because of Act 10?  
12 A Correct.  
13 Q And then These suggestions have been discussed  
14 with Segal and those that are supported by both  
15 Segal and ETF staff are recommended in the options  
16 included in this memo; do you see that?  
17 A Yes.  
18 Q Is that your understanding of how that process  
19 works?  
20 A Yes.  
21 Q And then the next paragraph says Every year, ETF  
22 convenes a "Study Group" to discuss potential  
23 benefit changes in order to provide the Board with  
24 feedback from the member, employer and health plan  
25 perspectives; do you see that?

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1 A Yes.  
2 Q Does that generally describe the process, the  
3 normal process, as you understand it?  
4 A Yes.  
5 Q I'd like you to take a look at page 10. About  
6 two-thirds or three-quarters of the way down  
7 there's a section headed Suggestions Deferred to  
8 Future Plan Years; do you see that?  
9 A Yes.  
10 Q And it says The following proposed changes are not  
11 recommended for 2016 based upon discussions  
12 between ETF and Segal staff. Consideration of  
13 these changes will be deferred as possibly part of  
14 a broader program redesign for 2017 or beyond; do  
15 you see that?  
16 A Yes.  
17 Q And then number 9 in that list following that  
18 sentence says Add coverage for gender reassignment  
19 benefits with strict protocols; do you see that?  
20 A Yes.  
21 Q So at this point at least in 2015 for the 2016  
22 plan year, coverage for gender reassignment  
23 benefits was deferred or recommended to be  
24 deferred?  
25 A Yes.

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1 Q Do you know why that particular benefit was  
2 deferred?  
3 A No.  
4 Q Do you -- do you know what this reference to  
5 possibly part of a broader program redesign in  
6 2017 refers to?  
7 A Not specifically, no.  
8 Q Generally?  
9 A Generally, we were looking at making some changes  
10 with self-insuring our plans instead of fully  
11 insured plans like we have now, so that was the  
12 broad scope. But as far as benefits within those,  
13 I don't know.  
14 Q And the self-insurance proposal was not ultimately  
15 adopted; is that correct?  
16 A Correct.  
17 Q Okay. You can set that one aside for the moment.  
18 A For the moment.  
19 Q Anything can come back at any time.  
20 A Absolutely.  
21 Q Now, that wasn't the first time ETF staff at least  
22 considered the possibility of eliminating the  
23 exclusion, was it?  
24 A I don't know.  
25 Q I'm going to just ask you to take a quick look at

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1 this. We could make this one exhibit really.  
2 (Exhibit No. 3 marked for  
3 identification)  
4 BY MR. DUPUIS:  
5 Q I'd like you to take a look at what's been marked  
6 as Exhibit 3. This is an e-mail from April of  
7 2015 from you -- or at least the lead e-mail is  
8 from you to Arlene Larson and Tara Pray; is that  
9 correct?  
10 A That's correct.  
11 MR. DUPUIS: And I just want to  
12 make a note for the record, as well, you'll  
13 note that these printouts of e-mails at the  
14 very top have the name of the lawyer who  
15 printed them out. That's because the  
16 documents were produced in native format, and  
17 the only way we could read those documents  
18 was to use the software that then put that on  
19 the --  
20 MR. ROTH: Understood.  
21 MR. DUPUIS: -- document.  
22 MR. ROTH: Understood.  
23 Q So and then the attachment to the e-mail, do you  
24 recognize that?  
25 A Yes.

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1 Q And that is actually to the -- that's a memo from  
2 April 24th to the Study Group, Advisory Study  
3 Group?  
4 A Yes.  
5 Q I'm sorry. Guidelines Advisory Study Group;  
6 correct?  
7 A Correct.  
8 Q Also from Tara Pray?  
9 A Yes.  
10 Q And is this essentially an earlier step in the  
11 process of devising the memo in Exhibit 2?  
12 A I don't know. It appears to be, but I don't know.  
13 Q Can you take a look at -- you did see this memo;  
14 correct?  
15 A Well, it's familiar. I've seen them in the past,  
16 but I don't know if I've seen this exact one.  
17 Q Okay. You responded to getting this memo by  
18 making some suggestions specifically to the  
19 pharmacy benefits; correct?  
20 A Yes. Yes.  
21 Q So you at least saw those sections?  
22 A Yes. It does indicate there I saw it.  
23 Q On page 5 of the attached memo, there's a heading  
24 Section VI, Changes not to be recommended to the  
25 Board for 2016; do you see that?

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1 A Yes.  
2 Q And, again, in the list of things not to be  
3 recommended is letter "h" Add coverage for gender  
4 reassignment benefits with strict protocols; do  
5 you see that?  
6 A Yes.  
7 Q Again, here, it says Many of these changes will be  
8 considered as part of a broader program redesign  
9 for 2017 or beyond. We will not take the time to  
10 discuss these at the Study Group meeting, but  
11 wanted to inform the group of the status of these  
12 proposals. Study Group members can contact Tara  
13 Pray to discuss any of these issues; do you see  
14 that?  
15 A Yes.  
16 Q Are you aware of anybody at this point raising the  
17 issue of gender reassignment benefits not being  
18 included for 2016?  
19 A I don't recall, no.  
20 Q Do you know who was on the Guidelines Advisory  
21 Study Group?  
22 A No, I don't.  
23 Q Do you know who generally is on those?  
24 A Again, it would be employer representatives,  
25 health plan representatives, some employees.

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1 That's the extent of my knowledge of who would be  
2 on those. And, of course, ETF staff would be  
3 involved.  
4 Q You can set that one aside. I'd like you to take  
5 a look at another exhibit here. Again, I'm just  
6 going to staple this and treat it as one.  
7 (Exhibit No. 4 marked for  
8 identification)  
9 BY MR. DUPUIS:  
10 Q I'm going to show you what's been marked as  
11 Exhibit 4. Do you recognize that?  
12 A No. But it was sent to me so -- I mean, it's an  
13 e-mail from Bill Kox to me.  
14 Q And Bill Kox at the time was your supervisor?  
15 A That is correct.  
16 Q And what is the date on that e-mail?  
17 A The date on that e-mail is September 8th, 2006.  
18 Q And that would have had an attachment with  
19 bargaining demands; correct?  
20 A Yes. According to the message from Pam linked  
21 below.  
22 Q And taking a look at the attachment, which is the  
23 heading on the first page is Wisconsin Retirement  
24 System; do you see that?  
25 MR. ROTH: Larry, sorry. I just

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1 like to get on the record. It doesn't appear  
2 that we have the entire --  
3 MR. DUPUIS: Yes.  
4 MR. ROTH: -- attachment. It looks  
5 like we skip from --  
6 MR. DUPUIS: Right.  
7 MR. ROTH: -- appears page 1 to  
8 page 19.  
9 MR. DUPUIS: Yeah. This is an  
10 excerpt I'll represent. These are just two  
11 or three pages in the exhibit.  
12 Q Do you recognize that excerpt of the attachment?  
13 A Yes.  
14 Q Okay. And what is that?  
15 A So these are the responses that we would have put  
16 together for bargaining demands back in -- this  
17 one, I believe, is -- according to the e-mail, it  
18 should have been the 2005-2007 bargaining demands.  
19 Q Okay. So basically this document is -- how is  
20 this document assembled?  
21 A This document is assembled by ETF staff based on  
22 the bargaining demands received by ETF.  
23 Q Demands received from whom?  
24 A Bargaining units. I think those were at the time  
25 provided to us by -- I want to say the Office of

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1 State Employee Relations, which is now Department  
2 of Personnel Management, I believe.  
3 Q I'd like you to take a look at page 19, what's  
4 marked as page 19 on the exhibit -- or the  
5 attachment. And number 18 there; do you see that?  
6 A Yes.  
7 Q Provide coverage for transgender, and transsexual  
8 individuals to get surgery and follow-up hormone  
9 therapy; right?  
10 A Yes.  
11 Q And that proposal was submitted by whom?  
12 A By the Teaching Assistants Association.  
13 Q And then on the next page is ETF's response?  
14 A Yes.  
15 Q Which says The Board's actuary estimates that in a  
16 population of the size of the state program, there  
17 would be two procedures annually. Do you know  
18 what procedures they're referring to?  
19 A They would be the gender -- figure out what we  
20 called them here. The transgender surgery or  
21 transsexual surgery.  
22 Q So this didn't deal with costs of -- it estimates  
23 the cost of each surgery at about 55,000; right?  
24 A That's correct.  
25 Q For an annual estimated cost of 110,800; correct?

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1 A Yes.  
2 Q Do you recall this demand and this response?  
3 A Yes.  
4 Q And you had said that back in 2006, you did a  
5 little research. Is this what triggered this  
6 research?  
7 A Yes. The research was actually provided by the  
8 Deloitte actuary that did this cost analysis for  
9 us and the evaluation for us, so they just felt it  
10 was, you know -- again, when we would get these  
11 back, we would kind of do a reasonableness check,  
12 and that was one way we did it was to look at some  
13 of the research that was provided.  
14 Q Okay. So this document does not appear to  
15 actually make a recommendation. ETF doesn't  
16 appear to make a recommendation. There's just a  
17 response that is more this is what it would cost?  
18 A That is correct.  
19 Q Just the facts?  
20 A That is correct.  
21 Q Do you know what happened with this demand in  
22 2006?  
23 A No.  
24 Q Did you participate in any meetings with other ETF  
25 staff about these demands?

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1 A Only in the development of this document.  
2 Q Okay. Were there discussions of that particular  
3 request to your recollection?  
4 A Only discussion of the cost analysis or the  
5 overall analysis. For instance, it indicates the  
6 population size and numbers of procedures. So  
7 that would be -- that's the discussion we would  
8 have had.  
9 Q Do you remember that discussion?  
10 A No. I wish I did.  
11 Q You remember doing the research?  
12 A Yes. I remember doing the research.  
13 Q This was before the Affordable Care Act was  
14 enacted; right?  
15 A That's my understanding, yes.  
16 Q And that was before the health -- U.S. Health and  
17 Human Services regulations implementing the  
18 Affordable Care Act came out; correct?  
19 A Yes.  
20 MR. ROTH: Objection. Vague.  
21 Assumes facts not in evidence.  
22 A I don't know specifically.  
23 Q Do you know when the Affordable Care Act --  
24 A Yeah. Again the date --  
25 Q -- was enacted?

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1 A -- is the problem. I'm not good with dates.  
2 Q The Affordable Care Act was enacted during the  
3 Obama administration?  
4 A The Obama administration, right.  
5 Q And this is 2006; correct?  
6 A Yeah. I don't know if there were other -- yeah.  
7 There were other -- yeah, correct.  
8 Q And the regulations would have been subsequent to  
9 the actual act; correct?  
10 A Correct.  
11 Q So we can safely assume this came out before?  
12 A Yes.  
13 Q Once again you can provisionally set that aside.  
14 (Exhibit No. 5 marked for  
15 identification)  
16 BY MR. DUPUIS:  
17 Q I'm showing you what's been marked Exhibit 5.  
18 A Thank you.  
19 Q Do you recognize that document?  
20 A It is an e-mail from David Nispel to me and  
21 another on March 16th.  
22 Q Okay.  
23 A Or 23rd of March in 2016.  
24 Q And the subject of that e-mail is Transgender  
25 Benefits and Bargaining Demands: 2009-2011; do you

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1 see that?  
2 A Yes.  
3 Q But this e-mail is actually a 2016 e-mail;  
4 correct?  
5 A Yes.  
6 Q A March 2016 e-mail?  
7 A Yes.  
8 Q And can you -- so your e-mail to Mr. Nispel  
9 appears below that, an e-mail from the same day,  
10 March 23rd, 2016; correct?  
11 A Yes.  
12 Q And it says -- your e-mail says The TAA once again  
13 included the transgender/transsexual benefit  
14 demands in their 2009-2011 request. The MGAA also  
15 included this in their list of 2009-2011  
16 bargaining demands for the first time; do you see  
17 that?  
18 A Yes.  
19 Q And the TAA is the Teaching Assistant Association;  
20 correct?  
21 A That's correct.  
22 Q And that would have been the same bargaining unit  
23 that had requested that the benefit be implemented  
24 in 2006?  
25 A Correct.

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1 Q What is the MGAA?  
2 A I don't recall.  
3 Q Okay. And then you say A review by Deloitte did  
4 not show much change from the previous bargaining  
5 demands cycle. What did you mean by that?  
6 A So that was comparing the 2007-2009 bargaining  
7 demands, which again is the first time that I was  
8 aware of the TAA submitting that demand. The  
9 change went from then to 2009 to 2011. There was  
10 not much of a change.  
11 Q In terms of the cost?  
12 A In terms of the cost and the number of cases and  
13 the population size.  
14 Q Okay. Do you know what documents Deloitte  
15 reviewed in coming up with their estimates?  
16 A I do not.  
17 Q Would they have been some of the same research  
18 documents that you mentioned before?  
19 MR. ROTH: Objection. Asked and  
20 answered.  
21 Q To the extent you know.  
22 A Two of the documents I do know of. They were  
23 provided to us.  
24 Q And what were those documents?  
25 A I don't know right off the top of my head. I'm

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1 sure there's an e-mail because they would have  
2 come through as an e-mail attachment.  
3 Q So both in Exhibit 5 and Exhibit 4 --  
4 MR. DUPUIS: Have you mark this  
5 one.  
6 (Exhibit No. 6 marked for  
7 identification)  
8 BY MR. DUPUIS:  
9 Q Showing you what's been marked as Exhibit 6.  
10 A Thank you.  
11 Q Do you recognize that e-mail?  
12 A It's from Linda Owen to myself from, let's see  
13 here, October 22nd of 2008.  
14 Q Who is Linda Owen?  
15 A Linda Owen was -- I don't remember exactly what  
16 her specific role was at ETF, but she worked on  
17 the retirement side kind of in a policy analysis  
18 type position.  
19 Q And what is DRS?  
20 A The Division of Retirement Services.  
21 Q So take a look at the attachment to this. Do you  
22 see that?  
23 A Yes.  
24 Q And does that appear to be the 2008 bargaining  
25 demands?

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1 A It's not dated, so I can't tell.  
2 MR. ROTH: Again, I'd like to note  
3 for the record it appears to be an excerpt.  
4 It goes from page 1 to 16.  
5 Q Can you -- so there are references to 2008?  
6 A Yeah. There are references to 2008 in the  
7 document.  
8 Q So could you take a look at the second page of the  
9 excerpt, which is page 16 -- marked as page 16; do  
10 you see that?  
11 A Yes.  
12 Q And this recommendation is, 8, Guarantee coverage  
13 for transgender, and transsexual individuals to  
14 get surgery and follow-up hormone therapy; do you  
15 see that?  
16 A Yes.  
17 Q Again, submitted by the Teaching Assistants  
18 Association?  
19 A Yes.  
20 Q So this one, unlike Exhibit 4, specifically  
21 mentioned hormone therapy; do you see that?  
22 A Yes.  
23 Q The analysis then goes on to talk about -- or the  
24 ETF response goes on to talk about the cost of  
25 surgery and show that the cost of these procedures

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1 are lower than earlier reported; do you see that?  
2 A Yes.  
3 Q And what do you mean by earlier reported? Is that  
4 the reference to the earlier Deloitte analysis for  
5 2006?  
6 A The previous bargaining demands analysis, yes.  
7 Q It talks about complication rates being difficult  
8 to determine; do you see that?  
9 A Yes.  
10 Q Research indicates most complications occur when  
11 Female-to-Male patients undergo either  
12 metoidioplasty or phalloplasty but the vast  
13 majority of Female-to-Male patients choose not to  
14 undergo either procedure; do you see that?  
15 A Yes.  
16 Q And then the estimated annual cost this time is  
17 40,000 to 50,000; do you see that?  
18 A Yes.  
19 Q So that's a reduction; correct?  
20 A Correct.  
21 Q Do you know whether this demand was met in the  
22 2009 to '11 period?  
23 A I don't. So the uniform benefits didn't change.  
24 Q Right. Okay. That's what I'm asking, I think.  
25 Are there other ways the demand could have been

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1 met?  
2 A I don't know.  
3 Q Now, neither Exhibit 4 nor Exhibit 6 mention the  
4 cost of hormones; correct?  
5 A They don't specifically list --  
6 MR. ROTH: I'm just going to note  
7 for the record the title of this one that  
8 you've been discussing says hormone therapy.  
9 Q But the cost of hormone therapy is not assessed,  
10 correct, so far as you can see?  
11 MR. ROTH: Objection. Calls for  
12 speculation.  
13 Q It's not discussed in the document?  
14 A What's discussed in the document is an overall  
15 cost. I don't know if that includes both the  
16 surgery and the hormone therapy.  
17 Q So to your knowledge from 2006 to 2016, did ETF  
18 ever recommend that GIB eliminate the exclusion  
19 for these treatments for gender dysphoria?  
20 A I don't recall. It may have been, but I don't  
21 recall.  
22 Q So at some point in 2016, ETF did recommend to the  
23 GIB that the benefit -- or the exclusion be  
24 eliminated; correct? The exclusion for treatment  
25 for gender dysphoria?

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1 A At some point, yes.  
2 Q Do you know when that happened?  
3 A I do not.  
4 Q Do you know if that was done at the usual August  
5 meeting?  
6 A I don't know.  
7 Q Do you know when it was going to be effective?  
8 A It would have been effective 1/1 of '17.  
9 Q Do you know why --  
10 A Let me get my dates right. Yeah. There's an  
11 e-mail in there somewhere that indicates it, but  
12 it would have been effective the next plan year in  
13 the year -- the year following the year of  
14 discussion.  
15 Q Were you aware of the fact that ETF made that  
16 recommendation?  
17 A Yes. Because we had to change the edits on the  
18 drug side.  
19 Q And when you say the edits, what do you mean?  
20 A There are gender edits. What we refer to as  
21 gender edits in claims processing for drugs.  
22 Q So is that basically -- are gender edits a  
23 mechanism for dealing with a -- providing coverage  
24 for a drug that would otherwise not be covered  
25 because it is not a drug that would ordinarily be

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1 prescribed to a person of that gender?  
2 A For a specific situation, yes.  
3 Q I'm going to get to that by using another document  
4 later.  
5 A Yes.  
6 Q Do you know the reason -- do you have an  
7 understanding of the reason that the exclusion --  
8 why ETF made the recommendation to eliminate the  
9 exclusion?  
10 A I had some supposition. I had some thoughts as to  
11 why that I felt were -- you know, there's an  
12 e-mail in there that expressed that.  
13 Q What I'm asking now is were you aware of the  
14 reason that they were going to start covering the  
15 benefit?  
16 A No. Other than it was a bargaining -- not a  
17 bargaining. The EEOC -- was it EEOC? No. It was  
18 something federal. I don't know specifically.  
19 Q So it was a reaction to some --  
20 A It was a reaction, yes. That's a good way to put  
21 it.  
22 Q Would it have been the issuance of the Affordable  
23 Care Act nondiscrimination regulations?  
24 MR. ROTH: Objection. Calls for  
25 speculation. Asked and answered.

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1 Q If you know.  
2 A Don't know.  
3 Q So at some point -- to your knowledge, GIB did  
4 approve of that recommendation by ETF to eliminate  
5 the exclusion?  
6 A To my knowledge, yes.  
7 Q But then at some point later, you learned that the  
8 exclusion -- they were considering reinstating the  
9 exclusion; is that correct?  
10 A Yes.  
11 Q How did you come to know of that?  
12 A Boy, again, I don't recall. I'm sure there was an  
13 e-mail and discussions within OSHP regarding that  
14 because, again, it would have affected how we  
15 allowed claims to process.  
16 Q Okay. Do you know roughly when you learned about  
17 it?  
18 A It was very late in the year prior to the year of  
19 implementation.  
20 Q Were you part of discussions with ETF when that --  
21 other ETF staff when that came up?  
22 A Only to the extent of how it would impact the  
23 claims processing for drugs.  
24 Q And what was the discussion around that?  
25 A If it went, we would have to reinstate edits. If

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1 the exclusion stood, we would remove gender edits.  
2 If the exclusion was placed back on, then we would  
3 have to reinstate the gender edits.  
4 Q Okay. Did you talk about your personal views  
5 about removing -- reinstating the exclusion?  
6 A Yes. That's indicated in one of the e-mails.  
7 Q Do you remember what your reaction was?  
8 A I was not very happy.  
9 Q Why were you not happy?  
10 A A couple of things. First of all, it was very  
11 late in the year and we were preparing -- I  
12 believe the e-mail indicates when we finally got  
13 word, it was December 29th, and on January 1st, I  
14 had to have a system up and running to process  
15 claims.  
16 So part of it was very reactionary. Very  
17 stressful time for us at ETF. And so I let it  
18 fly, so to speak, and my personal opinions came  
19 through.  
20 Q And your personal opinion was what?  
21 A That the exclusion should be removed or they  
22 should have not --  
23 Q Gone back to reinstating it?  
24 A Yes.  
25 Q And that personal opinion is based on what you

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1 had --  
2 A My own personal feelings and the reason it got  
3 broadcast like that was because of the stressful  
4 times.  
5 Q Okay. In your time at ETF, has there ever been  
6 any other change to the benefits that late in the  
7 process?  
8 A I don't recall.  
9 Q You don't recall there ever being one?  
10 A I don't recall there ever being one.  
11 Q It's disruptive for everyone?  
12 A Very.  
13 Q Did anybody tell you the reason that the  
14 benefit -- that the exclusion was being  
15 reconsidered?  
16 A Yes.  
17 Q What was the reason?  
18 A I believe the reason was an opinion that had come  
19 from the attorney general, and there were  
20 discussions with the Board, and then there was a  
21 board meeting to discuss that.  
22 Q What was the opinion from the attorney general, if  
23 you know?  
24 A I don't recall specifically.  
25 Q Did you ever see it?

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1 A I may have, but I don't recall.  
2 Q What did you think of it?  
3 A Most of what I had seen were news reports of it,  
4 and I didn't agree with it.  
5 Q Didn't agree with what?  
6 A Personally.  
7 Q Didn't agree with what?  
8 A With the attorney general's opinion.  
9 Q Do you recall what the attorney general's opinion  
10 was?  
11 A It was to essentially -- I don't know what the  
12 specific opinion at this point. I can't recall  
13 that. But the effect of his opinion would put the  
14 exclusion for the coverage back into our program.  
15 Q Did other people in ETF express their opinions  
16 about the reinstatement of the exclusion?  
17 A Yes.  
18 Q Who did?  
19 A Numerous people. Don't recall specifically who.  
20 We would have discussed this in staff meetings  
21 with OSHP so OSHP staff.  
22 Q Do you remember Ms. Ellinger saying anything in  
23 particular?  
24 A I do not.  
25 Q What kinds of things did you hear?

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1 A Just, again, the decision late in the game, the  
2 impacts it would have on us implementing the  
3 program. Not a lot of personal comments during  
4 that but it was mostly focused on, you know, how  
5 are we going to get this to work now this late in  
6 the game.  
7 Q Anybody express disagreement with eliminating the  
8 exclusion on policy grounds?  
9 A I don't recall.  
10 Q Anybody say that this is discriminatory?  
11 MR. ROTH: Objection. Asked and  
12 answered.  
13 A Yeah. And I don't recall.  
14 Q Did anyone say anything about harm to people who  
15 are beneficiaries?  
16 MR. ROTH: Objection. Asked and  
17 answered.  
18 MR. DUPUIS: No, it wasn't.  
19 MR. ROTH: He already said he  
20 doesn't recall about five times.  
21 MR. DUPUIS: But people can be  
22 reminded by being asked questions. That's an  
23 improper objection.  
24 THE WITNESS: And I don't recall.  
25 MR. DUPUIS: Let's mark this one.

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1 (Exhibit No. 7 marked for  
2 identification)  
3 BY MR. DUPUIS:  
4 Q Show you what's been marked as Exhibit 7.  
5 A Thank you.  
6 Q Do you recognize that?  
7 A Yes.  
8 Q What is that?  
9 A That is a message I sent to Steven Alexander and  
10 Shannon Tischer and Pam Olson, who are Navitus  
11 employees, on December 29th of 2016.  
12 Q And this is your reaction to learning that the GIB  
13 was going to be considering rescinding -- or  
14 reinstating the exclusion?  
15 A Yes.  
16 Q So you say this special GIB meeting is scheduled  
17 for tomorrow, and it came up at 5:00 p.m. last  
18 night; do you see that?  
19 A Yes.  
20 Q Why did you tell that to the folks at Navitus?  
21 A Navitus attends the Group Insurance Board meetings  
22 to keep abreast of what activities are occurring.  
23 Q And so are you usually the person who lets them  
24 know if there are special meetings?  
25 A Especially when -- yes. Just to make sure they

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1 had seen the notice that goes out publicly.  
2 Again, I manage their contract so it's their --  
3 Q You're their point of contact?  
4 A I'm their point of contact, yes.  
5 Q I think we've already established that this was  
6 very unusual to make a change this late in the  
7 year; correct?  
8 A Yes.  
9 Q How about notice two days before a meeting? How  
10 often have you seen that happen?  
11 A Personally, that was the first time I had  
12 experienced that myself.  
13 Q So in the second paragraph you say that the  
14 Meeting will be a discussion with Department of  
15 Justice and their recommendation to the GIB to not  
16 implement the uniform benefit changes for 2017  
17 surrounding gender identity; correct?  
18 A Correct.  
19 Q What was the basis of your information for that  
20 sentence?  
21 A That would have been information I received  
22 through Lisa and Bill Kox or Eileen, depending on  
23 who was there at the time.  
24 Q Would it have been an e-mail?  
25 A Verbal potentially.

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1 Q Okay. Next sentence says This is being pushed by  
2 the Governor's office and attorney general. What  
3 is the basis upon which you made that statement?  
4 A This is the embarrassing part. I really have no  
5 basis on that that I can recall. That was more of  
6 my own personal spin on this.  
7 Q Why did you think that?  
8 A Just based on media reports but I had no firsthand  
9 knowledge.  
10 Q Next sentence says It is based solely on the AG's  
11 opinion that the HHS non-discrimination rule is  
12 illegal -- which I think the courts would have to  
13 determine -- not the AG; do you see that?  
14 A Yes.  
15 Q And, again, what is the basis for that?  
16 A Again, same response. It was a very knee-jerk  
17 response.  
18 Q Based primarily on -- I mean, you assert facts  
19 that are based on something?  
20 A Again, media reports and what I read in the media  
21 and then coming to my own conclusions, you know.  
22 Q Did other people in the department -- in ETF  
23 express similar opinions to this?  
24 A I couldn't -- they didn't express them to me, no,  
25 that I recall.

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1 Q And then you say The link below (revised  
 2 agenda/notice) takes you to the agenda where you  
 3 can link to the documents they will be discussing.  
 4 The DOJ memo is an interesting read but doesn't  
 5 account for all the facts -- which isn't a  
 6 surprise and which our Legal Counsel points out in  
 7 his recommendations memo from August 2016 (also  
 8 included in that package of info). Do you see  
 9 that?  
 10 A Yes.  
 11 Q So did you read the memo at the time?  
 12 A Yes.  
 13 Q What facts did you think it wasn't taking account  
 14 of?  
 15 A I don't recall. I really don't.  
 16 Q And you say it isn't a surprise. Why do you say  
 17 that?  
 18 A Because the discussion with the memo that David  
 19 Nispel had provided to the Board, you know, based  
 20 on that was -- you know, we were -- we felt that  
 21 that was reasonable and was a good response and it  
 22 didn't account for -- in my opinion, it didn't  
 23 account for those.  
 24 Q And you're not a lawyer; correct?  
 25 A No.

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1 Q So the next paragraph says While you never know  
 2 what will happen these days we don't expect the  
 3 GIB to change from what they were doing  
 4 previously. Nonetheless, just a heads up that the  
 5 gender edits may have to be put back on if the  
 6 politics outweigh the BIB's -- and I assume you  
 7 mean GIB's?  
 8 A Correct.  
 9 Q -- consideration of their fiduciary duty and the  
 10 facts; do you see that?  
 11 A Yes.  
 12 Q Why did you think -- why did you not expect the  
 13 GIB to change from what they were doing  
 14 previously?  
 15 A Because, again, the decisions that had already  
 16 been made we felt were sound.  
 17 Q Were you aware of a December 13th meeting at which  
 18 the same issue was discussed?  
 19 A I don't -- I mean, I don't know dates. I'm not  
 20 really good at keeping track of those dates. I do  
 21 know there were a couple meetings that occurred.  
 22 Q That revolved around this issue?  
 23 A Revolved around this issue, yeah.  
 24 Q At that time, there was no action taken to reverse  
 25 the earlier decision to --

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1 A I don't know specifically now.  
 2 Q Did you attend those meetings?  
 3 A I don't recall. I don't believe I did, but I  
 4 would be on the roster of people that were there  
 5 if I was, but I don't recall being in those  
 6 meetings.  
 7 Q And then where you say if the politics outweighs  
 8 the GIB's consideration of their fiduciary duties  
 9 and the facts, what did you mean there?  
 10 A Personal conjecture. It was just my concern that  
 11 more politics were playing into this than actual  
 12 facts. But, again, there's no basis. There's no  
 13 sound basis for me making that statement.  
 14 Q No basis other than your views and the news media  
 15 reports you had seen?  
 16 A Media reports, correct.  
 17 Q So if the media reports were accurate, you might  
 18 be right?  
 19 A Correct.  
 20 Q Were you -- are you aware of any other situations  
 21 in which the Department of Justice or the attorney  
 22 general has weighed in on an individual benefit  
 23 determination by ETF or GIB?  
 24 A I don't recall. Not on the insurance side. We  
 25 used to get AG opinions all the time on the

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1 retirement side, but that's going back years.  
 2 But, no, I don't recall this.  
 3 Q So this was a novel experience?  
 4 A Again, I don't know if it had happened previously  
 5 or not. For me, it was a new experience.  
 6 Q You can set that one aside tentatively.  
 7 MR. ROTH: Larry, I can use a short  
 8 break at some point. If you want to go for  
 9 another five or ten, that's fine too but just  
 10 sometime.  
 11 MR. DUPUIS: Yeah. Why don't we do  
 12 it now if we can keep it to five especially.  
 13 MR. ROTH: Sure.  
 14 (Recess taken)  
 15 MR. DUPUIS: Back on.  
 16 BY MR. DUPUIS:  
 17 Q I'd like to just show you two documents that were  
 18 marked yesterday as Exhibits 5 and 6. Do you  
 19 recognize the form of those documents? What,  
 20 generally speaking, they are?  
 21 A Yes. They're the meeting minutes from Group  
 22 Insurance Board meetings.  
 23 Q Okay. And what are the dates of those meetings?  
 24 A The first date is December 13th, 2016. And the  
 25 second is December 30th, 2016.

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1 Q And can you tell from those minutes whether you  
2 attended either of those?  
3 A Yes, I could. Let's see here. And I was at  
4 neither of those meetings it doesn't appear.  
5 Q Actually, if you look at the second page of them,  
6 there's sometimes other ETF people. I don't  
7 believe you're listed, but I just want to make  
8 sure I'm not missing something.  
9 A Yeah. It does not appear I was in attendance at  
10 those meetings.  
11 Q So do you know what came out of that December 30th  
12 meeting?  
13 A Could you be more specific?  
14 Q In terms of the reinstatement to the exclusion of  
15 the treatments for gender dysphoria?  
16 A No. Again, moving forward, it was a matter of  
17 having to reinstate the gender edits in our claims  
18 processing. So I don't know specifically what  
19 came out of that meeting, but I know it impacted  
20 what I had to do moving forward.  
21 Q Do you recall any -- do you recall there being  
22 contingencies attached to the reinstatement of the  
23 exclusion?  
24 A I don't recall, no. I'm sorry.  
25 MR. DUPUIS: Okay. I'll have

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1 another exhibit marked here.  
2 (Exhibit No. 8 marked for  
3 identification)  
4 BY MR. DUPUIS:  
5 Q Showing you what's been marked as Exhibit 8. Do  
6 you recognize that document?  
7 A Yes. An e-mail to me -- or I should say to Ryan  
8 Olson, Shannon Tischer, and Steve Alexander from  
9 Navitus on February 1st, 2017.  
10 Q Sent by you; correct?  
11 A Sent by me, yes.  
12 Q And all three of those people are, again, from  
13 Navitus; is that correct?  
14 A That is correct.  
15 Q And the subject is Reinstatement of Gender  
16 Exclusion; do you see that?  
17 A Yes.  
18 Q And this is dated February 1st, 2017; is that  
19 right?  
20 A That's correct.  
21 Q So you say in the e-mail I just found out this  
22 morning that we are reinstating the exclusion of  
23 gender reassignment procedures, services &  
24 supplies in our Uniform Benefits effective today,  
25 2/1/17, based on GIB's opinion on the

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1 non-discrimination rules; do you see that?  
2 A Yes.  
3 Q So the exclusion was not effective right after the  
4 December 30th meeting; is that right?  
5 A That is correct.  
6 Q Does this refresh your recollection as sort of the  
7 process that played out after December 30th?  
8 A Somewhat, yes.  
9 Q Okay. So in the second paragraph you talk about  
10 ETF had informed Navitus that we would no longer  
11 apply gender edits for certain drugs in 2017; do  
12 you see that?  
13 A Yes.  
14 Q And that your first reaction to that was to ask  
15 Navitus to turn the gender edits back on; do you  
16 see that?  
17 A Yes.  
18 Q Let's talk a little bit about these gender edits.  
19 So what exactly are gender edits?  
20 A So a gender edit is what we refer to as a hard  
21 stop in the claims processing system that Navitus  
22 administers. That if a male gender -- according  
23 to our eligibility records, if a male gender  
24 member tries to get a prescription for, say,  
25 estrogen, that claim will stop, and, again, hard

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1 stop being there's no alternative that the  
2 pharmacist can do to make that go through and have  
3 the claim paid.  
4 That doesn't mean the member can't get the  
5 drug. It's just the member would have to pay for  
6 that drug, and that also goes vice versa for a  
7 female gender member trying to get, say, androgen.  
8 Q And you were planning to turn gender edits off in  
9 January of 2017; is that correct?  
10 A Initially, yes.  
11 Q Did you, in fact, turn them off?  
12 A They did, yes.  
13 Q And so the hard -- but there were cases in which  
14 people, members, were able to get what appeared to  
15 be cross gender hormones; correct?  
16 A Yes.  
17 Q And so there was a process for making that happen  
18 if it was appropriate for whatever reason;  
19 correct?  
20 A Yes.  
21 Q And that was a work-around around the gender  
22 edits; correct?  
23 A I wouldn't call it a work-around, but it was part  
24 of the process. I mean, it was a way for someone  
25 to have had a valid reason to have those, that

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1 prescription filled. It was part of a process  
2 established.  
3 Q Okay. Did that process involve getting a prior  
4 authorization?  
5 A Yes.  
6 Q What else was involved in that process?  
7 A It would be the prior authorization. I mean, they  
8 would have to complete the prior authorization,  
9 submit that to Navitus, and if it indicated that  
10 they were not having gender reassignment surgery  
11 or planning to have gender reassignment surgery,  
12 then the drug would be filled.  
13 Q So the next sentence says notwithstanding this  
14 gender reassignment decision, ETF will be allowing  
15 members to make gender changes in our system in  
16 accordance with their own wishes; is that correct?  
17 A Correct.  
18 Q And As such, I am concerned that if we turn the  
19 gender edits on and a member changes their gender  
20 in our system but still requires a medically  
21 necessary prescription (not associated with gender  
22 reassignment), we will unduly restrict the  
23 member's access to the drug. So can you explain  
24 how that might work?  
25 A We just had some concerns that that cross gender

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1 identifier if we turned those edits back on would,  
2 in fact, as it states here, restrict someone who  
3 in some cases would need that, that drug. Again,  
4 gender dysphoria can be treated with the  
5 various -- you know, the androgen or the estrogens  
6 as appropriate, but it does not involve the  
7 surgery, which is what our specific exclusion is.  
8 So we wanted to make sure that we weren't --  
9 if somebody went in and changed their gender to  
10 identify themselves, that we didn't inadvertently  
11 stop them from getting the drug that they needed.  
12 Q So say a male-to-female transgender person who had  
13 not had surgery --  
14 A Right.  
15 Q -- could continue to get estrogen under the --  
16 A That's correct.  
17 Q Because it wasn't associated with surgery; is that  
18 right?  
19 A Correct. Correct.  
20 Q And what about someone -- would gender edits also  
21 prevent a female-from-male transgender person who  
22 had not had surgery from obtaining a pap smear,  
23 for example?  
24 A That would be on the medical side, so I can't  
25 answer that.

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1 Q Do you know if gender edits exist on the medical  
2 side?  
3 A I do not. No. I do not know.  
4 Q And you ask a series of questions of Navitus in  
5 this e-mail; correct?  
6 A Yes.  
7 Q And at the bottom of that after the list of  
8 questions for Navitus, you say, Welcome to the  
9 fickle & politically infused benefit world of the  
10 state of WI, smiley face. Did I read that  
11 correctly?  
12 A Yes, you did.  
13 Q What did you mean by that?  
14 A It was a lot of changes occurring very quickly,  
15 and, again, a lot of politics involved in that.  
16 Q Having looked at -- actually, if you could look at  
17 the second page.  
18 A Yes.  
19 Q Well, second or third page. This is an e-mail  
20 from Mark Lamkins, who's he?  
21 A Mark Lamkins was the -- or is the communications  
22 director at ETF.  
23 Q So he sent you sort of this public explanation of  
24 what's going on with the exclusion; correct?  
25 A Yes.

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1 Q And it includes some background information  
2 including a little chart with four contingencies;  
3 do you see that?  
4 A Yes.  
5 Q Does that refresh your recollection about the  
6 contingent implementation?  
7 A Yes. Yes.  
8 Q Did you have anything to do with coming up with  
9 these contingencies?  
10 A No.  
11 Q Have you ever heard of a contingent policy change  
12 being made before?  
13 A Again, I don't recall.  
14 Q You don't recall one occurring?  
15 A I don't recall ever occurring.  
16 Q So this would be the first one you can remember?  
17 A This would be the first one I can remember.  
18 Q Did the gender edits get turned back on?  
19 A The gender edits eventually did get turned back on  
20 on March of that year -- March 1st of that year.  
21 Q So it took another month?  
22 A It took another month.  
23 Q Are you aware of anything other than the DOJ AG's  
24 memo and other efforts that led to this reversal  
25 in the policy decision that was made earlier in

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1 the year to eliminate the exclusion?  
 2 A I don't recall anything.  
 3 Q Are you aware of anything in state law that  
 4 forbids GIB from providing the coverage of hormone  
 5 therapy or gender confirmation surgery?  
 6 A Boy, I don't. I'm sorry. No.  
 7 Q Are you aware of anything in federal law that  
 8 would prohibit GIB or ETF from doing it?  
 9 A Again, I don't know specifics.  
 10 Q But as far as you know, there's nothing?  
 11 A I think there's something, but I don't know what  
 12 it is.  
 13 Q That would prohibit it?  
 14 A Can you rephrase the question or restate it?  
 15 Q This is complicated. We're talking about an  
 16 exclusion. Is there anything that would -- in  
 17 federal law that you're aware of that would forbid  
 18 GIB from covering -- or authorizing coverage of  
 19 hormones and gender confirmation surgery?  
 20 MR. ROTH: Object to the extent it  
 21 calls for a legal conclusion or speculation.  
 22 Q But you can answer if you understand.  
 23 MR. ROTH: You can answer.  
 24 A I don't know of anything.  
 25 Q Anybody ever -- in the course of these discussions

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1 that you've been part of or communications you've  
 2 been part of, has the cost of hormone therapy ever  
 3 been an issue that's been raised as a reason to  
 4 exclude coverage?  
 5 A I don't recall that being discussed with me.  
 6 Q And you have background and experience in  
 7 pharmacy-related matters; correct?  
 8 A In the management of a pharmacy benefit program,  
 9 yes.  
 10 Q So you have some sense of the cost of --  
 11 A Correct.  
 12 Q -- these pharmaceuticals?  
 13 A Yes.  
 14 Q And you discuss costs with Navitus all the time;  
 15 correct?  
 16 A Yes. Correct.  
 17 Q Do you have a sense of how much hormone therapy  
 18 costs for a treatment of gender dysphoria?  
 19 A Right off the top of my head, I do not. I'm sure  
 20 we have it documented somewhere.  
 21 (Exhibit No. 9 marked for  
 22 identification)  
 23 BY MR. DUPUIS:  
 24 Q I'm showing you what's been marked as Exhibit 9.  
 25 A Thank you.

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1 Q Do you recognize this document?  
 2 A Yes, I do.  
 3 Q What is that?  
 4 A It's a series of e-mails between Lisa Ellinger and  
 5 Eileen Mallow to and from me.  
 6 Q And I'd like you to take a look early in this  
 7 chain back to pages 2 and 3.  
 8 A Uh-huh.  
 9 Q You sent an e-mail on February 1st, 2017, saying  
 10 that Navitus got back to me with the following  
 11 data about claims processed in 2017 so far (all  
 12 January). Do you see that?  
 13 A Yes.  
 14 Q And got Males filling Estrogen; right?  
 15 A Yes.  
 16 Q Seven members had claims and the total cost of the  
 17 claims was 241.05; is that right?  
 18 A Yes.  
 19 Q And the total cost to the plan was 185.60; is that  
 20 right?  
 21 A Yes.  
 22 Q What accounts for the difference?  
 23 A It would be the amount the member paid.  
 24 Q The co-pay?  
 25 A The co-pay or cost shared.

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1 Q Okay. So I'm going to represent that I did a  
 2 little math. Maybe that was a mistake. We had  
 3 the mathematician here yesterday, but that's about  
 4 \$34 a month -- or \$30 per prescription; does that  
 5 sound about right?  
 6 A Without doing the math, I don't know but --  
 7 Q Does that seem about right based on your knowledge  
 8 of --  
 9 A Which number are you referring to?  
 10 Q The 241 divided by 7.  
 11 A Yeah.  
 12 Q I believe in a later e-mail you indicate one of  
 13 them might have been more than a 30-day supply if  
 14 you look up at on page 2 a little farther up a  
 15 couple other notes. All scripts written are for a  
 16 30-day supply except one.  
 17 A Right.  
 18 Q It's possible that one of those estrogens was even  
 19 cheaper per month than that; correct?  
 20 A Yes.  
 21 Q And does that number seem about consistent to you  
 22 with the cost of estrogen?  
 23 MR. ROTH: Objection. Vague.  
 24 A Yeah. I couldn't respond to that without doing  
 25 further research.

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1 Q Females filling Androgens is nine members at a  
2 total cost of 585.15; do you see that?  
3 A Yes.  
4 Q And it's about \$65 a month maybe, maybe less if  
5 the one that was more than a 30-day supply is  
6 included in the androgens; right?  
7 A Well, you're indicating that it's per month, but  
8 this is actually a one-month reporting.  
9 Q So would be a month either way?  
10 A So it's \$585 -- I see what you're saying. For the  
11 number of members, yep. Yep.  
12 Q So it's about \$65 for the month of prescription?  
13 A Yep.  
14 Q And for both of these, Navitus couldn't tell if  
15 they were for gender dysphoria even; correct?  
16 A That is correct.  
17 Q Do you think that cost is a reason for the  
18 exclusion of hormone therapy?  
19 MR. ROTH: Objection. Calls for  
20 speculation.  
21 Q To the extent you know.  
22 A I couldn't answer that. I don't know.  
23 Q What's your view?  
24 A I would say no.  
25 Q Why do you say that?

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1 A The cost is fairly low compared to other drugs in  
2 the market.  
3 Q That you do pay for?  
4 A That we do pay for, yes.  
5 Q Do you know what the reason for the exclusion of  
6 coverage for treatment of gender dysphoria is?  
7 MR. ROTH: Objection. Vague.  
8 Calls for speculation.  
9 Q To the extent that you know.  
10 A No.  
11 Q Do you have a belief?  
12 A It would call for speculation and I don't. Yeah.  
13 I don't have facts.  
14 Q I'm asking for your opinion.  
15 A For my opinion, I think it should be covered. I  
16 think I stated that a few times before.  
17 Q So we talked a little bit about gender edits, and  
18 on the first page of this document there's some  
19 more discussion of that. So there have been times  
20 that -- are state employees still able to get  
21 coverage for cross gender hormones?  
22 A As long as they are not -- they have the prior  
23 authorization in place.  
24 Q And what would they need to get the prior  
25 authorization?

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1 A The prior authorization would have to be completed  
2 by their doctor and submitted to Navitus.  
3 Q And what -- so hormone therapy is covered for  
4 treatment of gender dysphoria if it's not  
5 connected to surgery?  
6 A That is correct.  
7 Q What does it mean to be connected to surgery?  
8 A If it's not part of the process or the surgical  
9 process as a procedure as a whole.  
10 Q So per your conversation -- this is the  
11 February 7th e-mail on page 1 from you to  
12 Ms. Ellinger, and you say Certain prescriptions  
13 that will be blocked if Gender Edits are turned  
14 on. And then basically it's the thing we talked  
15 about is that members who are identified as male  
16 in their computer system will be blocked from  
17 receiving scripts for estrogens or oral  
18 contraceptives and any other drugs related to  
19 disease states associated with females and members  
20 who are identified as female in the system will be  
21 blocked from receiving androgens and other drugs  
22 associated with disease states associated with  
23 males; is that correct?  
24 A Yes.  
25 Q Okay. So the prescribing physician can then

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1 submit a request for an exception to coverage;  
2 correct?  
3 A Yes.  
4 Q So there is -- would it be fair to say the process  
5 is more involved if gender edits are on rather  
6 than if gender edits are off?  
7 MR. ROTH: Objection. Vague.  
8 A Can you kind of rephrase the question?  
9 Q Yeah. Are there more steps in the process to deal  
10 with coverage of hormones if gender edits are on  
11 than if gender edits are off?  
12 A Steps for who?  
13 Q For Navitus?  
14 A For Navitus, yes. There are more steps that have  
15 to be --have to go through to allow that to run  
16 through, yes.  
17 Q Did anybody at Navitus complain about having to  
18 turn gender edits back on?  
19 A Not that I am -- no. Not that I'm aware of.  
20 Q Back to that third page, at the second to last  
21 sentence you say Navitus indicated most of their  
22 clients have removed gender edits completely; do  
23 you see that?  
24 A Yes.  
25 Q Do you know why they removed their gender edits?

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1 A I do not.  
2 Q Did they give any indication as to why?  
3 A No. They did not. It was a very straightforward  
4 question.  
5 Q Okay. Are you aware of anyone who was able to  
6 start coverage or start receiving coverage for  
7 hormone therapy or gender confirmation surgery  
8 during January who subsequently lost coverage?  
9 A I don't recall. We had one case, but I don't  
10 think it was associated with the surgery. I do  
11 remember specifically working for one member to  
12 get -- they had gotten coverage during that time  
13 period, but I can't recall if it was associated  
14 with the surgery or not.  
15 Q Do you know who decided whether the contingencies  
16 that GIB had set at the December 30th meeting had  
17 been met?  
18 A Can you state that again?  
19 Q Do you know who made the decision that the  
20 contingencies that the GIB had set at the  
21 December 30th meeting for the reinstatement of the  
22 exclusion had been met?  
23 A I don't know. I think as we moved forward, it was  
24 just -- we said, okay, here's what it is. We  
25 received word from Lisa and Eileen, but I don't

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1 know who made that decision that all of the  
2 criteria had been met.  
3 Q Did anybody express any concerns about the process  
4 of determining whether the criteria were met?  
5 A I know I did not hear it personally, and, yeah --  
6 Q Did you hear it indirectly?  
7 A No. I mean, I didn't hear anything about it. I  
8 was just trying to think if there was any message  
9 that was sent out that basically kind of gave us a  
10 rundown of where we were, you know, as the  
11 contingencies progressed through, and I don't  
12 recall any specifically.  
13 Q Do you believe the exclusion discriminates against  
14 transgender individuals?  
15 MR. ROTH: Objection to the extent  
16 it calls for a legal conclusion.  
17 A I can't answer that except on a personal basis.  
18 Q And on a personal basis?  
19 A The exclusion -- that's a difficult -- I would say  
20 no. I think it should be covered, but I don't  
21 think it discriminates.  
22 Q Why do you say that?  
23 A Because there's a lot of things we don't cover.  
24 There are other things that we don't cover. So  
25 that's my personal opinion.

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1 Q Are there other things where there's a blanket ban  
2 on coverage for a treatment of -- for treatment of  
3 a disorder that only affects a defined class of  
4 people?  
5 MR. ROTH: Objection. Assumes  
6 facts not in evidence.  
7 A The gender or bariatric surgeries is one that  
8 comes to mind immediately.  
9 Q So that's people who are --  
10 A Obese, yeah.  
11 Q Are there any situations in which bariatric  
12 surgery can be covered?  
13 A There are situations where it can be. If the  
14 member enrolls in a self-insured -- I don't know  
15 if that provision is still there. That's a  
16 medical provision that I am not up on on those  
17 programs.  
18 Q So it might not be completely excluded from  
19 coverage?  
20 A Right. In the past I know we had allowed  
21 bariatric surgery if you enrolled in the standard  
22 plan, which was at a much higher cost.  
23 Q Would you consider an exclusion of treatment --  
24 coverage of treatment for sickle cell anemia to be  
25 discriminatory?

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1 MR. ROTH: Objection. It calls for  
2 a legal conclusion. Assumes facts not in  
3 evidence.  
4 A Yeah. I don't have an opinion on that.  
5 MR. DUPUIS: All right. I'd like  
6 to take a quick break just to consult.  
7 MR. ROTH: Sure.  
8 (Recess taken)  
9 MR. DUPUIS: We don't have anymore.  
10 MR. ROTH: Okay. I just have a  
11 very short series of questions. Like, two or  
12 three. I'm just going to ask you a couple  
13 questions.  
14 BY MR. ROTH:  
15 Q Good morning, Jeff. I'm Colin Roth. I represent  
16 the Department of Employee Trust Funds, Group  
17 Insurance Board, a variety of other state  
18 defendants. I'm just going to ask you a couple  
19 questions to finish this off. Do you understand  
20 what's going to happen here?  
21 A Yes.  
22 Q Same rules as before. Tell the truth.  
23 A Yes.  
24 Q Let me know if you don't understand the question.  
25 So I think you testified earlier this morning --

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1 and please correct me if I'm wrong. This is what  
2 I think the testimony was.  
3 At one point you testified you thought that  
4 hormone therapy could help to treat gender  
5 dysphoria; is that correct?  
6 A Yes.  
7 Q Are you a doctor?  
8 A No.  
9 Q Do you have any clinical training?  
10 A No.  
11 Q Have you received any clinical education at any  
12 point during your career or otherwise?  
13 A No.  
14 Q So do you have any clinical basis upon which to  
15 opine on whether hormone therapy treats any  
16 particular type of disorder?  
17 A No.  
18 Q Do you have any clinical basis on which to opine  
19 whether gender reassignment surgery treats any  
20 type of disorder?  
21 A No.  
22 Q I think at one point I believe -- let me go back  
23 to -- so can you refer back to Exhibit 7, please.  
24 A Got it here.  
25 Q And the third paragraph where you say The DOJ memo

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1 is an interesting read but doesn't account for all  
2 of the facts; do you see that?  
3 A Yes.  
4 Q Are you a lawyer?  
5 A No.  
6 Q Do you have any legal training?  
7 A No.  
8 Q Do you have any legal basis on which to opine  
9 whether certain facts should have been considered  
10 but were not in the DOJ memo that you're  
11 referencing?  
12 A No.  
13 Q I think at one point you testified that you didn't  
14 agree with the DOJ memo?  
15 A Yes.  
16 Q Do you have any legal training or legal basis on  
17 which to rest your disagreement with the attorney  
18 general's memo?  
19 A No.  
20 MR. ROTH: I have no questions.  
21 MR. DUPUIS: That's all I have.  
22 MR. ROTH: You're done.  
23 (Adjourning at 12:10 p.m.)  
24  
25

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1 STATE OF WISCONSIN )  
2 COUNTY OF DANE ) ss.  
3  
4 I, Tammy L. Uhl, Certified Realtime Reporter  
5 and Notary Public in and for the State of Wisconsin,  
6 do hereby certify that the foregoing deposition of  
7 JEFFREY E. BOGARDUS was taken before me on  
8 April 3, 2018, and reduced to writing by me, a  
9 professional court reporter and disinterested person,  
10 approved by all parties in interest and thereafter  
11 converted to typewriting using computer-aided  
12 transcription.  
13 I further certify that I am not related to nor  
14 an employee of counsel or any of the parties to the  
15 action, nor am I in any way financially interested in  
16 the outcome of this case.  
17 IN WITNESS WHEREOF, I have hereunto set my hand  
18 and affixed my notarial seal of office at Madison,  
19 Wisconsin, this 9th day of April 2018.  
20  
21  
22  
23  
24  
25

Notary Public, State of Wisconsin  
My Commission Expires 8/18/2020

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