

In The Matter Of:

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

*Deposition of Michael S. Farrell
April 11, 2018*

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

ALINA BOYDEN and
 SHANNON ANDREWS,

Plaintiffs,

-vs- Case No. 17-CV-264

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

Defendants.

Deposition of MICHAEL S. FARRELL,

taken at the instance of the Plaintiffs, under and
 pursuant to Section 804.05 of the Wisconsin Statutes,
 before Peggy S. Christensen, RPR, CRR, and Notary Public
 in and for the State of Wisconsin, at the offices of the
 State of Wisconsin Department of Justice,
 17 West Main Street, Madison, Wisconsin, on
 April 11, 2018, commencing at 9:00 a.m. and ending at
 4:03 p.m.

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1 HAWKS QUINDEL, S.C., by
 2 NICHOLAS E. FAIRWEATHER,
 3 409 East Main Street,
 4 Madison, Wisconsin 53703,
 appeared on behalf of the Plaintiffs;

5 AMERICAN CIVIL LIBERTIES UNION FOUNDATION, by
 6 JOHN A. KNIGHT,
 7 ACLU Foundation,
 8 Lesbian Gay Bisexual Transgender Project,
 9 150 North Michigan Avenue, Suite 600,
 Chicago, Illinois 60601,
 appeared on behalf of the Plaintiffs;

10 and

11 AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN
 FOUNDATION, by
 12 ASNA KADRI,
 13 ACLU of Wisconsin Foundation,
 207 East Buffalo Street, Suite 325,
 14 Milwaukee, Wisconsin 53202,
 appeared on behalf of the Plaintiffs.

15 STATE OF WISCONSIN DEPARTMENT OF JUSTICE, by
 16 STEVEN C. KILPATRICK, COLIN T. ROTH, and
 17 JODY J. SCHMELZER,
 18 17 West Main Street,
 Madison, Wisconsin 53707,
 appeared on behalf of the Defendants.

19

20 Also Present: David Nispel, Diana Felsmann

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MICHAEL S. FARRELL, called as a witness, being first duly sworn, testified on oath as follows:

EXAMINATION

By Mr. Knight:

Q Mr. Farrell, again, as I told you before, my name is John Knight. I'm one of the plaintiffs' attorneys. And I'll remind you of the rules about depositions. Have you ever been deposed before?

A Yes.

Q Okay. So could you tell me about what the circumstances were in which you were deposed before?

A Workers' compensation cases and also long ago, early '90s, WERC case, the school district that I worked for at the time.

Q Okay. And how many workers' comp cases have you been testifying in?

A Probably just a couple. Two or three maybe.

Q Are those administrative hearings or --

A Yes. Administrative law judge.

Q And you were testifying for whom during those cases?

A On behalf of Racine Unified School District.

Q Were you on the school board at that time?

A No.

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1 Q No. What was your position? Why were you
2 deposed, then?
3 A I managed the employee benefits program for the
4 school district, including workers' compensation.
5 Q And so both hearings were in that same
6 representation for the Racine School District or
7 because of your role with respect to the Racine
8 School District?
9 A Yes.
10 Q Okay. What is WERC?
11 A Wisconsin Employee -- it's either Employment or
12 Employee Relations Commission.
13 Q Okay. And what was that case about?
14 A That case was brought against Racine Unified
15 School District by the teachers union relating to
16 a change in claims administrator for their health
17 insurance plan.
18 Q What was the basis for the lawsuit, at least your
19 understanding?
20 A It goes back to 1992 or '93, I believe were the
21 years involved. So my quick recall of it was the
22 teachers union challenged the change -- were
23 concerned about changes in benefits to a
24 negotiated labor agreement.
25 Q And you testified in what respect? For whom? Who

Page 10

1 called you to testify in that particular case?
2 A Well, on behalf of Racine Unified. I would have
3 been called by the union, Racine Education
4 Association. Honestly, I don't know who called me
5 of the two of them, but those were the
6 participants.
7 Q Okay. I guess back to the rules. If you would
8 please remember to give me a verbal answer as
9 opposed to nodding, like that. So yes, please.
10 A Yes.
11 Q Thank you.
12 A Sure.
13 Q Got it. And if at any point you don't understand
14 a question, please let me know. I'll repeat it.
15 If you answer, I'm going to assume that you
16 understood the question.
17 A Okay.
18 Q Does that seem fair? Are you represented by
19 Mr. -- sorry.
20 MR. KILPATRICK: Kilpatrick.
21 Q -- Kilpatrick today? Sorry about that.
22 A I don't think I knew your last name, but okay.
23 Steven?
24 MR. KILPATRICK: Yes.
25 A Kilpatrick, okay.

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1 Q Are you represented by Mr. Kilpatrick?
2 A I believe so, yes.
3 MR. KILPATRICK: Yes.
4 Q Okay. And it is possible that Mr. Kilpatrick will
5 raise objections during the course of the
6 deposition. If he does, you can still answer my
7 question unless he tells you not to.
8 A Okay.
9 Q Do you understand that?
10 A I do. Am I able to ask a question? Colin Roth is
11 also here. Is he representing me as well?
12 Q Well, normally you don't get to ask questions, but
13 I'm going to let this one by.
14 A Okay.
15 MR. ROTH: Steve is defending the
16 deposition, so --
17 THE WITNESS: Okay. Thank you.
18 Q Is there any reason you can think of that you
19 would not be able to answer my questions
20 truthfully today?
21 A No.
22 Q Did you meet with your attorneys to prepare for
23 today's deposition?
24 A Yes.
25 Q When was that?

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1 A Monday this week. The 9th.
2 Q For how long?
3 A Two to two and a half hours.
4 Q And which attorneys did you meet with?
5 A Steve Kilpatrick and Colin Roth.
6 Q Anybody else?
7 A Yes. Two others on the phone, and I'll ask for
8 names.
9 Q Who?
10 A Diana and Dan, I believe.
11 Q Diana Felsmann. And who is Dan?
12 A I don't know.
13 Q Do you know if Dan is an attorney?
14 A I believe so.
15 Q We're going to be looking at some documents that
16 we received in what's called discovery. Were you
17 involved at all in preparing or pulling together
18 documents to respond to our discovery requests?
19 A Yes.
20 Q And did you review your own files, as well as
21 electronic files for purposes of producing
22 responsive documents, documents that would answer
23 the questions we raised?
24 A Yes.
25 Q Is there anything that you did not produce?

Page 13

1 A No.
 2 Q Were you involved in responding to what are called
 3 the interrogatories, the questions that are asked
 4 of the defendants?
 5 A Yes.
 6 Q And you reviewed those?
 7 A I did, the ones that applied to me.
 8 Q How did you know which ones applied to you?
 9 A I was asked to look at specific numbered
 10 interrogatories.
 11 Q By counsel?
 12 A Yes.
 13 Q Okay. And when you say you were asked to look at
 14 certain ones, are those the ones that are listed
 15 in the document that you signed related to the
 16 discovery?
 17 A Yes.
 18 Q Okay. So at various points today we're going to
 19 discuss a particular language which I'm going to
 20 call the exclusion typically, and so let me just
 21 read you that so I want to make sure that you
 22 understand what exactly I'm talking about. Is
 23 that fair?
 24 A Okay. Sure.
 25 Q Okay. So when I talk about the exclusion, I'm

Page 14

1 referring to the exclusion of "Procedures,
 2 services, and supplies related to surgery and sex
 3 hormones associated with gender reassignment."
 4 So have you heard that language before or
 5 seen that language before?
 6 A Yes.
 7 Q Okay. And so when I ask -- When I use the word
 8 exclusion, you'll know what I'm talking about?
 9 A Yes.
 10 Q Okay. Great. And that particular language I
 11 believe is found in what is I think called the
 12 uniform benefits for state employees; is that
 13 right?
 14 A Yes.
 15 Q And I believe that's still in that same document
 16 this year, the current version that's in place
 17 now; is that right?
 18 A Yes.
 19 Q Have you discussed that particular exclusion with
 20 anyone other than the attorneys who represent you?
 21 A Are you referring to meetings to discuss the
 22 exclusion?
 23 Q We'll talk about the meetings later. But just in
 24 the preparation for the deposition, did you talk
 25 about that exclusion with other people?

Page 15

1 A No.
 2 Q Did you go to college?
 3 A Yes.
 4 Q And where did you attend college?
 5 A Undergraduate, University of Wisconsin-Parkside.
 6 Q What kind of degree did you receive from the
 7 University of Wisconsin-Parkside?
 8 A Business management with a concentration in human
 9 resources.
 10 Q Was there any particular emphasis in your studies
 11 at the University of Wisconsin?
 12 A Well, human resources.
 13 Q Other than human resources, was there any
 14 particular type of human resources?
 15 A No. General.
 16 Q General. And was that 2012 that you graduated?
 17 Or, I'm sorry, when did you graduate? No, 1986.
 18 A 1986 and then graduate studies graduating in 2012.
 19 Q And where was your graduate degree?
 20 A New England College.
 21 Q And was that a master's in public policy?
 22 A Correct.
 23 Q Any other education?
 24 A No. Not completed.
 25 Q Any other incomplete education?

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1 A Yes.
 2 Q Courses or something or anything to that effect?
 3 A Yes.
 4 Q What were those?
 5 A Graduate studies in labor relations and sports
 6 management contracts.
 7 Q When did you do that study?
 8 A 1990 to '94.
 9 Q And where did you do that?
 10 A Labor relations, UW-Milwaukee. The sports
 11 contracting, United States Athletics Academy I
 12 believe it was called. Or United States Sports
 13 Academy.
 14 Q Any training specific to health insurance?
 15 A I'm a licensed health and life intermediary, which
 16 requires training, testing, and ongoing continuing
 17 education.
 18 Q When did you do that training?
 19 A 1992.
 20 Q Where?
 21 A Excuse me. I have to back up. That was in 1994.
 22 Q Okay.
 23 A State of Wisconsin.
 24 Q Is there one training session for the state?
 25 A In that case it was a training that occurred here

Page 17

1 in Madison. No. I take that back. In
 2 Brookfield, Wisconsin, and then the testing was
 3 also done in Brookfield, Wisconsin.
 4 Training is over I believe a three full-day
 5 period where you become licensed as a health and
 6 life insurance agent/broker/consultant. In
 7 official language, intermediary.
 8 Q I'm sorry. Intermediary is official language for
 9 an insurance broker?
 10 A Yes.
 11 Q Okay. And where does that official language come
 12 from?
 13 A I believe from the State of Wisconsin.
 14 Q Okay. You said that was in '94, then, or did I
 15 get the dates wrong?
 16 A 1994, correct.
 17 Q Any other licensing? Any other licenses that you
 18 hold?
 19 A No.
 20 Q And I guess I should clarify. Professional
 21 licenses, I should say. I assume you have a
 22 driver's license, for example. Right? None other
 23 than that?
 24 A No other professional licensing.
 25 Q Okay. Do you have any training in medical

Page 18

1 treatment for transgender people?
 2 A No.
 3 Q In the condition of gender dysphoria?
 4 A No.
 5 Q And what is your work right now? What is your
 6 position?
 7 A Employee benefits consultant.
 8 Q How long have you been doing that?
 9 A Since 1994.
 10 Q So that started after you were licensed?
 11 A Correct.
 12 Q Why did you decide to get into employee benefits
 13 work?
 14 A Prior to that I was managing the benefits program
 15 for Racine Unified School District, as I
 16 indicated, and decided to go from the public
 17 sector into the private sector. A career move.
 18 Q Got it. I'd like to back up. What other
 19 positions since college have you had? If you can
 20 give me an overview, that would be helpful.
 21 A Sure. Are you referring to association roles?
 22 I'll tell you that I've been involved in my
 23 industry associations for many years.
 24 Q Okay. Well, let me go back to -- let me start
 25 with employment, what you were working at, and

Page 19

1 then we'll talk about the associations.
 2 A Okay. I will tell you I am also currently the
 3 village president for the Village of Bristol in
 4 Kenosha County.
 5 Employment history, as I said, since 1994 has
 6 been in employee benefits consulting with a couple
 7 of different organizations. If you want, I can
 8 list them.
 9 Q Sure.
 10 A Frank Haack & Associates in Milwaukee.
 11 Q What is Frank Haack & Associates?
 12 A An insurance broker. No longer named that, by the
 13 way.
 14 Q And how long did you work there?
 15 A Through acquisition. Just short of ten years.
 16 Q What were the years?
 17 A 1994 to 2003.
 18 Q Okay.
 19 A From there, Destiny Health.
 20 Q I'm sorry. Are we going backwards or forward?
 21 A Forward.
 22 Q Destiny Health?
 23 A Correct.
 24 Q How long did you work there?
 25 A About three years.

Page 20

1 Q And after that? So that would have been
 2 approximately 2003 to 2006?
 3 A Correct. It may have been 2007, but it's close to
 4 that.
 5 Q Okay. And?
 6 A From there a partnership with an organization
 7 called Creative Insurance Planning.
 8 Q I'm sorry. Created?
 9 A Creative.
 10 Q Oh. Creative Insurance Planning.
 11 A In Racine, Wisconsin.
 12 Q How long were you there?
 13 A About six or seven years, because we merged with
 14 my current company. My current company is David
 15 Insurance in Racine, and Creative Insurance
 16 Planning merged with David Insurance.
 17 Q Okay. And when did that happen?
 18 A I believe it was 2012, possibly 2011. But I
 19 believe it was 2012.
 20 Q And that's where you are now?
 21 A Correct.
 22 Q And what is your position in David Insurance?
 23 A Employee benefits consultant.
 24 Q Do you have an official title within the
 25 organization or are you -- I guess how many

Page 21

1 employees are there in the organization?
 2 A Between 35 and 40.
 3 Q And what is your position within the organization?
 4 A I am a consultant. I'm an employee.
 5 Q Okay. So who do you work for at David Insurance?
 6 A Well, directly, I guess my vice president of sales
 7 who reports to our CEO.
 8 Q And who is the vice president of sales?
 9 A His name is Craig Vaughn, V-a-u-g-h-n.
 10 Q Okay. I believe you've told me about your work
 11 positions since '94. Did you have jobs after you
 12 graduated from college in '86?
 13 A Yes.
 14 Q What were those?
 15 A 1986 I worked as an employment coordinator for the
 16 Private Industry Council.
 17 Q For how long?
 18 A Five years.
 19 Q And after that?
 20 A 1991 to 1994, for Racine Unified School District.
 21 Q And I think you told me, but I'm not sure I
 22 remember. Your position at the school district
 23 was what?
 24 A Benefits specialist. It's evolved since then.
 25 Q So in your current position -- actually, why don't

Page 22

1 we talk about the associations. I'm not sure I'm
 2 using the right word. What was the word you used
 3 before?
 4 A Associations.
 5 Q Associations. What are the ones that you're a
 6 member of?
 7 A They are industry associations. Currently I'm a
 8 member of the Independent Insurance Agents of
 9 Wisconsin and former board member.
 10 Q Okay. Anything else?
 11 A Prior to that I was a founding member and
 12 president of an organization called Wisconsin
 13 Employee Benefit Advisors, who ultimately merged
 14 with the Independent Insurance Agents of
 15 Wisconsin.
 16 Q Any others?
 17 A Yes. Prior to that, board member with Wisconsin
 18 Association of Health Underwriters and former
 19 president-elect of that association.
 20 Q Any others?
 21 A Committees for the state.
 22 Q What committees are those?
 23 A The Office of the Commissioner of Insurance has on
 24 and off committees for health and life agents that
 25 I've participated in, and I was previously a

Page 23

1 member of the BadgerCare advisory committee.
 2 Then, of course, the Group Insurance Board.
 3 Q Any others other than those? I believe you
 4 mentioned three.
 5 A Not any others that I recall.
 6 Q Okay. And how long have you been on the Group
 7 Insurance Board?
 8 A Since 2012.
 9 Q And did you start out as chair of the committee or
 10 as a member?
 11 A As a member.
 12 Q How long were you a member before becoming chair?
 13 A I am not certain of the dates of that. I believe
 14 I've been chair for about a year and a half.
 15 Q Who chooses the chair?
 16 A The Group Insurance Board elects officers.
 17 Q Who are the current members -- Am I right it's an
 18 11-member board?
 19 A Yes.
 20 Q I guess I could have printed that off. But I
 21 assume you can give me a list fairly quickly.
 22 A I could, but it probably would be easier to print
 23 it off. If you would like, I'll just start naming
 24 names of those that are members.
 25 Q You know what, why don't we hold off on that. I'm

Page 24

1 not sure I need it.
 2 A Yeah.
 3 Q I'm sure I can get that. How did you get involved
 4 in the GIB? I mean, how did you learn about it?
 5 A How did I learn about it? The deputy commissioner
 6 of insurance at the time, Daniel Schwartz, was
 7 also involved with me in all of those associations
 8 that I mentioned previously. So Dan and I are
 9 long-time friends, and he is familiar with my
 10 background and asked me to become part of the
 11 Group -- or to consider becoming part of the Group
 12 Insurance Board in late 2011.
 13 Q Were you familiar with the GIB prior to that time?
 14 A Not very. I knew it existed.
 15 Q Okay. So he asked you about your interests or
 16 whether you would be interested. What then? I
 17 mean, did you express interest at that point?
 18 A Yes.
 19 Q And then what happened?
 20 A From there I was appointed to the board by
 21 Governor Walker in March of 2012. And my first
 22 meeting with the board was in May of 2012.
 23 Q What was the process for becoming appointed by the
 24 governor?
 25 A It was just a short letter of interest and

Page 25

1 expressing of my qualifications to serve on the
2 board.
3 Q And then how did he tell you that you were
4 appointed?
5 A In writing.
6 Q Was that from him or from staff?
7 A A letter signed by him, but it may have been a
8 nonsignature. I mean, it may have come from
9 staff, and staff were involved.
10 Q Do you communicate with the governor's office
11 about your work on the Group Insurance Board?
12 A From time to time.
13 Q How much?
14 A Oh, in nearly six years, maybe five times.
15 Q Who do you speak to?
16 A I've spoken to a number of people in various
17 departments within the administration, including
18 those in the governor's office. I have spoken
19 directly to the governor about the fact that I am
20 the chair of the Group Insurance Board. It
21 doesn't mean he's aware of who I am, but I have
22 told him who I am. Are you interested in others
23 that I've spoken with?
24 Q Yes.
25 A Scott Neitzel, former secretary of DOA. Other

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1 members of DOA who have been on the Group
2 Insurance Board about matters relating to
3 activities conducted by the Group Insurance Board,
4 budget-related activities that would impact the
5 Department of Administration.
6 There may be other staff members within the
7 DOA that I've spoken with over time.
8 I believe one of the persons, and I'm not
9 certain of my recall, was Heather Smith, who I
10 believe is in the governor's office.
11 Q And is Ms. Smith a staff person or a member of DOA
12 or what is her position?
13 A I am not sure other than she is a staff person. I
14 don't know if she's staff at the governor's office
15 or DOA.
16 Q Are some people both members of DOA and staff
17 members for the governor directly?
18 A I don't know the answer to that.
19 Q Okay. So you mentioned Scott Neitzel. You said
20 other members of DOA. Do you remember who those
21 members were?
22 A Waylon Hurlburt, for example. And I may be mixing
23 members of governor's staff versus DOA. Casey
24 Himebauch, who I believe was governor's staff at
25 the time, and I don't know if he was governor's

Page 27

1 staff or lieutenant governor's staff at the time.
2 I mentioned Heather Smith. And then I will
3 quickly mention legislators directly. Many of
4 them.
5 Q What are the things that you -- well, why don't we
6 talk specifically about the exclusion. Have you
7 had conversations about the exclusion with any
8 members of the governor's staff?
9 A Yes.
10 Q Who?
11 A Casey Himebauch would have been one. Members of
12 Office of the Commissioner of Insurance. If that
13 counts as governor's staff, I'm not certain.
14 Q Who were those members?
15 A J.P. Wieske, deputy commissioner.
16 Q Anybody else?
17 A Potentially others who have been on conference
18 calls whose names I cannot recall, or perhaps
19 would not have even known about. Members of ETF
20 staff as well.
21 Q I'm sorry. So you're saying you've spoke with
22 members of ETF staff or are you saying that they
23 were on the call when you were speaking to the
24 governor's office?
25 A No, they were not on the call when I was speaking

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1 with the governor's office.
2 Q So these are separate calls?
3 A Separate calls, yes.
4 Q And we'll talk about the ETF conversations in a
5 minute. But what did you speak to Casey Himebauch
6 about with respect to the exclusion?
7 A I'm not certain of the date, but at the time it
8 was at least expected that an injunction would
9 come that would either delay or rescind, and I'm
10 not sure of the terminology, the withdrawal or --
11 withdrawal of the exclusion.
12 Q Okay. Are we talking about the Texas litigation?
13 A Yes.
14 Q Okay. I'm a little confused about how that
15 relates to the exclusion in the Wisconsin plan.
16 Can you explain that to me?
17 A I can try. My understanding of the Texas
18 litigation was to challenge the federal
19 government's ruling on removal of transgender
20 exclusions from health plans, and there were other
21 lawsuits going on at the same time with regard to
22 transgender bathrooms and others. So in my
23 industry, private practice, I would be aware of
24 those, specifically as it would relate to an
25 exclusion in a health plan.

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1 Q Okay. And what was the conversation -- you said
 2 you talked to him about the injunction or the
 3 possibility of injunction. Did I understand that
 4 correctly?
 5 A The possibility of an injunction.
 6 Q Okay. And what else did he say about that?
 7 A Nothing further.
 8 Q How many times did you speak to him?
 9 A To?
 10 Q About the exclusion, Mr. Himebauch.
 11 A I am not certain, but I'm going to say it would
 12 have been two -- possibly two times, maybe three
 13 times.
 14 Q Did you have other ways of communicating with him?
 15 Did you email him, for example?
 16 A Yes.
 17 Q How often was that?
 18 A I only know of one or two times. I will add,
 19 though, that I would have communicated with him
 20 related to budget matters as well and Department
 21 of Administration staff, including Scott Neitzel.
 22 So I can't separate discussions about budget or
 23 DOA matters from discussions with Casey Himebauch
 24 about this matter, simply because they're ongoing
 25 and there was activity from the Group Insurance

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1 Board, I'll just mention quickly, as it related to
 2 self-insuring the plan during this time. The
 3 beginning steps were -- the beginning
 4 consideration steps were starting, so I would have
 5 communicated with the governor's office on that
 6 matter as well.
 7 Q Other than Mr. Himebauch, who else in the
 8 governor's staff did you speak to about the
 9 exclusion?
 10 A No others that I know of. Again, if there were
 11 people on a phone call, I cannot recall and would
 12 not know who they would have been name-wise.
 13 Q We talked about discovery earlier. Did you turn
 14 over the email communications you had about this
 15 issue in the discovery process?
 16 A Yes.
 17 Q So at GIB, my understanding is that you're not --
 18 that's not a paid position; is that right?
 19 A Correct.
 20 Q And you don't have staff who work -- they're not
 21 GIB staff specifically?
 22 A I do not have staff related to the GIB.
 23 Q Okay. So the staff you would have for your GIB
 24 functions would be the people from ETF?
 25 A Correct.

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1 Q Are you compensated for travel and, you know,
 2 expenses related to your work for GIB?
 3 A Expenses, yes.
 4 Q And who compensates you for the expenses, the
 5 travel -- and we're talking about travel expenses?
 6 A Yes. Travel expenses, yeah, and hotel
 7 accommodations if necessary and food expense.
 8 Q Okay. Who compensates you for those things?
 9 A The State of Wisconsin.
 10 Q Who do you submit the request for payment to?
 11 A Staff at ETF.
 12 Q Other than travel expenses, are there any other
 13 expenses that are paid for because of your work at
 14 GIB?
 15 A No other expenses, but we do get a \$25 per meeting
 16 stipend.
 17 Q And is it typically four meetings per year or is
 18 it more?
 19 A It depends on the year and the activity that the
 20 Group Insurance Board is considering. There are
 21 typically four scheduled meetings but others can
 22 be scheduled as necessary. All of them are public
 23 meetings. Sometimes there is a strategic planning
 24 meeting, for example, and those may have occurred
 25 during this time.

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1 Q What is GIB's role?
 2 A The role of the GIB is as -- I view it, at least,
 3 as a policymaking board that directs ETF staff on
 4 matters related to the group insurance plan for
 5 the State of Wisconsin. And the GIB acts as a
 6 fiduciary in that role.
 7 Q Where does your understanding of GIB's role come
 8 from?
 9 A Experience, I guess.
 10 Q Okay.
 11 A I'm going to add something to that.
 12 Q Okay. Please do.
 13 A I believe it's also statutorily whatever the
 14 terminology is related to that, but statutorily
 15 dictated or prescribed, whatever the term is.
 16 Q So I think you mentioned health insurance only.
 17 Does GIB also set policy and oversee administration
 18 for life insurance?
 19 A Yes.
 20 Q Okay. So would this be --
 21 A And other programs.
 22 Q What other programs? I guess there is an income
 23 continuation insurance plan?
 24 A Correct.
 25 Q Okay. Maybe I can just -- or I guess we could

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1 mark this as a document. Why don't we do that.
 2 Let's just mark this as Farrell Exhibit 1.
 3 (Exhibit No. 1 marked for
 4 identification)
 5 Q I just printed this from the ETF website. I'm
 6 just wondering if you could read that description
 7 of the Group Insurance Board. Tell me if that's
 8 accurate from your understanding.
 9 A Do you want me to read it into the record or do
 10 you want me to just read it?
 11 Q I don't think we need to. Because it's an
 12 exhibit, if you want to read it to yourself, we
 13 don't have to, unless you would like to read it
 14 out loud. But just for time's sake, why don't you
 15 just read it.
 16 A Okay. Okay. Yeah. That is my understanding.
 17 Q Okay. It looks like, if I'm understanding
 18 correctly, to correspond with the board, you are
 19 going to send an email to an email address at ETF;
 20 is that right?
 21 A Yes.
 22 Q And you're going to -- I take it if you got
 23 written mail, that goes to ETF as well?
 24 A Correct.
 25 Q Then it's provided to you by the ETF staff, is

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1 that how it works?
 2 A Any correspondence, phone calls, emails, are
 3 directed through ETF.
 4 Q So if you could describe to me how -- would you,
 5 please, describe for me how GIB sets policy, then.
 6 MR. KILPATRICK: Objection. Vague.
 7 You can answer.
 8 A I guess I'm pausing for clarification myself.
 9 Q I'm just asking for how you do the specific job.
 10 It's nothing beyond that. How do you do that?
 11 What is it that the board does to set policy?
 12 A Well, there are matters the GIB will decide on
 13 throughout the year and year over year related to
 14 provision of the program, and the most typical
 15 method for gathering detail related to those
 16 policy decisions is through advice from ETF staff,
 17 advice or opinion.
 18 Q So how do you interact with other members of GIB?
 19 A We don't interact other than at meetings.
 20 Q So there are no personal phone calls or emails to
 21 ETF between or among GIB members?
 22 A No.
 23 Q In terms of policy setting, does that all occur at
 24 the public meetings themselves?
 25 A It is, but we receive materials in advance of

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1 meetings from ETF staff. Each member of the ETF
 2 workgroup or staff group will provide advisory
 3 memos to us on their specific area of
 4 responsibility, and those are provided in advance
 5 of the meeting. And then in advance of meetings I
 6 personally would talk with ETF staff in
 7 preparation for a meeting, but that does not
 8 include any other board members.
 9 Q And is that because you're the chair?
 10 A Yes.
 11 Q Okay. And if you could then help me understand
 12 the different ways that ETF helps GIB in carrying
 13 out its function, that would be helpful. So you
 14 mentioned phone calls. You mentioned advice from
 15 counsel -- I'm sorry, advice from staff. What are
 16 the different ways that happens?
 17 A The best answer to that would be that at various
 18 points in time during the course of a year there
 19 are functional decisions that need to be made by
 20 the Group Insurance Board to carry out its role or
 21 its task. So setting, for example, the annual
 22 open enrollment time for employees, determining
 23 what changes might be made to the uniform benefits
 24 package, determining who might administer a
 25 program or other vendors that may be brought in to

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1 serve the purpose of the state employees insurance
 2 plan.
 3 Q Does ETF staff advise you about all those
 4 different things?
 5 A Yes.
 6 Q Are there other parts of the GIB function that
 7 they advise you on? You mentioned several. I'm
 8 just asking, are there more?
 9 A Any other as necessary. I would say that the
 10 board relies on ETF staff whenever policy
 11 decisions are going to be made.
 12 Q Does the secretary of ETF have a role in that?
 13 A Yes.
 14 Q What is his role in advising the GIB board?
 15 A Well, from time to time he would sit in on my
 16 phone call discussions with ETF staff in
 17 preparation for the meetings. He also attends
 18 most meetings.
 19 Q Do you have a regular phone call set up with the
 20 secretary?
 21 A No. Not at all.
 22 Q How often do you speak to him?
 23 A How often do I speak to him?
 24 Q Yes.
 25 A Independent of a board meeting day, maybe twice a

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1 year. I guess I would say two to four times a
 2 year depending on the year and the topic areas.
 3 Q So you're saying two times per year in addition to
 4 the times when you might speak to him either at
 5 the board meeting or to prepare for -- or in a
 6 phone call to prepare for the meeting?
 7 A Yes. Well, when I'm talking to him, it's always
 8 to prepare for the meeting.
 9 Q Okay. I'm sorry. The two times per year you're
 10 saying is the preparation for the meeting or it's
 11 something else?
 12 A They would always be in preparation for a meeting.
 13 Q Who were the ETF staff that you -- why don't we
 14 say in 2016 that you were interacting with to
 15 assist you in doing the GIB work?
 16 A Primarily Lisa Ellinger.
 17 Q Anyone else?
 18 A Only at meetings.
 19 Q And who at meetings did you typically interact
 20 with?
 21 A Any of the functional supervisors for a specific
 22 role within providing the plan.
 23 Q Who were those people who had a role with respect
 24 to the end of the exclusion and the reinstatement
 25 of the exclusion?

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1 A On ETF staff, you're referring to?
 2 Q Right. Other than Lisa.
 3 A Well, Attorney David Nispel would have been one.
 4 Very likely, and I can't say that I spoke directly
 5 to him, but Secretary Conlin. I think Deputy
 6 Secretary, if I have his title right, Voelker, and
 7 they would have been in attendance at meetings,
 8 potentially with the exception of closed session
 9 meetings, and that varies depending on the need.
 10 Q Anyone else that you --
 11 A I'm trying to think if there is anybody else. No
 12 others that I can recall.
 13 Q So would it be accurate to say that GIB
 14 establishes the policies related to health
 15 insurance coverage that ETF has to follow or must
 16 carry out?
 17 A I'm not sure what you mean by that. Are you
 18 referring to its fiduciary responsibility or its
 19 policymaking responsibility?
 20 Q Yeah. Well, I'm really talking about policymaking
 21 as it relates -- Is policymaking the right way to
 22 talk about the ending of the exclusion and the
 23 reinstatement of that?
 24 A I believe that's the correct terminology.
 25 Q Okay. So would it be accurate to say that ETF

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1 staff are going to execute the decisions that you
 2 made so when GIB set the policy that we're going
 3 to get rid of the exclusion that ETF staff would
 4 execute that or carry that out?
 5 A Yes. That's accurate.
 6 Q And the same would be true when the board
 7 reinstated the exclusion, ETF staff would execute
 8 or administer that change?
 9 A Yes.
 10 Q And I believe you also said that ETF recommends
 11 policy changes at various times. That's one of
 12 the roles that they carry out; is that correct?
 13 A Yes.
 14 Q So would it be fair to say that ETF and GIB have
 15 responsibilities to design the health insurance
 16 benefits provided to state employees?
 17 A Yes.
 18 Q And to administer those benefits for state
 19 employees?
 20 A Or hire an administrator, yes.
 21 Q But it's ultimately GIB and ETF's role to
 22 administer the benefits?
 23 A Yes.
 24 Q Whether they do it directly or through hiring an
 25 administrator?

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1 A Yes.
 2 Q And when you say hiring an administrator, are you
 3 talking about the private insurance companies that
 4 are hired by ETF and GIB to provide the plans
 5 themselves or to administer the plans themselves?
 6 A Yes, and any other vendors.
 7 Q Okay. What other vendors would that include?
 8 A Data management vendors, wellness vendors.
 9 Q Okay. Does the ETF Office of Legal Counsel
 10 provide legal advice to the board, to GIB?
 11 A At meetings, yes.
 12 Q Why do you say at meetings?
 13 A I don't interact with them any other time.
 14 Q Do you receive emails from Mr. Nispel, for
 15 example, prior to meetings or do you only -- in
 16 other words, prior to a board meeting are there
 17 times when you would receive an email, for
 18 example, from the Office of Legal Service staff?
 19 I think I've got the right title of the department
 20 there.
 21 A If so, that would be very rare. And I can't
 22 actually recall a specific instance of getting an
 23 email from David Nispel.
 24 Q Have you ever spoken to the ETF lawyers other than
 25 at meetings?

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1 A There may have been a conference call or two over
2 the years. That would have included Lisa
3 Ellinger.
4 Q Do you recall any conference calls regarding the
5 exclusion?
6 A No, I don't.
7 Q So I just want to be sure I understand, then.
8 You're saying you interact with the Office of
9 Legal Service staff but that's only at meetings;
10 is that correct?
11 A Yes.
12 Q Or possibly through --
13 A With the possible exception of a phone call.
14 Q With the exception of the possibility of some
15 email or a couple phone calls. But they are
16 providing legal advice to you at that point or the
17 board?
18 A Yes.
19 Q Is that something they do on a regular basis for
20 the board?
21 A They attend meetings regularly, yes.
22 Q But do they -- In those meetings do they provide
23 advice, legal advice to the board?
24 A Yes, when necessary.
25 Q Do you happen to know what it means that GIB

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1 members are positions of state public office?
2 A No. My only reference to that would be we are a
3 public body that conducts public meetings and
4 dictates public policy to operate the programs.
5 Q Okay. And we talked about the private health
6 insurance companies. Let me just make sure that
7 my understanding is correct. When you contract
8 with a private insurance company, they are the
9 companies that are administering the state health
10 insurance plans; is that right?
11 A Yes.
12 Q And they are doing that under -- they are required
13 to provide the coverage that ETF and GIB decide
14 they have to provide; is that right?
15 A By contract, yes.
16 MR. KNIGHT: Let's go off the
17 record.
18 (Discussion held off record)
19 MR. KNIGHT: What I'm doing is
20 writing the document assigned by the
21 Department of Justice to this on the bottom
22 here.
23 (Exhibit No. 2 marked for
24 identification)
25 Q So, Mr. Farrell, this is actually just the first

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1 couple pages of what I understand is one of the
2 contracts. Is that your understanding?
3 A Yes. It's the contract I referred to before.
4 Q Okay.
5 A An example of a contract.
6 Q Okay. Great. And this is -- I believe this is
7 for the -- it looks like it's for the period
8 January 1, 2018, through December 31, 2018?
9 A Correct.
10 Q So I have a version that has -- frankly, I don't
11 have the complete version because it's, like,
12 500 pages long, but it sounds like you're okay
13 with telling me this at least is the first few
14 pages of it. This would be an accurate copy of
15 one of the contracts?
16 A Yes.
17 Q Okay. And is this the same type of contract that
18 you would have signed for the 2017 year period,
19 January 1, 2017, through 12/31?
20 A Yes.
21 Q Okay. And these are, as you said, the contracts
22 between -- it looks like, as I'm understanding it,
23 it's between the State of Wisconsin Group
24 Insurance Board and the State of Wisconsin
25 Department of Employee Trust Funds with the

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1 contractor who is here, MercyCare Insurance
2 Company; is that right?
3 A Yes, it is.
4 Q And this would be one of the plans for state
5 employee health insurance benefits?
6 A Yes, it is.
7 Q And there are several of these?
8 A Yes. I believe in 2016 there were 18 of them.
9 Q Are any of these self-insured plans?
10 MR. KILPATRICK: Objection as to
11 vagueness. It's best to talk about the year.
12 Q Well, for 2018, for this year, were any of these
13 self-insured plans?
14 A Portions of the plan in total can be self-insured.
15 For example, the dental plan -- I don't recall if
16 the dental plan was self-insured for the year
17 2016. I know it is self-insured now. My
18 understanding of the health insurance plans for
19 that year were that they were all fully insured,
20 none of them were self-insured, with an exception
21 being one of the plans provided by WPS, and I
22 can't recall who the eligibility -- or the members
23 were in that plan. But there was one element
24 of -- one small element of the plan that was
25 self-insured through WPS.

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1 Q To be clear, we're talking about 2018. Is that
2 what you were talking about was the year 2018?
3 A For the dental plan, yes. I don't recall if 2016
4 or '17, if the -- well, I'm going to back up.
5 In 2016 I don't recall if the dental plan was
6 self-insured or not. I believe it was in 2017 and
7 into 2018. That only refers to the dental plan.
8 Q So 2017 to 2018, so that's not this contract.
9 A That is not.
10 Q But for the previous year, which plans were
11 self-insured? Were there any plans that were
12 self-insured?
13 A Just the WPS plan, with a very small enrollment
14 number.
15 Q And is that because the legislature voted against
16 allowing GIB to have self-insured plans?
17 A No. That preceded any of that discussion about
18 self-insured plans. The WPS plan goes back many,
19 many years. The WPS plan also is subject to the
20 same uniform benefits that all of the other plans
21 had.
22 Q So in 2017 -- well, let's say currently, do any of
23 the plans receive Medicare funds? Maybe I should
24 ask it this way. Is there Medicare coverage as a
25 part of any of these plans currently?

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1 A I don't know how the plans interact with Medicare,
2 but there is retiree coverage provided by the
3 State of Wisconsin.
4 Q Okay. And would this particular plan provide for
5 retiree coverage or is this just for currently
6 employed employees?
7 A No, it would provide for retirees as well.
8 Q So this is complete. And so to the extent that
9 those retirees are getting Medicare, there would
10 be a Medicare portion to the plan?
11 A That is my understanding, that the plan -- or this
12 plan could serve as a Medicare supplement, for
13 example. That may be the wrong terminology, but
14 in that context it would serve as what looks like
15 a supplement.
16 Q And so for the years -- for 2016, 2017, was there
17 also a Medicare -- or those plans also covered
18 retirees?
19 A Yes.
20 Q Okay. And those retirees -- some of those
21 retirees presumably received Medicare as far as
22 you know?
23 A Yes. If I could clarify.
24 Q Sure. Please do.
25 A That includes retirees under age 65 and over age

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1 65, if that helps.
2 Q What is your role during the GIB meetings?
3 A I'm currently the chairman.
4 Q Right. But as chairman, what is your role?
5 A To carry out the agenda subject to Robert's Rules
6 of Order, to clarify motions, and to conduct votes.
7 Q And ETF assists you in these different parts of
8 your role?
9 A Yes, when necessary. For example, if there is the
10 need for a roll call vote on an issue, ETF will
11 conduct a roll call vote -- ETF staff will conduct
12 a roll call vote.
13 Q Is it your understanding that Secretary Conlin is
14 ultimately responsible for making sure the GIB
15 decisions are carried out by the ETF staff?
16 A I can't say that I know that, because I believe
17 it's statutorily prescribed as well.
18 Q Is that your understanding of how it works?
19 A What?
20 Q That he's responsible for making sure that the GIB
21 decisions are carried out?
22 A Yes.
23 Q Does Mr. Conlin have the authority to speak for
24 GIB?
25 A I believe he does.

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1 Q And you also share that authority; is that right?
2 A I don't know what you mean by that.
3 Q The ability to speak for the board, GIB?
4 A I do during meetings, yes, but not otherwise.
5 Q You don't speak publicly about GIB?
6 A No, I don't.
7 Q Does Mr. Conlin?
8 A I don't know the answer to that.
9 Q Have you ever communicated in any way with my
10 clients, Alina Boyden and Shannon Andrews?
11 A No.
12 Q What do you know about them?
13 A I don't know anything about them.
14 Q Are you familiar with the word transgender?
15 A Yes.
16 Q And what is your understanding of what it means to
17 be transgender?
18 A A person who has undergone a sexual transformation
19 from one gender to another.
20 Q How did you come to that understanding?
21 A Probably the best answer is through my private
22 practice of 20-plus years. It's a matter that we
23 would ordinarily discuss with insurance companies,
24 plan members, for example.
25 Q Have you ever interacted with someone you knew to

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1 be transgender?
2 A Yes.
3 Q On what occasions?
4 A Well, there may be a suspect case of transgender
5 versus not, and if you've been told somebody
6 indicates that they're transgender, well, then if
7 there is an interaction, then that is how that
8 could occur. So if I have friends --
9 Q Can you tell me a little more about a circumstance
10 that might come up in?
11 A Sure. If I have friends who are homosexual, for
12 example, who would introduce me to transgender
13 friends of theirs, that kind of interaction
14 socially can occur.
15 Q Has that ever happened?
16 A Yes.
17 Q Do you have any understanding of the word gender
18 dysphoria?
19 A Very limited. I understand that it is an
20 insurance or medical diagnosis, probably medical
21 diagnosis is a better way to phrase that, but that
22 leads to how an insurance company might handle
23 coverage for that medical condition.
24 Q So I believe you mentioned that it's happened that
25 someone has introduced you to someone who

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1 identified as transgender; is that right?
2 A That's the best way to put it, yes.
3 Q Have you worked or otherwise come into contact
4 with people who you knew to be transgender?
5 A Not that I'm aware of.
6 Q Do you know when the exclusion first came into
7 place?
8 A As far back as I can remember, health insurance
9 plans have contained this exclusion. My first
10 recall of it would have been a 1986 document from
11 Blue Cross/Blue Shield for a plan that I was
12 administering beginning in 1991 which included
13 this exclusion. And every insurance company
14 contract that I've known since then has included
15 this exclusion, up until 2016.
16 Q So to go back to your work at Davis Insurance --
17 is that the right --
18 A David.
19 Q David Insurance.
20 A David Insurance.
21 Q Do you provide insurance to -- I mean, is your
22 position to provide insurance to private
23 individuals or to companies or what kind of --
24 A Yes. Both of those.
25 Q Both.

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1 A Public entities as well: school districts,
2 cities, villages, private employers, individuals.
3 Q And prior to 2016 was there never an entity or
4 individual who asked for a policy that did not
5 include this kind of exclusion?
6 A No. Not that I am aware of.
7 Q How did it come about that you came into contact
8 with a policy -- let me make sure I'm remembering
9 the way you put it. You say in 2016 you came into
10 contact with a policy that did not have the
11 exclusion in it or did I misunderstand?
12 A No. It was under consideration in 2016 what to do
13 if the federal government made the exclusion
14 unacceptable or forced rescinding of the
15 exclusion. And that would have begun in early
16 2016 as discussions with Health and Human Services
17 unfolded with regard to their ultimate ruling
18 which led us to withdraw the exclusion in July of
19 2016 as the GIB.
20 Q When you're saying you first came into contact
21 with this issue of getting rid of the exclusion,
22 it was because of the Affordable Care Act
23 nondiscrimination provision?
24 A Among other things, sure. Insurance companies
25 would have announced their intention to remove the

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1 exclusion, for example, through communication,
2 through industry sources in my private practice.
3 That could have occurred before the July decision
4 in 2016 for the Group Insurance Board.
5 Q What is your understanding of the basis for this
6 exclusion?
7 A Well, not to mention the Affordable Care Act --
8 Q No. I'm talking about the exclusion. Let's leave
9 out the Affordable --
10 A Okay.
11 Q What's the basis for having that kind of
12 exclusion, at least your understanding of it?
13 A If I go back to my earliest days of recognizing
14 the exclusion existed, I would say that it was --
15 the desired surgery would have been, not the word
16 experimental, but a preference of the covered
17 member, just as cosmetic surgery, for example, has
18 always been an exclusion. So that's a preference
19 of the member. And there are other exclusions
20 that could be -- could have been developed for
21 similar reasons throughout the history of health
22 insurance plans.
23 Q Okay. Are you familiar with the science that
24 shows that the surgery is medically necessary to
25 treat this condition?

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1 A I'm not familiar with the science, but I do know
2 that medical necessity is the basis for most
3 coverage decisions -- for all coverage decisions
4 with health insurance plans.
5 Q But you weren't familiar with that?
6 A I'm not familiar with the science, no.
7 Q Is it your understanding that this exclusion
8 covers surgery?
9 A I believe it covers more than surgery.
10 Q Okay. So your understanding is that it also
11 covers hormone therapy?
12 A Yes.
13 Q Anything else?
14 A Sure. Mental health therapy. Prescription drug
15 treatment, and perhaps others.
16 Q Are you supportive of having this kind of
17 exclusion?
18 MR. KILPATRICK: Objection. Vague.
19 A I don't have an answer for that.
20 Q Can you answer? I mean, do you have -- is it your
21 view that those exclusions should exist?
22 A It's not my place to indicate what my preference
23 is.
24 Q Well, I mean, ultimately you're a person who makes
25 a board vote about whether to have an exclusion or

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1 not have an exclusion, so why wouldn't it be your
2 place?
3 A That would be my opinion versus my duty. I
4 separate those two.
5 Q Okay. Well, what is your opinion, then?
6 A I don't care if it's included or not included in a
7 health plan.
8 Q Okay.
9 A It has no bearing on me.
10 Q Well, in terms of your duty, why do you -- do you
11 support in your duty on behalf of the Group
12 Insurance Board -- I mean, I take it as a Group
13 Insurance Board member your role is obviously to
14 set policy, but is your role to establish policy
15 to provide coverage for the medical care that is
16 medically necessary or needed by members?
17 A Well, that's a bigger question, I think, than just
18 that simple. I have multiple roles in carrying
19 out the contract for not only what I do for the
20 Group Insurance Board but what I do in my own
21 private practice.
22 Q I'm just asking about the Group Insurance Board.
23 A Okay. So then I have to say I'm not clear on the
24 question.
25 MR. KNIGHT: Sorry. Can you read

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1 it back?
2 (The following question was read:
3 "Q. Well, in terms of your duty,
4 why do you -- do you support
5 in your duty on behalf of the
6 Group Insurance Board -- I
7 mean, I take it as a Group
8 Insurance Board member your
9 role is obviously to set
10 policy, but is your role to
11 establish policy to provide
12 coverage for the medical care
13 that is medically necessary
14 or needed by members?")
15 A Yes.
16 Q So in light of that role, I'm wondering why you
17 would vote to reinstate this kind of exclusion.
18 A We felt that in the lead-up to the July 2016
19 meeting that Health and Human Services provided a
20 clear ruling on whether health plans could
21 continue the exclusion or not and were advised at
22 the time that we could not continue to have the
23 exclusion, and so the board voted I think
24 unanimously, if I recall correctly, to withdraw
25 the exclusion.

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1 Q Okay. But in terms of your role to provide the
2 coverage that is needed by members, I'm wondering,
3 why would you then vote to reinstate the exclusion?
4 A Exclusively because of the expected and then
5 ultimately known injunction that occurred at the
6 end of December of 2016. But we knew that was an
7 ongoing case during the course of 2016.
8 Q So is it your understanding that the injunction
9 prevented you from providing the coverage?
10 A I'm not an attorney, so I guess I can't comment or
11 even explain what "an injunction" means in legal
12 terms, but my understanding is that it put on hold
13 our withdrawal, or, I know, a lot of double
14 negatives, our rescinding of the decision -- let
15 me back up a step -- our removal of the exclusion.
16 It put it on hold.
17 Q Okay. Where did that understanding come from?
18 A Of what an injunction means?
19 Q Of the Texas litigation and its impact on the
20 reinstatement of the exclusion.
21 MR. KILPATRICK: Objection to the
22 extent it would reveal attorney-client
23 communications. I'll direct you not to
24 answer.
25 Q Did you have any other understanding of why you

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1 were required -- or why you felt like you must
2 vote to reinstate the exclusion other than advice
3 of counsel?
4 A Just to be clear, you're referring to the action
5 of December 30th?
6 Q Correct.
7 A Okay. And if you wouldn't mind please repeating
8 the rest of that question. I'm in July and then
9 I'm in December. So if you would clarify
10 timeframe for me.
11 Q Okay. Well, you reinstated the exclusion
12 December 30th of 2016; right?
13 A That is correct, yes.
14 Q You voted to do it?
15 A Yes.
16 Q And I'm just trying to understand whether you did
17 that on advice of counsel or whether you had other
18 reasons for reinstating the exclusion.
19 A It was entirely because of the injunction.
20 Q It was entirely because counsel advised you that
21 you should vote to reinstate the exclusion. Is
22 that your testimony?
23 MR. KILPATRICK: Objection, again,
24 as to revealing attorney-client communications.
25 I instruct you not to answer.

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1 MR. KNIGHT: He spoke publicly --
2 he publicly voted to reinstate the exclusion.
3 I believe I'm entitled to ask about the
4 reason for that. I'm not asking him for the
5 advice, the specific advice. I'm simply
6 asking whether that was the basis for voting
7 to reinstate the exclusion.
8 Q Can you answer my question?
9 MR. ROTH: I'll instruct you not to
10 answer if it would reveal attorney-client
11 communications.
12 Q If you can answer why you voted -- why did you
13 vote to reinstate the exclusion. That's my only
14 question.
15 A My only response to that is because of the
16 injunction.
17 Q And your information about the injunction came
18 from counsel; is that correct?
19 A Well, no. It was a public media discussion as
20 well.
21 Q As to --
22 A Throughout 2016.
23 Q I understand that. But as to the meaning of the
24 exclusion, that information came from counsel; is
25 that correct?

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1 A Not just counsel.
2 Q Where else did it come from?
3 A I deal with insurance companies every day who had
4 to make their decisions about how to handle or not
5 handle withdrawing the exclusion, and they did it
6 in several different ways. And that was ongoing
7 throughout 2016. So I'm informed beyond counsel.
8 Q Okay. Who else told you that the injunction was
9 the reason why you should vote to reinstate the
10 exclusion?
11 MR. KILPATRICK: Objection. I
12 believe that mischaracterizes the testimony.
13 MR. KNIGHT: I suppose you could
14 read back the testimony, although that's
15 probably going back a little bit.
16 Q Is that an accurate reflection of your testimony,
17 that you -- I believe you said several times
18 that you voted to reinstate the exclusion on
19 December 30th of 2016 because of the injunction?
20 MR. KILPATRICK: Right. But you
21 had just talked about someone telling him to
22 vote that way, and I don't believe he
23 testified to that.
24 Q Can you answer my question?
25 A On December 30th of 2016, there was a closed

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1 session of the board where consideration was given
2 about reinstating the exclusion with all board
3 members and counsel present.
4 Q I understand that. Did you vote to reinstate the
5 exclusion because of the injunction?
6 MR. KILPATRICK: Objection. Asked
7 and answered.
8 A Yes, I voted because of the injunction, as I've
9 said.
10 Q Okay. I guess you mentioned that you had other
11 sources of information about the injunction, and
12 I'm just trying to understand, other than counsel,
13 what are your other sources of information, other
14 people you spoke to about the injunction that led
15 to this vote.
16 A Specifically health insurance companies would have
17 had to address this issue, both for individuals
18 and groups, and it would have been every insurance
19 company. I would have actually sought opinions
20 from insurance companies on how they were going to
21 handle the exclusion and whether they were going
22 to withdraw it or not. And then after December 30
23 whether -- if they had withdrawn the exclusion if
24 they were going to reinstate it, and that can
25 include any insurance company that I deal with.

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1 Q In terms of those insurance companies, did any of
 2 those insurance companies decide that they were
 3 going to go ahead and get rid of the exclusion
 4 even though -- even after they learned that there
 5 was an injunction in the Texas case?
 6 A I'm not aware of any that reinstated the
 7 exclusion. I'm not aware of any.
 8 Q Oh. So all of those private insurance companies
 9 just went ahead and got rid of the exclusion?
 10 A That is my understanding. And I can demonstrate
 11 examples of that. I know Molina Healthcare in the
 12 individual space went ahead. UnitedHealthcare
 13 in the group and individual space went ahead and
 14 withdrew the exclusion. And those are two I know
 15 directly from inquiry.
 16 Q Okay. Well, if those private insurance companies
 17 chose to not reinstate the exclusion, why is it
 18 that the board chose to do so?
 19 A That is a matter of timing.
 20 Q How so?
 21 A December 30th, it was our understanding that the
 22 injunction was going to occur and, because of
 23 that, voted to reinstate the exclusion.
 24 Q Okay. Well, couldn't you have voted to get rid of
 25 it at a later point? I mean, it's still there;

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1 right? The exclusion is still there?
 2 A It is. I believe that --
 3 Q I'm just trying to understand why -- I'm sorry.
 4 A The board also indicated a desire to revisit, if
 5 necessary, removing the exclusion at a later time.
 6 Q Have they done that?
 7 A Yes, in a very limited way. May 24th of 2017,
 8 there was a Group Insurance Board meeting on that
 9 date where an offer to reconsider was made.
 10 Q Who made that offer to reconsider?
 11 A Herschel Day, a board member.
 12 Q And what happened with that offer?
 13 A It was not taken up -- or it was not voted to
 14 reconsider.
 15 Q Why not?
 16 A Pardon me?
 17 Q Why not?
 18 MR. KILPATRICK: Objection. It
 19 calls for speculation.
 20 Q Was there a vote taken?
 21 A I believe there was, but I am not certain of that.
 22 I would actually need to look back at the minutes
 23 to the meeting.
 24 (Exhibit No. 3 marked for
 25 identification)

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1 Q Mr. Farrell, you've seen this document before, I'm
 2 sure?
 3 A Yes, I have.
 4 Q This is the document you received prior to the
 5 July meeting when you voted to end the exclusion,
 6 when the board voted to end the exclusion?
 7 A That is correct.
 8 Q And this includes the ETF analysis that -- if you
 9 need a break -- okay. So it includes the ETF
 10 analysis that ETF self-insured plans -- or with
 11 respect to the self-insured plans -- wait. Let me
 12 look at this again.
 13 A Uh-huh.
 14 Q So I'm looking at, just so you can see where I'm
 15 reading, page 3.
 16 A Yes, I see.
 17 Q So with respect to ETF self-insured plans, ETF
 18 meets the definition of a covered entity, and then
 19 it goes on to explain that ETF accepts Medicare
 20 Part D subsidies which are federal financial
 21 assistance through the Department of Health -- the
 22 federal Department of Health and Human Services.
 23 So I'm not reading exactly, but is that your
 24 understanding of what this says?
 25 A Yes.

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1 Q And then goes on to talk about the insured plans,
 2 that they're a part of the health program
 3 activity.
 4 So which are the -- well, first of all, did
 5 you have a conversation with legal counsel, ETF
 6 counsel, Mr. Nispel, or any ETF legal counsel,
 7 about this issue in terms of ETF being a covered
 8 entity?
 9 A Discussion, no. But meeting materials, for
 10 example, from David Nispel would have included
 11 advice that indicated we were a covered entity.
 12 Q Right. So this is referencing self-insured plans.
 13 Which are the self-insured plans that ETF has?
 14 A The WPS plan I mentioned earlier.
 15 Q Are there any others?
 16 A None that I'm aware of, that are medical plans, at
 17 least.
 18 Q Does that plan still exist?
 19 A I can't answer who administers the plan any
 20 longer. WPS no longer administers it, and I'm
 21 just -- sorry. I can't tell you who currently
 22 does.
 23 Q But there is such a plan. You're just not sure
 24 who administers it?
 25 A My understanding is yes.

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1 Q Why is there just the one self-insured plan, do
 2 you know?
 3 A My understanding is that was prescribed long ago
 4 by Chapter 40 statute to accommodate, for example,
 5 people who were not in the service area of the
 6 local plans. It acted like a catchall for
 7 somebody who could not participate in a local HMO
 8 plan, for example.
 9 Q And the self-insured, if I'm understanding
 10 correctly, is that the circumstance in which the
 11 state has all the risk, they pay all the health
 12 insurance costs?
 13 A Yes. However, whether the state would seek to
 14 engage another party for what's called stop loss
 15 or reinsurance, I don't know the answer to that,
 16 on large claimants, for example. That's what
 17 would normally happen in my private practice is
 18 there would be additional layers of insurance
 19 contract to protect against large claims for a
 20 self-insured plan. I don't know if that exists
 21 with this plan.
 22 Q Okay. And when we are talking about here this ETF
 23 self-insured plan, would this plan be of the same
 24 nature as the one we looked at earlier, that it's
 25 a plan that is set up between -- or it's a

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1 contract for a plan set up between ETF, GIB, and
 2 the private company?
 3 A Yes, and it would include uniform benefits.
 4 Q And it would include the same uniform benefits --
 5 A Correct.
 6 Q -- as all the other plans had?
 7 A Correct.
 8 Q Then it says ETF accepts Medicare Part D
 9 subsidies. I looked at this, but I've now forgot.
 10 What does that cover?
 11 A Prescription drug.
 12 Q Prescription drugs, okay. Are you aware of any
 13 other federal funding that is accepted by ETF or
 14 GIB?
 15 A Not that I'm aware of. I mean, there may be other
 16 interactions between Medicare and ETF with regard
 17 to providing the whole package of retiree
 18 coverage. How those interactions occur, I'm not
 19 aware.
 20 Q And Medicaid funds, do they come to ETF or is that
 21 a different entity?
 22 A My understanding is that would be a different
 23 entity.
 24 Q Do you know which one that is?
 25 A Through the Department of Health Services and

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1 through the Medicaid program that's provided to
 2 Medicaid eligible participants.
 3 Q Okay. For the Medicaid Part D, do you know if --
 4 A Medicare?
 5 Q I'm sorry. Medicare Part D, do you know if those
 6 funds come directly to ETF or whether they -- do
 7 you know where those funds go? In other words,
 8 who does HHS send the funds to, do you know?
 9 A I don't know. I don't know if there are funds
 10 transacted at a pharmacy, for example, or what the
 11 sharing mechanism for those transactions would be.
 12 If they're done real time, for example, or if
 13 they're done after the fact.
 14 Q So at the board meeting itself, do you recall who
 15 presented the issue with respect to the removal of
 16 the exclusion?
 17 A Which board meeting?
 18 Q The July board meeting. July 12th.
 19 A Yes. This would have been the presentation of
 20 that issue, this letter dated June 22. Myself, I
 21 had known about it prior to this date, but other
 22 board members may not have.
 23 Q So was it Tara Pray who presented the issue?
 24 A I can't say that for certain, but it would be
 25 likely that she would have presented this issue,

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1 yes. I can't speak to for certain if she was at
 2 that meeting or if somebody did it on her behalf,
 3 but it would be very likely that she would.
 4 Q Did any of the ETF lawyers speak to the issue, do
 5 you recall?
 6 A I can't say that I recall discussion with
 7 attorneys at the July 12th meeting. I'm not
 8 saying it couldn't have happened, but I don't
 9 recall any direct conversation or inquiry.
 10 Q Would it be helpful to see the minutes from that
 11 meeting in terms of remembering who presented the
 12 issues?
 13 A Yes, it would.
 14 (Exhibit No. 4 marked for
 15 identification)
 16 Q So I'm handing you what we marked as Farrell
 17 Exhibit 4. And please, am I mispronouncing your
 18 name? I should have asked earlier. Is it Farrell?
 19 A Farrell.
 20 Q Okay. Good. Are these the minutes from the
 21 July 12th meeting?
 22 A Yes, they are.
 23 Q And referring to pages 3, 4, and a little bit on
 24 5, this seems to be where that issue is discussed.
 25 A I don't know where on page 5 you're referring to

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1 this issue.
 2 Q Oh, so the request for proposal is a different
 3 issue, so it looks like it's just 3 and 4.
 4 A Okay. Yes.
 5 Q So it talks about Ms. Pray referring the board to
 6 the memo. Does that refresh your memory? Do you
 7 remember her talking about this issue?
 8 A Yes.
 9 Q And then it talks about at the bottom of the page,
 10 I don't know whether she was saying this or
 11 whether Office of Legal Counsel staff were
 12 speaking. Do you recall after looking at the
 13 minutes?
 14 A If I could take a minute, please.
 15 Q Sure. Please do.
 16 A Okay. It does not remind me whether or not legal
 17 staff advised during the meeting.
 18 Q Okay. Because it could have been just reference
 19 to the memo itself from Office of Legal staff?
 20 A Yes. There was a memo. I'm sorry.
 21 Q I was trying to say the full Office of Legal
 22 Service staff. I believe I've got that right.
 23 A Excuse me.
 24 Q Okay. When did you first hear about anything
 25 related to restoring the exclusion after the board

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1 vote on July 12th?
 2 A I couldn't give you a specific date, but it would
 3 have been in the fall of 2016 related to
 4 litigation in Texas and other discussion just in
 5 general, including media discussion.
 6 Q And who did you hear about this from, other than
 7 media? Was there someone you spoke to?
 8 A Well, no. I mentioned earlier that insurance
 9 carriers were dealing with it as well, so it would
 10 have been from multiple sources.
 11 Q Did you speak to anyone at the governor's office
 12 about restoring the exclusion?
 13 A Yes. My recall is that December 29th, and if I'm
 14 correct on the date, and I'm trying to know that
 15 for certain, but that is my understanding, I would
 16 have spoke to Casey Himebauch and J.P. Wieske.
 17 Q I'm sorry. You spoke to them on December 29th or --
 18 A I believe on December 29th.
 19 Q Okay. You had not spoken to the governor's office
 20 about the exclusion prior to that?
 21 A I don't know. I don't recall.
 22 Q Did you speak to anyone at ETF about the
 23 reinstatement of the exclusion?
 24 A Yes.
 25 Q Who?

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1 A Lisa Ellinger and possibly others. Possibly
 2 Secretary Conlin.
 3 Q What did you and Mr. Himebauch talk about with
 4 respect to this on December 29th?
 5 A Just that it was expected that an injunction was
 6 going to occur prior to the 31st of December and
 7 that had bearing on whether the state should go
 8 forward with removing the exclusion.
 9 Q How did he explain that it had bearing on it?
 10 A Well, I would have already known that, actually.
 11 Just knowing about the Texas case and knowing what
 12 had occurred in July and anything that occurred
 13 between July and the end of December. It is an
 14 awareness thing that I would have had throughout
 15 that timeframe.
 16 Q When did you first speak to ETF staff about this?
 17 A Well, there was a meeting in mid-December also
 18 where there was discussion of the issue as well.
 19 So preceding that meeting it would have been
 20 another instance. It's possible that I would have
 21 spoken to Casey Himebauch even prior to that
 22 meeting. It's possible that I could have spoken
 23 to J.P. Wieske prior to that meeting as well. In
 24 fact, I remember one such discussion about how
 25 insurance companies in general, and this is J.P.'s

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1 role as the deputy commissioner of insurance, I
 2 would have asked how insurance companies are
 3 handling the issue and the potential that the
 4 Texas case would result in an injunction.
 5 Q So other than ETF staff, Mr. Himebauch, and
 6 Mr. Wieske, is there anyone else you spoke to
 7 about the reinstatement of the exclusion prior to
 8 the December 30th meeting?
 9 A The December, I believe it was, 16th meeting would
 10 have also included discussion of the topic, and I
 11 said before I believe that I may have had
 12 discussions with others prior to that meeting as
 13 well.
 14 Q Who?
 15 A J.P. Wieske or potentially Casey Himebauch and
 16 staff from ETF. I'm going to back up. Lisa
 17 Ellinger from ETF. Potentially others that I
 18 can't recall.
 19 Q When did you first learn that the Department of
 20 Justice was going to draft a memo asking the board
 21 to reinstate the exclusion?
 22 A When did I first learn that?
 23 Q Yes.
 24 A I don't think I learned it prior to receiving the
 25 memo.

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1 Q Did you have any other -- Did you have any
2 conversations with DOJ about anything else prior
3 to receiving the memo?
4 A No. Not that I'm aware of. Other than I knew DOJ
5 would be present at the December 16th meeting.
6 Q How did you know that?
7 A I don't know if it was an agenda item in that
8 regard or I was told that. I don't recall the
9 agenda item, specifically if DOJ staff are
10 indicated on the agenda, but I was told they would
11 be present.
12 Q By whom?
13 A That could have been Lisa Ellinger. It could have
14 been J.P. Wieske. It may have been Casey Himebauch.
15 I don't know for certain.
16 MR. KNIGHT: Let's mark that.
17 (Exhibit No. 5 marked for
18 identification)
19 Q Farrell Exhibit 5 is an email with a sentence
20 redacted from it. Do you recall getting this
21 email, presumably without the redaction?
22 A Yes.
23 Q And this would have been August 11, 2016?
24 A Yes.
25 MR. KNIGHT: Okay. And then let's

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1 mark this.
2 Q Is that when you first received that DOJ memo?
3 A I see that there is an attachment to this. I
4 don't remember what that attachment was. I don't
5 have it in front of me, so I don't know what this
6 is referring to.
7 Q Okay. Do you recall receiving a Department of
8 Justice memo dated August 10 to the board?
9 A Not directly. But if it exists where you could
10 show it to me, then I could identify it.
11 MR. KNIGHT: We'll go ahead and
12 mark this.
13 (Exhibit No. 6 marked for
14 identification)
15 Q Okay. This actually is a memo to the board from
16 December 29th; is that right?
17 A Among other memos, yes.
18 Q Okay. Well, it looks like -- it looks like a memo
19 from December 29th which then includes, as an
20 example, the August 10th DOJ memo.
21 A Yes, and others.
22 Q Okay. So have you seen -- I take it you've seen
23 this August 10th memo from the Department of
24 Justice?
25 A Yes, I have.

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1 Q Do you recall whether that's the memo you received
2 attached to the previous -- to Exhibit 5?
3 A Well, to clarify, the email refers to August 11th,
4 so the December 29th memorandum would not have
5 been included or the December 8th would have not
6 been included. The DOJ memo dated August 10th and
7 David Nispel memo dated August 11th are what I --
8 and I'm not certain of this, but those are what I
9 believe would have been included as this
10 attachment that's referred to in this email.
11 Q Had you -- I guess I'll go back to my previous
12 question. Had you received the August 10th DOJ
13 memo prior to August 11th?
14 A I don't recall the timing, if one was received
15 before the other or if they were received at the
16 same time.
17 MR. KNIGHT: Okay. Let's mark
18 this, then.
19 (Exhibit No. 7 marked for
20 identification)
21 A I may add, my understanding is, in fact as I look
22 at this email, it refers to the drafting of ETF's
23 legal counsel working on a response. So I would
24 say that allows me to recall that I would have
25 gotten the August 10th memo first and probably got

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1 the August 11th memo at a later time, perhaps the
2 next day or day following.
3 Q Here you are. So that would be Exhibit 7,
4 Mr. Farrell.
5 A Uh-huh. Yes. This confirms what I just said,
6 actually.
7 Q Okay. So this is when you received the response
8 memo from ETF counsel, and then obviously the
9 document that we looked at before includes both of
10 them together as attachments to the December 29th
11 memo; is that right?
12 A Yes. As I said, I didn't know if I received them
13 the same day or if it was a day following. But
14 now this allows me to recall that it was likely
15 the day following. Whether I had actually seen
16 the August 10th memo on August 10th, I actually
17 cannot tell you that for certain.
18 Q So it's possible you got it from somebody other
19 than Ms. Ellinger?
20 A No.
21 Q Okay. So Lisa Ellinger says in this email that
22 she's going to be talking to you, there will be
23 a call tomorrow. So did you speak to her on
24 August 12th?
25 A I would only assume that I did. I don't know

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1 why -- I mean, I don't know why that would have
 2 been scheduled because there was no meeting
 3 immediately coming up. So our normal practice, as
 4 I indicated earlier, was to talk on the Friday
 5 preceding a normally scheduled meeting. And I
 6 don't know that there were meetings scheduled
 7 between July 12th and December of 2016. There
 8 could have been and I just maybe don't recall
 9 those.
 10 Q Do you recall that conversation on the 12th?
 11 A Do I recall it? No. I can't directly recall
 12 that. With one exception. I would have said that
 13 we have contrary opinions.
 14 Q And, I'm sorry, what do you mean by "we have
 15 contrary opinions"?
 16 A Well, my reading of the August 10th memo from
 17 Department of Justice and August 11th memo from
 18 David Nispel would have led me to say these two
 19 memos don't agree with each other. And without
 20 reading them directly and reading them again, I
 21 can't even characterize what those differences
 22 might be. I haven't read these memos since that
 23 time.
 24 Q Had the Department of Justice ever taken a
 25 position in your experience about health insurance

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1 coverage issues in the past?
 2 A I don't know. I don't know if Department of
 3 Justice would have weighed in on health insurance.
 4 Q In your experience have they ever done so?
 5 A Not with me, no, and not in my experience.
 6 Q And have they done it since this time in your
 7 experience?
 8 A Well, not that I'm aware of, but litigation exists
 9 related to health plans all the time. So I don't
 10 know if our Department of Justice is involved in
 11 other litigation.
 12 Q Okay. I'm asking, I guess, about your -- about
 13 their interactions with the Group Insurance Board,
 14 whether they have taken a position about coverage
 15 issues since they did in this particular instance.
 16 A I don't accurately know the answer to that. My
 17 belief is no. But I don't know if they have
 18 provided an opinion.
 19 Q What I'm asking is whether you recall them
 20 submitting a memo about whether coverage should be
 21 provided or not in the way they did here.
 22 A Not that I'm aware of.
 23 Q And as you say, they were two conflicting
 24 opinions. Did you reach a conclusion about which
 25 memo you should follow or whether it was

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1 Department of Justice or ETF's advice you should
 2 follow?
 3 A Did I reach a conclusion? No. I would leave it
 4 up to the board.
 5 Q So did the board reach that conclusion?
 6 A Eventually, yeah, on December 30th they reached a
 7 conclusion.
 8 Q And they did so in that closed session in which
 9 they met with Department of Justice counsel?
 10 A Well, the action was done in open session, but the
 11 discussion occurred in closed session with
 12 Department of Justice Attorney Kevin Potter and
 13 with David Nispel present as well and then the
 14 full board of the Group Insurance Board.
 15 Q Did the Department of Justice represent the board
 16 at that time?
 17 MR. KILPATRICK: Objection to the
 18 extent it calls for a legal conclusion.
 19 A I don't know. I don't know from a legal
 20 perspective. I suspect that the Group Insurance
 21 Board has legal backup when it is necessary,
 22 whether it's from our own legal counsel or others
 23 if necessary for the State of Wisconsin, just as
 24 it would have backup from other departments within
 25 the state, Legislative Audit Bureau, Fiscal

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1 Bureau, whatever those may be.
 2 MR. KNIGHT: I don't know if it
 3 would help people. Do we need to take a
 4 break? I mean, we're -- sorry. Can we go
 5 off the record for a minute?
 6 (Recess)
 7 MR. KNIGHT: Back on the record.
 8 And you're still under oath, Mr. Farrell.
 9 THE WITNESS: Okay.
 10 MR. KNIGHT: Let's mark this
 11 Exhibit 8.
 12 (Exhibit No. 8 marked for
 13 identification)
 14 Q Mr. Farrell, would you identify Exhibit 8.
 15 A Okay. This is an email from Lisa Ellinger from
 16 ETF with an attachment that includes what we call
 17 the chair agenda for the meeting for August 16.
 18 Q Is this the kind of email that you would typically
 19 get prior to ETF board meetings?
 20 A Yes, it is.
 21 Q And the first paragraph there in terms of call to
 22 order explains that the Attorney General is
 23 sending a designee in Bonnie's absence. Is Bonnie
 24 an Attorney General appointee to the board?
 25 A That was my understanding, yes.

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1 Q And she's for this meeting being replaced, if I'm
 2 understanding correctly, by Andy Cook; is that
 3 right?
 4 A That is what it says. I don't recall if Andy Cook
 5 actually attended the meeting or not.
 6 Q Okay. But that would be reflected in the minutes?
 7 A It would.
 8 Q Okay. But Bonnie -- to be clear, Bonnie is a
 9 regular board member or had been?
 10 A She was at the time, yes.
 11 Q Is she still on the board?
 12 A No, she's not.
 13 Q So Ms. Ellinger says that she hopes that the
 14 motion -- so there is -- in 8.D. -- and I take it
 15 8.D. references a portion of the agenda itself; is
 16 that right?
 17 A Yes, it is.
 18 Q So D. is the subject area related to the exclusion
 19 that we've been talking about; is that right?
 20 A Among other things, but yes.
 21 Q I'm sorry. What other things are you --
 22 A Well, any other changes to uniform benefits can be
 23 discussed, but this also references specifically
 24 the exclusion.
 25 Q Okay.

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1 A And this is a chair agenda.
 2 Q Right.
 3 A This is my agenda for conducting the meeting.
 4 This is not a public agenda.
 5 Q Right. Okay. So this is something that we
 6 received through the discovery process.
 7 A Uh-huh.
 8 Q And I just realized this is, I guess we should
 9 note for the record, ETF2002. Help me out. I
 10 think we've been trying to mark those on the
 11 exhibits themselves. So do you want to mark on
 12 the bottom of there or do you want to --
 13 MR. KILPATRICK: Sure. I'll do it.
 14 2002?
 15 MR. KNIGHT: ETF2002.
 16 Q Okay. So in the email itself Lisa says, "I
 17 appreciate your planned approach for 7.A., 'GIB
 18 Correspondence.'"
 19 A Uh-huh.
 20 Q And 7.A. is the reference to the GIB
 21 correspondence from the Department of Justice; is
 22 that right?
 23 A It could be correspondence from anywhere.
 24 Q Well, I'm just looking at the board agenda itself
 25 where it says DOJ memo re: gender identity.

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1 A Okay. Yes. I believe the GIB received much
 2 correspondence during this time as well, so I
 3 think it's both.
 4 Q Okay. Correspondence about the exclusion issue?
 5 A Yes.
 6 Q Was that from members or from other people?
 7 A It could have come from anywhere and it could have
 8 been at any time during 2016, subsequent to the
 9 July decision.
 10 Q Okay. So just to be clear, when you're saying you
 11 received correspondence, you're saying that may or
 12 may not be correspondence you discussed at this
 13 particular meeting?
 14 A Yes.
 15 Q You're saying it is other correspondence that you
 16 discussed at this meeting?
 17 A I can't recall the exact correspondence, but it
 18 could be from a multitude of sources on a
 19 multitude of issues.
 20 Q Okay. In any event, she says, I appreciate your
 21 planned approach for that item, the GIB
 22 correspondence, and the AG and ETF memos. And I
 23 guess my question is what is the planned approach?
 24 A I don't immediately recall what that is or what
 25 that was.

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1 Q Okay. Is that something -- You had talked to her
 2 prior to receiving this email on August 15th about
 3 the approach to the issue of the two different
 4 memos?
 5 A As I said, it's customary that I would talk to
 6 Lisa prior to any meeting and, in fact, every
 7 meeting. What the approach was, honestly, I can't
 8 recall. And I can't recall if it was related to
 9 this issue or other issues. I mentioned before
 10 that there was correspondence related to other
 11 things. During this time there was discussion
 12 about withdrawing a plan that directly impacted
 13 Madison employees. We received a lot of
 14 correspondence about that too during that time.
 15 Q Okay. Well, the reason why I'm asking about it is
 16 that it says the GIB correspondence and the AG and
 17 ETF memos.
 18 A Uh-huh.
 19 Q Did you receive AG and ETF memos about anything
 20 else other than the exclusion during this time
 21 period?
 22 A AG -- I'm sorry. From the DOJ, no.
 23 Q Well, I think AG -- my understanding is that AG
 24 would be referencing the Attorney General memo.
 25 A Okay.

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1 Q And so the Department of Justice --
2 A I'm not sure how the interlocking goes. Forgive
3 me.
4 Q I guess the question really is more about what is
5 your understanding. When she's talking about an
6 AG and an ETF memo --
7 A Yes.
8 Q -- it's your understanding that we're talking
9 about those August 10th and August 11th memos?
10 A Yes, it is.
11 Q Okay. But at this point you don't recall what the
12 planned approach was with respect to those memos?
13 A No, I don't.
14 Q Then she says we want to be prepared, and so she's
15 provided illustrative motions before that would
16 show up in red; is that right?
17 A Those are suggested possibility motions, but there
18 could be more beyond this. At the discretion of
19 the board, other motions beyond these could have
20 been made or no motion could have been made.
21 Q Right. Right. Okay. Well, so is this something
22 that ETF would regularly do, that they would
23 provide you with an example or illustrative
24 motions so that you could do your work as the
25 chair of the board?

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1 A Yes. It is very regular that ETF staff would
2 provide us with suggested motions on any topic in
3 our board materials, and that happens at every
4 meeting.
5 Q Right. Well, and then right after these, the red
6 area, she says, "I hope these motions are
7 unnecessary, but I do not want to be caught off
8 guard." So do you know why she -- I mean, had you
9 spoke to her about why she hopes they're not
10 necessary?
11 A I can't speak for what Lisa's thought process was
12 related to that statement.
13 Q Right. That's why I'm asking you whether she had
14 talked to you about what her hopes were.
15 A Not that I can recall. She may have talked to me
16 prior to this meeting and expressed some thought
17 on our phone call, but I can't recall what it was.
18 Q What was your plan with respect to the discussion
19 of the exclusion?
20 A To allow the board to deliberate and discuss the
21 direction they wanted to take, which is what I
22 feel is always my role.
23 Q Did they do that?
24 A During this meeting on August 16th, yes, they did.
25 Q And what did they discuss?

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1 A Well, I believe part of this meeting was in closed
2 session. Yes, it was. In fact, the agenda item
3 calls for closed session.
4 Q Do you know why it was in closed session?
5 A Well, my understanding of going into closed
6 session is to deliberate or discuss matters that
7 are legal in nature, among other things, such as
8 contract awarding or competitive issues, contract
9 issues. But they are prescribed in my mind by
10 statute as to when a group can go into closed
11 session.
12 Q So, again, do you know what -- do you recall
13 what was discussed about the exclusion at this
14 August 16th board meeting?
15 A Do I recall?
16 Q Yes.
17 A It would have been --
18 MR. KILPATRICK: I'm going to
19 object to the extent it would reveal any
20 attorney-client privilege from the closed
21 session.
22 A I'm only going to refer back to the suggested
23 motions or the potential motions that were
24 described by Lisa Ellinger in her memo. Those
25 would have been the context of the discussion in

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1 closed session.
2 Q Okay. What was done by the board in open session?
3 A I cannot specifically recall, but I believe there
4 was a vote taken during that time and I would
5 prefer to look at minutes to respond in full.
6 Q Was there a meeting held on August 16th?
7 A I believe there was.
8 Q Well, I will -- so, Mr. Farrell, maybe I'm just
9 confused here, but I don't believe that I have
10 seen any memos or minutes for an August board
11 meeting. I've seen -- The next board meeting I've
12 seen was from December 13th, 2016. We can take a
13 break and look, but that's my understanding.
14 A I probably referred to that or alluded to that
15 earlier as well. I don't specifically recall if
16 we met after July 12th and then on August 16th. I
17 just don't recall. It seems like a pretty full
18 agenda for the business of the board, so I would
19 have suspected that we would have met based on
20 this full agenda. That's what it appears to me.
21 Q Why don't we move along.
22 A And, by the way, that's why I asked about minutes
23 before from this meeting, because I'm unsure.
24 MR. KNIGHT: At a break we can get
25 these printed out. I apparently missed them.

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1 MR. FAIRWEATHER: Sure.
2 MR. ROTH: Would you like me to
3 make copies of this?
4 MR. KNIGHT: Why don't we do that
5 at the lunch break.
6 MR. ROTH: Do it at the lunch
7 break?
8 MR. KNIGHT: If you don't mind.
9 MR. ROTH: That's fine.
10 (Exhibit No. 9 marked for
11 identification)
12 Q Mr. Farrell, are you familiar with this email? It
13 looks like you're not on this email.
14 A No, I'm not.
15 Q Okay. And we talked about Bonnie is another GIB
16 board member, and it looks like in this email
17 Mr. Wieske, who you talked about before, is
18 emailing her. Do you have any understanding of
19 why he would email her about the exclusion?
20 MR. KILPATRICK: Objection. Calls
21 for speculation. You can answer.
22 A No. I can't comment.
23 Q You don't know?
24 A I don't.
25 Q Did you hear from Mr. Wieske about -- at about

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1 this time period or at some point about the DOJ
2 memo about reinstating the exclusion?
3 A I could have spoken to Mr. Wieske on many
4 occasions about the issue. I said earlier that I
5 interacted with the commissioner's office on a
6 regular basis, including J.P. Wieske. Whether it
7 was timing related to this, I don't know.
8 Q Okay. Well, Mr. Wieske mentions that he'll
9 probably call you about this.
10 A Uh-huh. He mentions that.
11 Q Do you recall his calling you about the DOJ memo
12 with respect to the exclusion?
13 A I don't know if he called me at this time. I know
14 he called me at some time, but I don't know if it
15 was near this email.
16 Q Okay. Whether it was near or not, do you recall
17 him calling you about the DOJ memo asking about
18 having another meeting or suggesting another
19 meeting?
20 A Yes.
21 Q When was that? I mean approximately when was that?
22 A It would have likely been in November. I have to
23 back up, if you don't mind. I don't remember if
24 there was a regularly scheduled meeting for
25 mid-December of that year. I suspect there

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1 probably was, a regularly scheduled meeting of the
2 GIB. Whether there was discussion about
3 scheduling another meeting, it would have occurred
4 at that time too and perhaps discussion of when
5 the timing should be.
6 Q Okay. You're describing your discussion with
7 Mr. Wieske?
8 A That's correct, yes. It could have been the same
9 discussion with Lisa Ellinger from ETF as well.
10 Q And what else did you discuss other than is there
11 a meeting coming up when we can talk about this
12 and, if not, scheduling a meeting?
13 A Sure. I would have suggested that it be an agenda
14 item, which we can do as board members. Not only
15 can I offer a suggested agenda item, other members
16 can as well and board members can also request
17 that a meeting of the GIB be scheduled. It's not
18 just myself. But I had mentioned earlier that GIB
19 can be called as necessary to have a meeting.
20 (Exhibit No. 10 marked for
21 identification)
22 Q Mr. Farrell, I'm giving you what we marked as
23 Exhibit 10. Have you seen this before?
24 A Yes, I have.
25 Q And I should probably clarify. The person at the

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1 top of these emails is my assistant. That's the
2 only way we can print these things out.
3 A Okay.
4 Q Just so you understand. What is this?
5 A It is my inquiry to a couple of the -- well, in
6 this case specifically Molina as it relates to
7 whether or not they were going to include the
8 exclusion or not. It also includes a website page
9 printout from UnitedHealthcare, and I referenced
10 both of these earlier in my discussion about
11 inquiries with both Molina and UnitedHealthcare.
12 By the way, I'm sorry. Excuse me. One of
13 these is not an inquiry to UnitedHealthcare. It
14 is a communication to myself as a broker or agent
15 representing UnitedHealthcare.
16 Q I'm sorry. You're a broker representing
17 UnitedHealthcare?
18 A Independent broker, yes. It's one of the
19 insurance companies I represent.
20 Q Okay. So was this email to Ms. Ebert an email as
21 a part of your work for GIB?
22 A Well, specifically, no. It would have been my
23 work in private practice as well.
24 Q Okay. But I guess I'm just wondering, was this an
25 inquiry you were making for purposes of your

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1 responsibilities to the board?
 2 A Not exclusively, no.
 3 Q But partially?
 4 A Partially, sure. It's informational.
 5 Q And why were you making this inquiry?
 6 A Well, at the time this is immediately preceding
 7 annual open enrollment for people that choose
 8 health plans, so it is informative for me to
 9 understand what's going on in my industry during
 10 this timeframe.
 11 As I said earlier, insurance companies after
 12 the HHS ruling were making their decisions about
 13 what they needed to do with regard to removing the
 14 exclusion, and this is just examples of two
 15 different companies and how they dealt with it.
 16 Q And the two different companies were
 17 UnitedHealthcare and also Molina?
 18 A Correct.
 19 Q Okay.
 20 A In fact, I can offer that I even went back to
 21 their prior year health plan documents to look up
 22 whether or not the exclusion existed in their
 23 documents, and it had, and this was confirmation
 24 that they would be removed going into 2017.
 25 Q Okay. And are these two who you learned chose to

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1 not reinstate the exclusion after the Texas
 2 injunction?
 3 A That's correct. Yes. And, in fact, I don't know
 4 anybody who reinstated the exclusion. I think I
 5 said that earlier. I'm going to take that back,
 6 because there is a difference between a fully
 7 insured plan and a self-insured plan. And a
 8 self-insured plan does get its own latitude and
 9 flexibility with regard to including or not
 10 including an exclusion. So when I say that I
 11 don't know of anybody that retained the exclusion,
 12 I am referring specifically to fully insured
 13 plans. There could be self-insured plans anywhere
 14 and everywhere that continued the exclusion.
 15 Q Are you aware of any of those?
 16 A I just said I don't know of any.
 17 Q Okay. I'm sorry if I --
 18 A I don't even know if my own clients took them out
 19 or did not take them out. In fact, I could
 20 reference that and be completely accurate, given
 21 time.
 22 Q Okay.
 23 A I know of specific clients that actually withdrew
 24 the exclusion and then built their plan language
 25 around the withdrawal of the exclusion using an

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1 insurance company's boilerplate for how coverage
 2 should be provided.
 3 MR. KNIGHT: Okay. Let's mark
 4 this.
 5 A If you don't mind, I would like to add that if I
 6 went back and looked at my self-funded contracts
 7 for my customers, I believe I would find some that
 8 did not withdraw the exclusion. I just can't tell
 9 you who they are this second.
 10 (Exhibit No. 11 marked for
 11 identification)
 12 Q This, again, is not an email that came to you.
 13 This Exhibit 11, which appears to be an email from
 14 Mr. Wieske to Brian Webb and Elizabeth, I'll mess
 15 that up, Hizmi, H-i-z-m-i. Have you seen this
 16 before?
 17 A No.
 18 Q Do you know who Brian Webb is?
 19 A No, I don't. I see that he is apparently with the
 20 NAIC.
 21 Q And who is that, the NAIC?
 22 A National Association of Insurance Commissioners.
 23 Q Do you have any interaction with NAIC?
 24 A Rarely. They cover our licensing or they
 25 administer our licensing.

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1 Q I see. Licensing of brokers?
 2 A Yes.
 3 Q Got it. So do you have any understanding of why
 4 Mr. Wieske would have reached out to NAIC?
 5 MR. KILPATRICK: Objection. Calls
 6 for speculation. You may answer.
 7 A No. It appears there is something behind this as
 8 well that is not included here, whether it's a
 9 discussion or more email. Just from reading it.
 10 Q You didn't speak to Mr. Nieske about this?
 11 A Mr. Wieske.
 12 Q I'm sorry, Mr. Wieske?
 13 A No, I did not.
 14 (Exhibit No. 12 marked for
 15 identification)
 16 Q So this obviously is an email saying, "Good
 17 afternoon Group Insurance Board member," and it's
 18 dated 12/9 from Sara Brockman. Is this the kind
 19 of email that you would get prior to board
 20 meetings?
 21 A Yes.
 22 Q And so Sara Brockman is at ETF?
 23 A Correct.
 24 Q And it looks like the documents above would be
 25 attachments that you would be provided as well?

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1 A Yes.
2 Q Okay. Was it always Sara Brockman who sent these
3 out? Or maybe I should specify. In 2016?
4 A At least during this timeframe. But, yes. Other
5 staff have come and gone who would be those that
6 would distribute information over the years.
7 MR. KNIGHT: Can we take just a
8 break for just a second?
9 (Discussion held off record)
10 (Exhibit No. 13 marked for
11 identification)
12 Q So, Mr. Farrell, these were produced to us a
13 couple days ago or a day ago or something, and are
14 these documents that you provided counsel?
15 A If I could look through all of them.
16 Q Sure. Please.
17 A The question was can I identify these?
18 Q Yes.
19 A Yes. These are copies of chair agendas from
20 meetings during 2016.
21 Q And are these your notes on these copies?
22 A Yes. Misspellings forgiven?
23 Q Okay. Looking through these, I would like to ask
24 you about some of the references. On page 1, the
25 guidelines and uniform benefit changes for 2017,

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1 there is a name written there Diana?
2 A Correct. Diana.
3 Q And can you tell me what the last name is?
4 A I believe it's Feldsam, but I'm not certain of
5 that. That's why I asked misspellings forgiven.
6 Q Do you know who that is?
7 A Yes. Diana is here with us today.
8 Q So she's one of the ETF attorneys?
9 A Yes. Correct.
10 Q And why did you put her there, include her there?
11 A I will only speculate on this. Because she likely
12 would have come up to the podium or presentation
13 table with Tara at the time of the discussion.
14 Q Do you recall whether she spoke?
15 A I don't.
16 Q I mean, would it be typical if someone came up to
17 the podium that they would speak?
18 A Any time somebody comes to the podium, it would be
19 typical for them to speak if asked.
20 Q Okay. So she could have been there to answer
21 questions if there --
22 A Yes. Exactly. That happens regularly, by the
23 way, where somebody may approach and sit at the
24 presentation podium and not speak at all. That
25 happens.

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1 Q Okay. Now then turning to -- I'm now looking at
2 the August 16th agenda, chair agenda.
3 A Uh-huh.
4 Q On the last page -- or I guess it's not the last
5 page. So this is the page that starts where D.,
6 Update on Guidelines Contract and Uniform Benefit
7 Changes is included?
8 A Yes.
9 Q Is that when any discussion of the exclusion would
10 have happened?
11 A Yes, it is, or reconsideration of the exclusion.
12 Q Reconsideration?
13 A Yep.
14 Q Okay. And what is TT written there? It looks
15 like TT. Is that right?
16 A Yes. It would have been reference to two of the
17 board members if somebody made a motion, but there
18 is no further information there. I suspect one of
19 them would have been Ted, and I'm trying to recall
20 who the other would have been. Likely Terri
21 Carlson. T and T would be Ted and Terri.
22 Q And do you know -- So they raised a motion, you're
23 saying?
24 A I can't be certain of that.
25 Q Okay. But you put them down because they did

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1 something?
2 A Yes.
3 Q You don't recall what. So these are two board
4 members, Ted --
5 A Ted and Terri.
6 Q And Terri?
7 A Yes. And I don't recall what.
8 Q And do you recall their last names?
9 A Ted Neitzke.
10 Q Neitzke, okay.
11 A I mix up my Neitzkes and my Heifetzes and my
12 Neitzels, but you probably all do too, and then
13 Terri Carlson.
14 Q Okay. And the next page there is a reference to
15 closed session. The reference there suggests to
16 me that this is not about the exclusion. Is that
17 your understanding?
18 A What do you mean by the reference?
19 Q Well, what's written here about the motion needed
20 to go into closed session. I guess it's actually
21 just --
22 A We need a motion to go into closed session, yes.
23 Q Right. I understand. But was there a closed
24 session discussion about the exclusion at this
25 August meeting?

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1 A I believe there was.
2 Q And do you believe it was then?
3 A During this section of the agenda? Yes.
4 Q Okay.
5 A But as I said earlier, I needed to be reminded
6 that we met on this date.
7 Q And I'm sorry if I apparently misunderstood
8 earlier.
9 A It's also why I asked for minutes, by the way.
10 Q Okay. We'll look at the minutes in a moment. Now
11 turning to the December 13 board minutes, at the
12 top of the page there is some notes. It looks
13 like delay implement, continuation of exclusion.
14 Is that what that says?
15 A Contingent on injunction.
16 Q Oh, "delay implement contingent on injunction."
17 Is that right?
18 A That's what it says, yes.
19 Q Okay. And then what's the next -- what's the rest
20 of it say here?
21 A "Did HHS enforce rules across the board."
22 Q And what is this about?
23 A Discussion would have occurred during the meeting,
24 and it's just me scribbling a couple notes related
25 to the topic issue or the topic related to item 6

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1 on the agenda. I probably would have written it
2 just because that's where I had room or that's the
3 page that was open.
4 Q Got it. So what does it mean, delay implement or
5 do you --
6 A Delay withdrawing the exclusion.
7 Q And the next part you said was contin -- what is
8 that again?
9 A Contingent on injunction.
10 Q And what does that mean?
11 A Because at the time we knew that an injunction was
12 being considered and whether it would happen or
13 not was unknown, but we expected it would be
14 happening.
15 Q Okay. And where in this topic -- when --
16 you know, who spoke to this issue I guess is what
17 I should say.
18 A The board in public session.
19 Q Who spoke about these things? Did you speak about
20 them?
21 A Myself or any board member could have spoken on
22 the issue. You see I scribbled the name of Kevin
23 Puder, who came to be known as Kevin Potter.
24 Q This is on the last page of where you've got
25 Kevin --

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1 A Yes, it is. Under item 6, yes. Again, apologies
2 for misspelling.
3 Q Okay. So Kevin Potter spoke in open session at
4 the meeting; is that right?
5 A Yes, it is.
6 Q And that's why you've got the name there?
7 A Correct.
8 Q Then what is D, the next thing there? Is that
9 DOJ?
10 A DOJ.
11 Q DOJ. So you're identifying where he's from?
12 A Correct.
13 Q And to be clear, these are meetings -- I'm sorry.
14 These are your notes that you take during the
15 course of a board meeting?
16 A Yes.
17 Q Okay. And then looking at the December 30th
18 meeting.
19 A Yes.
20 Q There is not much that hasn't been redacted, but
21 what is the thing on the first page?
22 A Well, Chuck refers to Chuck Grapentine, a board
23 member who was present at the meeting, and what
24 the scribble before the word Chuck is, I don't
25 know. I suspect it was me making an H for

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1 Hurlburt, for Waylon, but it would have just been
2 quick scribble notes because Waylon Hurlburt was
3 also in attendance at this meeting. The rest of
4 the board were in attendance by phone.
5 Q And, I'm sorry, Chuck wasn't in attendance by
6 phone or by --
7 A No. He was physically there.
8 Q So those were the only two board members who were
9 there on December --
10 A In addition to myself.
11 Q Okay. And then looking at the February 8th
12 meeting notes -- or agenda, I should say, what is
13 this -- there is a reference at the very front
14 page JN.
15 A Yeah. It would have been whoever made the motion
16 to adopt the minutes from the prior meetings.
17 Q Got it. And then page 2, item 4, it looks like
18 you've written "What if legal action"?
19 A Right.
20 Q What is that about?
21 A That was a question I wrote even prior to getting
22 to item 4, and it was for me to ask -- a reminder
23 about -- it was to remind me of a question I had
24 in my mind and that is what if there was legal
25 action related to the issue. But now it's

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1 February and it's past the time where the
2 decisions of December 30th had been made.
3 Q So you're making a note to yourself to do
4 something or to do something in the course of the
5 meeting? What is the note about?
6 A To ask, what if there is legal action related to
7 item 4.
8 Q And who did you ask?
9 A I don't know. There is no presenter for this
10 item. So maybe it was just a reference to the
11 group as a whole or -- and I'm only speculating,
12 the group as a whole or ETF staff.
13 Q Okay. So you don't recall -- Do you recall
14 whether you made that request or asked that
15 question or raised the issue?
16 A I don't recall, but I believe it's a matter of
17 public record.
18 Q I'm looking at the August 30th meeting notes. Was
19 there any discussion of the exclusion at this
20 particular meeting?
21 A Was there discussion about litigation at this
22 meeting?
23 Q Actually my question was was there discussion of
24 the exclusion at this meeting.
25 A I don't know how to distinguish between litigation

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1 and discussion of the exclusion.
2 Q Okay. I can ask -- I guess I'm just asking in
3 general whether there was anything about the
4 exclusion, whether there was discussion of
5 reconsideration of the exclusion or whether there
6 was discussion of litigation about the exclusion,
7 either one.
8 A Yes, as it refers to item 10 in the agenda.
9 Q Oh, I see. Consultation with legal counsel. Got it.
10 A If you would like, I could add one other thing.
11 The May 24th meeting, the minutes of the May 24th
12 meeting I believe were adopted in this meeting as
13 well. Let me look at that. Yes.
14 Q I'm sorry. The May 24th meeting minutes were
15 adopted --
16 A During this August.
17 Q -- during this August meeting?
18 A Correct.
19 Q And I'm sorry. Was there something about the
20 minutes that related to the exclusion? Is that
21 why you're referencing that?
22 A No. In the May 24th meeting, as I said earlier,
23 Herschel offered a motion to reconsider.
24 Q Got it.
25 A I believe I said that earlier.

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1 Q You did. I don't know if we talked about it at
2 length, but you did mention it.
3 A Okay.
4 Q So in section 10 on the last page, you've got SN
5 written there.
6 A Right.
7 Q What is that?
8 A That would have been two board members who likely
9 made the motion to go into closed session. N
10 would have been for Nancy. S I'm not sure of. I
11 would have to recall the names of the board
12 members. But it would have been another board
13 member, seconded by Nancy.
14 Q And it's just got Boyden ETF. Are these just a
15 reference to -- what is that in reference to?
16 A It is a reference to what is now known as the case
17 that had been filed.
18 Q Got it.
19 A I don't think I knew the name of the case prior to
20 this, though, so that's why I wrote it down. I
21 don't know when the case was filed. S would have
22 been for Stacey, by the way.
23 (Exhibit No. 14 marked for
24 identification)
25 Q So Exhibit 14 is an email from a place called

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1 Wisconsin Health News, it looks like. Is this a
2 publication that you receive?
3 A No. But I am aware of this particular report.
4 Q So you received a copy of this particular issue of
5 the Wisconsin Health News?
6 MR. KILPATRICK: Objection.
7 Mischaracterizes the answer.
8 Q Can you answer my question?
9 A I'm not sure what the question is. I said I've
10 seen it.
11 Q Okay. How did you come to see it?
12 A Oh, I couldn't tell you. I mean, I mentioned
13 earlier we subscribe to many, many news services
14 and ListServes, among other things. I get 50 a
15 day. If this one contains my name, I may have
16 seen it because of that. I know it wasn't
17 directed to me in this email, at least.
18 Q Well, yeah, it's hard sometimes to know who ETF
19 and SMB Library is.
20 A Right.
21 Q But in any event, on page 2 of it, the report says
22 that GIB to continue covering gender reassignment
23 surgeries, and I'm just looking back. So the date
24 of this is December 14, 2016; is that right?
25 A The date of the publication, December 14th, 2016.

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1 Q Right. So this references the DOJ memo and it
2 also references at the beginning, "The Group
3 Insurance Board will go forward with covering
4 gender reassignment surgeries for the plan year
5 2017, members agreed Tuesday."
6 A Members did not agree. Members took no action.
7 Q Okay. So that part of this is inaccurate is your
8 statement?
9 A I'm just saying that there was no action taken at
10 the meeting of the 13th on the issue.
11 Q So the -- I'm sorry. Go ahead.
12 A On the issue.
13 Q Later down this story says that Kevin Potter --
14 well, it actually says that the Department of
15 Justice memo came at the request of Governor Scott
16 Walker's office. Is that your understanding?
17 A I don't know that --
18 MR. KILPATRICK: Objection. Calls
19 for speculation, but you may answer that.
20 A I don't know that specifically.
21 Q Did Mr. Potter say that when he spoke to the board
22 on December 13th?
23 A I don't recall that.
24 Q It also says that -- or it says, "He added that
25 contrary to the memo, the DOJ would recommend the

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1 board 'follow the law as it stands today.'" Do
2 you recall him saying that?
3 A I remember him saying follow the law as it stands
4 today. I don't know anything about contrary to
5 the memo.
6 Q And then on the next page, it goes on to quote him
7 as saying, "I know that you've already taken
8 action on that from earlier this year. If that's
9 the case." Do you see where I'm reading?
10 A Yes.
11 Q "If that's the case then that might be the best
12 way to go in terms of minimizing your liability or
13 reducing the risks of any penalties that might be
14 imposed." Do you recall him saying that?
15 A Yes.
16 Q What was your understanding of that, of what he
17 was saying?
18 A I would refer back to the previous paragraph and
19 sentence that says, "Follow the law as it stands
20 today." That was my conclusion.
21 Q And which law are we talking about? The
22 Affordable Care Act?
23 A Well, my impression is he's referring to the HHS
24 ruling, not the Affordable Care Act.
25 Q The regulation?

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1 A Yes. HHS regulation, yes.
2 Q Is it your understanding at the -- or I should say
3 was it your understanding that at the board
4 meeting he was recommending as of December 13th
5 that the board continue with or not change its
6 decision from July to get rid of the exclusion?
7 A Yes, that's correct.
8 MR. KNIGHT: If everyone is ready,
9 maybe we should just go ahead and take a
10 break now for lunch.
11 (Lunch recess)
12 MR. KNIGHT: Back on the record.
13 Q Mr. Farrell, you are still under oath, as before.
14 A Yes.
15 Q All right. I'm going to go ahead and mark these.
16 We have the minutes from August 16th now.
17 (Exhibit No. 15 marked for
18 identification)
19 Q These are public minutes, then? Okay. We were
20 talking about the August 16 meeting and whether
21 the exclusion was discussed at the August 16
22 meeting, so I'm just going to ask if you would
23 take a minute to take a look at this and see
24 whether it was a topic of discussion.
25 A I have one comment, and that is I may have said

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1 earlier May 24th of 2016. It appears from these
2 minutes that it was a May 18th meeting, for the
3 sake of clarification.
4 Q Okay.
5 A And then as far as any discussion of the topic, I
6 don't see anything in these minutes that refers to
7 an open public discussion of the topic. Likely
8 that would have occurred during closed session.
9 Q Okay. Well, on page 10 after the closed session
10 then there is an announcement of action taken on a
11 business deliberated during closed session.
12 A Uh-huh.
13 Q Is that when you would normally explain publicly
14 what business occurred during the closed session?
15 A We would explain the topic discussed and perhaps
16 reaffirm why we went into closed session to begin
17 with, but it doesn't appear that any other action
18 was taken.
19 Q And there was no action taken with respect to the
20 exclusion?
21 A Correct. No action.
22 Q Okay. And at the very end of these minutes, there
23 is a paragraph that says the board -- actually,
24 let me just go back.
25 On page 9, which is the topic area update on

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1 guidelines, contracting, and uniform benefit
2 changes for 2017, these are -- when it's
3 referencing the changes to those guidelines, those
4 would include the changes from the July meeting
5 with respect to the exclusion?
6 A That's correct.
7 Q And then on page 10 there is a reference to a
8 motion from Mr. Neitzke to approve those 2017
9 changes; is that right?
10 A Yes, it is.
11 Q Okay. And then back to the very end. It looks
12 like there is reference to the board having -- or
13 supporting the addition of a special meeting in
14 December. Did that have anything to do with the
15 exclusion or do you remember?
16 A I can't recall if it was already a scheduled
17 meeting or if it was a meeting that was scheduled
18 then backed up to December. I'm going to say that
19 I think it was a meeting that might have been
20 previously scheduled for a later time and backed
21 in to December.
22 Q Okay. Because it says here meet in December 2016
23 instead of January 2017?
24 A Yeah. That is what I recall.
25 Q Okay. So there was normally a January 2017

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1 meeting?
2 A It's a quarterly meeting. It can be in a number
3 of different months.
4 Q Okay.
5 A Normally a quarterly meeting. Scheduling also
6 occurs based on the needs of the board and
7 decisionmaking timeframes as well. So it's not
8 unusual to schedule additional meetings, as I said
9 earlier, or move meetings.
10 (Exhibit No. 16 marked for
11 identification)
12 Q So this looks like an email from Mr. Voelker to
13 you and to Mr. Conlin about the December 30th
14 board meeting?
15 A That's correct.
16 Q Is that your understanding? And is this typical,
17 that there would be an email from Mr. Voelker
18 about the meetings?
19 A Is it typical? No. But this was also a
20 regularly -- or, I'm sorry, a separately scheduled
21 meeting and I do know that from a timing
22 perspective in order to post a meeting notice
23 there is a specific time window that has to be
24 adhered to and I know they needed to do that
25 during the course of that day.

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1 Q Got it. So he says he's attached a draft agenda,
2 and then he says Mr. Conlin is going to follow up
3 by phone on the agenda. Did you speak to Mr. Conlin
4 then prior to the December 30th meeting?
5 A I don't recall.
6 (Exhibit No. 17 marked for
7 identification)
8 Q This looks like another email from -- well, this
9 is the email from you, I don't know, perhaps --
10 oh, it looks like it must be a response to
11 Exhibit 16. You're responding to Mr. Voelker?
12 A Correct.
13 Q And in this email you've approved the agenda; is
14 that right?
15 A Yes.
16 Q Okay. And is that typical, that you're given a
17 proposed agenda and then you approve it?
18 A Yes.
19 Q And then you say that Waylon Hurlburt will be at
20 the meeting. How did you learn that?
21 A We were provided with a letter from the Department
22 of Administration indicating that Waylon would be
23 the DOA's representative at this meeting.
24 Q Who provided that letter to you?
25 A Secretary Neitzel. It was a letter written by

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1 Secretary Neitzel. How I got it, I can't recall.
2 I likely would have gotten it from Lisa or
3 possibly John Voelker.
4 Q And, I'm sorry, remind me, who was Secretary
5 Neitzel?
6 A Department of Administration.
7 Q Okay. So he's the head of the Department of
8 Administration effectively. And do you know why
9 Waylon Hurlburt was going to be there instead of
10 the normal -- or the regular person from DOA?
11 MR. KILPATRICK: Objection to the
12 extent it calls for speculation.
13 A I don't.
14 Q Had he ever appeared on the board before?
15 A I know he's on the board now. I don't know if he
16 appeared either with the board or at a meeting
17 prior to this, but he is currently on the board.
18 Q Is he currently a DOA appointment or designee for
19 the board?
20 A Yes.
21 (Exhibit No. 18 marked for
22 identification)
23 Q Mr. Farrell, Exhibit 18 is an email from
24 Mr. Hurlburt to Jennifer Kraus forwarding the
25 agenda. You're not copied on this, but do you

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1 know why -- or do you know who Jennifer Kraus is?
 2 A No, I don't.
 3 Q And do you have any understanding of why
 4 Mr. Hurlburt would forward this to her?
 5 MR. KILPATRICK: Objection to the
 6 extent it calls for speculation. You can
 7 answer.
 8 A I don't. Can I comment further?
 9 Q Sure.
 10 A I see the email below from Cheryllynn. This is an
 11 email that would have gone to the entire Group
 12 Insurance Board. Because of the late notice of
 13 the meeting, she's just reiterating the fact that
 14 there is willingness from the board to
 15 accommodate. But why it was sent to -- why this
 16 was sent from Waylon to Jennifer Kraus, I don't
 17 know, but I would have been cced on the piece from
 18 Cheryllynn. But I don't know about the top part
 19 of this email.
 20 Q Okay. Maybe I can just -- wait a minute. So let
 21 me just follow up as opposed to showing you an
 22 additional document.
 23 The email from Cheryllynn Wilkins, which
 24 Mr. Hurlburt is forwarding, so that was Cheryllynn
 25 Wilkins to Sara Brockman. That email is something

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1 that you would have been copied on; is that right?
 2 A Yes.
 3 Q Okay. And these are the -- this is the agenda for
 4 the board meeting, as well as the attachments, is
 5 that right, that you received?
 6 A Not from Cheryllynn in this case, no. I had
 7 already approved the agenda prior to this message
 8 from Cheryllynn, and it is not attached with her
 9 email. It may be attached to Waylon's email to
 10 Jennifer.
 11 Q I'm sorry. Well, I can just show you this one, I
 12 guess.
 13 (Exhibit No. 19 marked for
 14 identification)
 15 Q So maybe you just told me this, but this email,
 16 which looks like the one that was forwarded, is
 17 the email that you would have received as a board
 18 member?
 19 A Yes, it is.
 20 Q And I presume you would have already seen the
 21 agenda and approved the agenda, but this was when
 22 it was sent out to all the board?
 23 A Yes.
 24 Q Okay. And these are the -- So this is the notice
 25 of the meeting, as well as the correspondence memo

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1 from the ETF?
 2 A Yes.
 3 Q As well as several memos?
 4 A Yes.
 5 Q Various attachments that you received at that
 6 time?
 7 A Yes.
 8 Q Okay.
 9 (Exhibit No. 20 marked for
 10 identification)
 11 Q Mr. Farrell, Exhibit 20 looks like it's an email
 12 chain. If I'm understanding correctly, this email
 13 chain started with an email from Mr. Wieske which
 14 has been redacted, and that includes an email to
 15 various people, Delanie Breuer at DOJ, you, Lisa
 16 Ellinger, Katie, I don't know how to say that. Do
 17 you know how to say that?
 18 A Ignatowski.
 19 Q Ignatowski and Sara Brockman. Do you recall
 20 getting this email?
 21 A Yes, I do.
 22 Q What was this about?
 23 MR. KILPATRICK: Objection to the
 24 extent it concerns the redacted attorney-
 25 client privilege. I'm directing you not to

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1 answer, with only regard to the attorney-
 2 client privilege. You may answer the
 3 question otherwise.
 4 THE WITNESS: Meaning don't talk
 5 about anything under the redaction?
 6 MR. KILPATRICK: Correct.
 7 A This is really nothing more than confirmation that
 8 a meeting is scheduled. And during this time we
 9 knew that there were a lot of people off on
 10 vacation, which would -- for example, if Lisa was
 11 away on vacation, that's what would have led to
 12 John Voelker initiating an email which would be,
 13 as I said before, unusual. I don't know who of
 14 these people were or were not on vacation during
 15 this week, but it's a typical vacation week.
 16 Q Okay. Well, that explains Voelker, but it doesn't
 17 explain why the Department of Justice attorney and
 18 the people in the governor's office were on the
 19 email chain. Do you know why they were on the
 20 email chain?
 21 MR. KILPATRICK: Objection to the
 22 extent it calls for speculation. And to the
 23 extent it would reveal attorney-client
 24 communication, don't answer that.
 25 Q Do you know why you were communicating in this

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1 email chain with the governor's staff?
 2 A It would be my normal practice to respond to an
 3 email with a reply to all.
 4 Q Well, I guess I'm trying to understand why the
 5 governor's people are on this email chain other
 6 than your responding to everybody else who is on
 7 the chain.
 8 MR. KILPATRICK: Same objection.
 9 A And the same answer. It's strictly a reply to
 10 all. I don't even know who Katie Ignatowski or
 11 Delanie Breuer are.
 12 Q Did you speak to them about the exclusion?
 13 A No. Not that I know of. But I did indicate I
 14 spoke to J.P. and to Casey Himebauch during this
 15 day.
 16 Q So it's your understanding that -- or let me just
 17 make sure I understand. You're basically telling
 18 me that somebody other than yourself sent an email
 19 that included people from the governor's office
 20 and somebody from DOJ and you're not sure why they
 21 were included. Is that what you're saying?
 22 Because you didn't start the email chain.
 23 MR. KILPATRICK: Again, same
 24 objection as before. If the answer would
 25 reveal attorney-client privileged

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1 communication, I'd direct you not to answer.
 2 Q Well, the question isn't what's the content. I'm
 3 just asking why are these people on this email
 4 chain. That's all I'm asking.
 5 MR. KILPATRICK: And the same
 6 objection as to speculation as well.
 7 A I don't have an answer for you.
 8 Q Because you don't know or you're -- you're saying
 9 you don't know?
 10 A I'm saying I don't know. I even said I didn't
 11 know some of the people that are on this email.
 12 Q Okay. Is it your understanding that it was the
 13 governor's office that was pushing for the
 14 reinstatement of the exclusion?
 15 A No. I wouldn't characterize it that way.
 16 Q Okay. How would you characterize it?
 17 A It was, as I probably have said a multiple number
 18 of times, the injunction was expected so I felt
 19 the Group Insurance Board would need to take
 20 action presuming the injunction occurred.
 21 (Exhibit No. 21 marked for
 22 identification)
 23 Q Okay. Mr. Farrell, this appears to be a
 24 continuation maybe of the previous email chain?
 25 A Yes. Between myself and ETF staff.

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1 Q So there is an email from you, and I'm looking in
 2 the middle of the page, the December 29th email,
 3 and this is an email to the same group,
 4 J.P. Wieske, Delaney Breuer, Lisa Ellinger, Katie
 5 Ignatowski, and Sara Brockman, as well as Casey
 6 Himebauch, and Bob Conlin; is that right?
 7 A Yes, it is.
 8 Q And so you're reaching out to all of these people
 9 to say something about revising the notice with
 10 respect to a closed session; is that right?
 11 A Yes. The possibility of a closed session.
 12 Q Then Mr. Conlin is saying we can do that, at least
 13 in the part that's not redacted; is that correct?
 14 A That is correct, but it is now later in the day
 15 and a notice needs to be published prior to 3:00
 16 that afternoon. So I recall that we did not
 17 revise the notice, the meeting notice.
 18 Q Okay. And, again, why were all of these other
 19 people on this email chain about whether or not to
 20 have a closed session?
 21 MR. KILPATRICK: Same objection.
 22 A And the same answer. Reply to all.
 23 (Exhibit No. 22 marked for
 24 identification)
 25 Q Mr. Farrell, is Exhibit 22 another email from ETF

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1 to you about the 12/30 board meeting?
 2 A Myself and the full board.
 3 Q So it mentions correspondence. I don't believe we
 4 received that correspondence. But do you know
 5 what this is?
 6 A Not specifically. I had mentioned earlier we
 7 received correspondence on many issues.
 8 Q Wasn't the only issue on the 12/30 agenda the
 9 exclusion or the reinstatement of the exclusion?
 10 A On the agenda, yes.
 11 Q So would it be related to that?
 12 A Potentially, yes.
 13 Q Do you recall looking at that correspondence?
 14 A I try to look at as much correspondence as I can
 15 and scan, perhaps not read and absorbed. But,
 16 yes, I review correspondence page by page as it
 17 comes in.
 18 Q Do you recall at this point what that
 19 correspondence was about?
 20 A About these? No. Not at all.
 21 (Exhibit No. 23 marked for
 22 identification)
 23 Q Okay. Mr. Farrell, these are, as I understand it,
 24 the public minutes from the 12/30 board meeting.
 25 And just in terms of on the first page, am I

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1 understanding correctly that there is typically a
2 DOJ member, board member?
3 A Yes.
4 Q So who of these people would be that person on the
5 front page?
6 A Normally it would be Bonnie Cyganek who was absent
7 for this meeting.
8 Q So there was no DOJ representative on the board
9 that day?
10 A On the board, correct.
11 Q So on page 3 there is this -- after the closed
12 session, it says, "The board's discussion of the
13 gender reassignment language proposed was based on
14 the legality of the final HHS rule." What does
15 that mean to you?
16 A Are you referring to "language proposed was based
17 on the legality of the final HHS rule"?
18 Q Yes, that's what I'm referring to.
19 A Is that the part you're referring to? I can't
20 answer that. The minutes are prepared by somebody
21 else and the terminology that's used is not
22 familiar to me. So I don't know what that means.
23 I mean, the situation was in litigation up until
24 that point. So based on the legality of HHS rule,
25 we knew the rule had been challenged.

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1 Q Okay. Well, and then it says Mr. Hurlburt moved
2 to reinstate the exclusion contingent on these
3 four different things happening. Have you ever
4 seen this kind of board action in the past?
5 A Contingencies, yes.
6 Q Right. In what sense?
7 A Contingent to contract negotiations, for example.
8 And maybe others.
9 Q Did you ever see anything where it was subject to
10 a court ruling?
11 A I don't know.
12 Q Do you recall any time that that kind of board
13 action occurred?
14 A As it relates to the GIB, no. No.
15 Q Okay.
16 A But other court rulings have impact on other
17 issues related to insurance and society in
18 general.
19 Q So are you aware of anything in state or federal
20 law that prohibits -- that would prohibit the
21 board from providing coverage for these kinds of
22 services?
23 MR. KILPATRICK: Objection to the
24 extent it calls for a legal conclusion.
25 A I can't say yes or no to that. Courts rule all

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1 the time on matters of insurance coverage.
2 Independent medical review boards rule as well.
3 So there are rulings all the time unrelated to
4 this matter.
5 Q Well, specifically was there -- you mentioned, for
6 example, that some of the private insurers that
7 you work with even after the Texas injunction was
8 entered decided to go ahead and provide the
9 services for gender dysphoria or for transgender
10 people?
11 A Yes, that's correct.
12 Q So is it your understanding that they were able to
13 do that, that there was nothing about the Texas
14 injunction that prohibited them from providing
15 those services?
16 MR. KILPATRICK: Same objection.
17 You can answer.
18 A On this specific issue, I don't think there was
19 anything prohibiting them from going forward with
20 removal of the exclusion.
21 Q Was there anything prohibiting the Group Insurance
22 Board?
23 A I'm sorry. I want to add to that. Just as there
24 wasn't anything related to this ruling that would
25 have prevented a self-insured plan from continuing

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1 the exclusion.
2 Q Okay. I understand. So my question -- my
3 follow-up question, then, is isn't the same true
4 with respect to the plans that the Group Insurance
5 Board sets terms for?
6 MR. KILPATRICK: Same objection
7 stands. But you can answer.
8 A The removal of the exclusion applied to all the
9 carriers based on our action in July of 2016, and
10 the reinstatement of the exclusion applied to all
11 the carriers beginning after this action was taken.
12 Q And was there anything about the Texas injunction
13 that required you to reinstate the exclusion?
14 MR. KILPATRICK: Same objection.
15 A No. I don't know enough about the legal rules of
16 how to recognize an injunction.
17 Q Well, I'm asking -- I'm effectively asking the
18 same question as the one you answered with respect
19 to the private entities and I'm simply asking if
20 your understanding was that they could do that
21 without violating the law. Is that what you said
22 before?
23 A Well, now I'm unclear on the question.
24 Q Well, before I asked you about whether the -- you
25 had talked about how the private insurance

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1 companies had gotten rid of their exclusions and
2 were going to leave it that way, they weren't
3 going to reinstate them.
4 A Correct. That is correct. I don't know if they
5 would have reconsidered. I suspect they could
6 have done that individually as an insurance
7 carrier, determined whether they wanted to revisit
8 the idea. I can't speak to those -- to what the
9 insurance companies did internally with
10 reconsideration.
11 Q I'm not sure I understand that. What do you mean
12 by that?
13 A Well, when the injunction was filed, to me that
14 meant that the exclusion could go on and, as I
15 said before, in some cases of what I believe my
16 self-funded plans did, not with every one of them
17 but with some of them, was to continue the
18 exclusion. So I think insurance companies at the
19 time could have chosen to reinstate the exclusion.
20 Q But the ones you talked to did not?
21 A As far as I know, I don't know anybody that
22 reinstated the exclusion on the fully insured
23 insurance side of our business.
24 Q And what I understood you to be saying is that
25 your understanding was that the Texas court

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1 injunction did not require them to do -- to either
2 reinstate or to not reinstate the exclusion; is
3 that right?
4 A My understanding of the injunction is that it
5 allowed for reconsideration. If you wanted to
6 include the exclusion, you could continue to do
7 so.
8 MR. KNIGHT: I'm sorry. Maybe you
9 could just read back the last answer.
10 (Answer read)
11 Q Right. But it was your choice. You didn't have
12 to?
13 A My choice?
14 Q It was the insurance company's choice. They were
15 not required to reinstate the exclusion. Is that
16 what you were explaining to me?
17 A Not required to reinstate or not reinstate.
18 Q And what I'm trying to understand is if that's the
19 case, is that any different for GIB, that GIB
20 could have chosen to reinstate or not reinstate
21 the exclusion either way?
22 A Yeah. I believe GIB did have that choice.
23 Q Okay.
24 A And still has that choice.
25 Q But it made the choice to reinstate the exclusion

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1 and I believe you said earlier that you made the
2 choice to reinstate the exclusion because of the
3 injunction. I'm just trying to understand if
4 there was any other reason why you chose to
5 reinstate the exclusion.
6 A No.
7 (Exhibit No. 24 marked for
8 identification)
9 Q Okay. Mr. Farrell, is this an email from Lisa
10 Ellinger to you dated January 6, 2017?
11 A Yes, it is.
12 Q Exhibit 20 --
13 A 24.
14 Q 24. Okay. So this is a draft for the January 18th
15 meeting, and then -- yeah. Then it says there is
16 going to be a call tomorrow about it; is that right?
17 A Yeah. As I've said a couple of times, it was
18 customary for me to speak with Lisa the Friday
19 preceding a meeting, and this was similar.
20 Q Okay. Do you recall anything about that
21 discussion?
22 A Well, it's always to discuss through the agenda
23 either what action might need to be taken or
24 preparation, whether it's preparation of materials
25 or preparation of -- or in preparation for the

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1 board making decisions. I see there was
2 deliberation of what looks like something else in
3 closed session.
4 Q Okay.
5 A The vendors, yeah.
6 Q And the exclusion -- or the uniform benefits was
7 listed as a topic at that point. So do you recall
8 any discussion about the exclusion with her as it
9 might relate to that point or that topic item?
10 A My discussion with her on that would have related
11 to, because now time had passed since the 30th of
12 December, confirming that the injunction had
13 occurred and whether or not any or all of the
14 other four -- or the total of four contingencies
15 had been met. And it probably was a work in
16 progress at that time. I don't remember or recall
17 exactly what date all the contingencies were
18 confirmed. There was also a vendor selection
19 action that occurred during this meeting and there
20 was a couple hours of discussion related to that.
21 Q Okay. Why don't we turn to -- this is Exhibit 25.
22 (Exhibit No. 25 marked for
23 identification)
24 Q Okay. So this looks like the next -- you got an
25 email about the chair agenda on January 7th from

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1 Lisa Ellinger; is that right?
 2 A I probably would not have gotten it until the
 3 following Monday, but, yeah. If you give me a
 4 second to read it. Okay. So the agenda was
 5 reordered. I see that what had originally been
 6 proposed as item 6 became item 4. And as I
 7 mentioned before, there was deliberation about the
 8 contract issuance or program issue.
 9 Q Okay. In the email itself she says that she's
 10 tentatively "gaveled" the HHS issue. At least as
 11 I understand it, that means it's an action item.
 12 That's the way it's written on the agenda.
 13 A It means it can be.
 14 Q Did you talk to her about whether or not that
 15 should be an action item, that is, whether the
 16 board should take any action?
 17 A I would have suggested that we leave that open as
 18 an allowance. I do remember suggesting that we
 19 leave that open.
 20 Q So that you could either have a vote or not have a
 21 vote or take action in some other way?
 22 A Yes. That's correct.
 23 MR. KNIGHT: Okay. I think you
 24 wanted to take a break.
 25 (Recess)

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1 (Exhibit No. 26 marked for
 2 identification)
 3 Q Mr. Farrell, Exhibit 26 looks like an email from
 4 you to Casey Himebauch in the governor's office
 5 dated January 9th; is that right?
 6 A Yes, it is.
 7 Q And it says that ETF wanted to allow flexibility
 8 and that you're saying if you feel strongly that
 9 it should not be an action item, please let me
 10 know; is that right?
 11 A It is, but I'll add that it's not just ETF wanted
 12 to allow flexibility. It would have included
 13 myself, meaning that I would have wanted
 14 flexibility. I think there was an earlier
 15 discussion between myself and Lisa where I would
 16 have -- or she and I would have discussed
 17 flexibility. So, yes, I would have asked for it
 18 as well.
 19 Q Why were you reaching out to Casey about this?
 20 A Well, I sent him the agenda and the topic was
 21 obviously coming back. He and I had had previous
 22 discussions, as already indicated in the record.
 23 It was at this time that the progress was being
 24 made on the four contingencies as well, and
 25 honestly, I don't know if we took action or not in

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1 this meeting related to item 4 until I look at the
 2 minutes.
 3 Q So why does his opinion about whether or not it
 4 should be an action item matter?
 5 A I'm trying to think about why I would have even
 6 asked him. And it could be that there is other
 7 materials during this time window that we would
 8 have received that would have influenced that
 9 thought. Again, as I said before, the
 10 contingencies were in process or in progress with
 11 being met. So without seeing what else is behind
 12 this, I don't know.
 13 Q I am just trying to understand how it is Casey has
 14 a role in GIB business.
 15 A I can't answer. I mean, I've known Casey for long
 16 before he was in the governor's office; so if he
 17 felt the need to call me about an issue, he could
 18 or would. As I said before, it was very, very
 19 rare, but I've known him for years. So I can't
 20 answer as to why I would have asked his opinion
 21 about this. And even so far -- my saying so far
 22 I'm okay with this means that there is probably
 23 other things going on in the background and I'm
 24 certain that there were during this time. That's
 25 why I would have said that.

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1 (Exhibit No. 27 marked for
 2 identification)
 3 Q So this appears to be an email from you responding
 4 to an email from Lisa Ellinger on January 9th of
 5 2017; correct?
 6 A Yes.
 7 Q And it says --
 8 A If I could take a minute?
 9 Q Sure.
 10 A Thank you. Okay. Just quick, I'm assuming that I
 11 spoke to Eileen because Lisa was very likely away
 12 on vacation during this time, and I would have
 13 just confirmed the agenda and been done with it.
 14 Q Who is Eileen?
 15 A Eileen Mallow, currently a member of the Group
 16 Insurance Board. I don't know if she was a member
 17 of the Group Insurance Board during this timeframe
 18 or not.
 19 Q I'm sorry. A member of the board or ETF?
 20 A She is also part of ETF and always has been a
 21 staff member at ETF. She currently also serves
 22 on -- I'm sorry. She's not on our board. She
 23 attends our board meetings as our ETF staff
 24 representative. Thank you for letting me clarify.
 25 She's not a board member. She sits next to me

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1 now, though.
2 Was I clear on my clarification, that she was
3 not and has not ever --
4 Q Yes. I've got it. I think the record is clear
5 now.
6 A Thank you.
7 (Exhibit No. 28 marked for
8 identification)
9 Q Okay. Mr. Farrell, Exhibit 28 looks like it's an
10 email from you to Bob Conlin and Lisa Ellinger and
11 then Bob Conlin's response to it; is that right?
12 A Yes, it is.
13 Q And were you reaching out to -- I guess I'm
14 wondering why you were reaching out to Bob at this
15 point as opposed to Lisa only.
16 MR. KILPATRICK: Objection. It
17 mischaracterizes the 10:56 email. It's to
18 both Bob and Lisa.
19 Q Okay. Well, I guess I'll change my question. Why
20 did you include Bob on your original email as
21 opposed to just Lisa?
22 A As Secretary, my understanding is he's the --
23 Conlin would be the ultimate authority for policy
24 implementation as it relates to board decisions.
25 Lisa is a day-to-day operational person, but

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1 Conlin is the end of the day authority, and during
2 this time I would have asked Bob, just as I would
3 have asked him in a meeting, about making sure
4 that the contingencies either were met or were
5 being in process of being met.
6 And I do recall actually having a
7 conversation with Conlin directly after the
8 December 30th meeting where I said I'll be in
9 touch with you to talk about whether these
10 contingencies are being met. And it could have
11 had something to do with the fact that Lisa was in
12 and out on vacation during this time window as
13 well. So if Lisa wouldn't have been there, it's
14 conceivable that I would have talked to Conlin
15 directly. I don't remember what Lisa's vacation
16 was during this time.
17 Q Okay. So Bob is responding then that they've got
18 the AG opinion, which I take it is one of the
19 contingencies?
20 A Yes, it was.
21 Q And then the next thing is to negotiate with the
22 plans. What does that negotiate mean?
23 A Well, at this late date, we are changing the
24 language in the uniform benefits. I don't know
25 that negotiate is the right term. In fact, I

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1 believe that's why Conlin would have put it in
2 quotation marks. And it is because we would have
3 notified the plans to reinstate the exclusion as
4 one of the four contingencies.
5 Q Okay. And then he's saying once that's happened
6 ETF will send notice to the board that the
7 contingencies have been met; is that correct?
8 A Yes. One of the contingencies says the words
9 "subject to renegotiation of contracts."
10 Q Okay. So that's why he's using the word
11 negotiate?
12 A Right.
13 Q I take it this is pretty unusual, to change the
14 contract at what seems like the very last minute;
15 is that right?
16 A Is it unusual? Yes, it is.
17 (Exhibit No. 29 marked for
18 identification)
19 Q Have you had a chance to look at this?
20 A Not quite. Okay.
21 Q As I understand it, this starts with an email from
22 Kevin Potter at the Department of Justice to you
23 dated January 13th, 2017; is that right?
24 A Yes, but it refers to an attached memo, and I
25 don't see an attachment on this email or a

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1 reference to an attachment. And I don't know if
2 that's just normal or not.
3 Q Well --
4 A Because whatever it was, I forwarded it clearly to
5 Lisa at ETF and just simply forwarded it. So I'm
6 assuming a memo was attached. I'm sorry.
7 Q I'm missing the memo too, but I didn't receive it.
8 Do you know why Mr. Potter provided the memo to
9 you as opposed to providing it to you and ETF or
10 to ETF directly?
11 MR. KILPATRICK: Objection to the
12 extent it calls for speculation.
13 A I can answer, though, because I recall. I would
14 have asked somebody at ETF to ask Department of
15 Justice to give me the memo that we needed to
16 satisfy what was, I'm sorry, the fourth
17 contingency. And I do recall doing that. Whether
18 it was through Conlin or through Lisa, I would
19 have said to them, we need something from DOJ.
20 Q And you said to them we need that, and so,
21 therefore, would you ask the department to send it
22 to me directly?
23 A Sure. Yes. I cannot say that I would have
24 sent -- asked them to send it directly but know I
25 requested it.

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1 Q Okay. So you forwarded it to Lisa and Bob at ETF,
2 and then they want to know whether you want to
3 forward the DOJ memo to the rest of the board; is
4 that right?
5 A Yes.
6 Q And then you say, yes, go ahead and just send it
7 to everyone and you asked whether it's definitive
8 and Lisa says I do consider this the formal
9 guidance. Am I accurately describing what
10 happened in this email chain?
11 A Yes.
12 (Exhibit No. 30 marked for
13 identification)
14 Q Okay. So this seems to be an email chain starting
15 on January 20th from Joan Kohler to various
16 people, and then Lisa responds and she says that
17 this is the proposed health contract amendment
18 relating to the gender reassignment and says -- it
19 indicates she's waiting for feedback from you.
20 A Uh-huh.
21 Q Had you seen at that point the language which is
22 page 2 of this exhibit?
23 A First, I don't recall seeing either of these
24 emails. If I was cced, I don't remember.
25 Q It doesn't seem to show you unless it's a BCC.

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1 A Right.
2 Q But I wondered if you had actually -- if you knew
3 what the feedback -- or the request for feedback
4 was about, whether it was the language of this
5 addendum or anything else that you recall?
6 MR. KILPATRICK: I'll object to the
7 extent it calls for speculation.
8 A I might have been asked my opinion about the
9 addendum as it is drafted here. But I can't
10 recall that specifically. I do know that I have
11 seen this addendum, though. And I cannot tell you
12 what date that would have occurred.
13 Q Okay.
14 (Exhibit No. 31 marked for
15 identification)
16 A Okay. I'm familiar with this email.
17 Q Okay. It says -- so is this an email from you
18 dated January 23rd of 2017 -- I'm sorry, an email
19 dated January 23rd, 2017, from Lisa Ellinger to
20 you?
21 A Yes. From Lisa to me.
22 Q And she indicates that the previous plan was to
23 let GIB decide that the -- or whether the four
24 contingencies had been met. Was that right?
25 A Well, I think she's unclear as to whose decision

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1 it ultimately was, even by reading her email.
2 Q Right. Yeah. I mean, I'm just asking -- I see
3 where she talks about a previous plan.
4 A Uh-huh.
5 Q But she is asking your understanding of whether
6 the board expected to have another vote or not.
7 Is that correct?
8 A I think we left it open to that, to whether the
9 board would have another vote.
10 Q The board left it open, is that what you mean?
11 A No. That would have been myself and Lisa in
12 preparing for any next agenda.
13 Q Do you know whether this was the first time that
14 you had seen the agenda language? I'm sorry, the
15 addendum language?
16 A I don't know what date that was, but -- if I saw
17 it prior to the 23rd or not, I can't tell you. As
18 I said, I may have been copied in on some of the
19 discussion on January 20th as well.
20 Q Okay. Well, was it your understanding as of that
21 point that the board wanted to decide the issue
22 and whether the contingencies had been met or
23 whether the board wanted ETF to make that decision?
24 A I don't think we specifically made a determination
25 either way as to whether ETF or the board would

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1 have to make that decision. I will tell you I
2 recall that we were advised that a decision -- or
3 the reinstatement of the exclusion could not be
4 retroactive so it was a go forward based on the
5 date that it was determined that the contingencies
6 had been met. And you'll see that they've
7 indicated that this is effective January 27th
8 allowing time for communication to the plans. And
9 I would also rely on my discussion back with
10 Conlin that contingencies had been met -- or were
11 in the -- I should say were in the process of
12 being met.
13 Q And when you're referencing that discussion, do
14 you mean an email interchange or an on the phone
15 discussion?
16 A Email interchange for sure, as we have, dated
17 January 17th. I don't recall if I had a phone
18 discussion with him or not.
19 MR. KILPATRICK: I'm going to
20 object to the extent that the deponent's
21 previous answer concerned advice from legal
22 counsel with regard to the exclusion, that
23 the contingency is based on attorney-client
24 privilege, and direct the deponent not to
25 disclose any communications in any answer.

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1 THE WITNESS: Okay.
2 (Exhibit No. 32 marked for
3 identification)
4 Q So this is, Exhibit 32, an email -- well, it looks
5 like it starts at the bottom with an email from
6 Lisa to you about the next steps, and I believe
7 this is the email we looked at before.
8 A Yes. Lisa's section of the email, yes.
9 Q Okay. And then it looks -- If I'm understanding
10 you correctly, it looks like you forwarded this
11 email to Waylon Hurlburt; is that right?
12 A Yes.
13 Q And you asked him -- or you stated that it's your
14 understanding that once the contingencies are met,
15 the exclusion is immediately reinstated. No
16 further action necessary. So was that your
17 understanding?
18 A That once contingencies were met, yes. That the
19 exclusion was reinstated, yes.
20 Q Okay. And you've asked him whether he concurs,
21 and he -- I guess you get a response saying it was
22 sent to the wrong email. I'm a little confused.
23 A Well, I don't know how that happened either.
24 But -- oh. Okay. I would have probably gotten a
25 reply, you know, a do not -- or a message to

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1 sender would have given me something incorrect. I
2 think I misspelled his name, one of his first or
3 last names actually. I couldn't even tell you
4 which. But, yes, this is me asking if he concurs.
5 The reason I asked him is he was present at the
6 meeting and he made the motion, by the way, for
7 the four contingencies.
8 Q Okay. And he says he concurs, and then it looks
9 like at the top is Lisa forwarding this to Bob and
10 John Voelker and Eileen Mallow and Dave Nispel;
11 correct?
12 A Right, because Waylon Hurlburt replied to myself
13 and Lisa.
14 Q Right. Did you reach out to any other board
15 members?
16 MR. KILPATRICK: Objection. Vague
17 as to time.
18 A At what time?
19 Q At that time. You reached out to Waylon. My
20 question is did you reach out to any other board
21 members to see what they thought about whether or
22 not further board action needed to be taken?
23 A No. I would have reached out to ETF staff, and
24 this would have been the end of the discussion
25 between myself and Waylon.

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1 Q So it just basically took two people to decide
2 that that was the way it was?
3 A No. I wouldn't say that.
4 (Exhibit No. 33 marked for
5 identification)
6 Q So why did you reach out just to the one person?
7 MR. KILPATRICK: Objection. Asked
8 and answered.
9 A He was at the meeting and, as I said before, I
10 reached out to Secretary Conlin as well about the
11 contingencies. So it wasn't myself and Waylon
12 making -- myself and Waylon making a decision.
13 Q Did Mr. Conlin take a position about whether or
14 not the issue had been decided by the board that
15 ETF should make the determination?
16 A Well, I don't know if I can even respond to that.
17 Q Well --
18 A I mean, I'm in the meeting and I'm the chair of
19 the meeting. We have a motion and a second and a
20 vote to build the contingencies, and then whether
21 they're met or not over a period of time in
22 January would have been subject to several
23 discussions between myself and ETF staff.
24 Q The question is whether the board -- I don't know
25 how -- I guess what I'm trying to understand is

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1 how could Mr. Conlin know what the board's
2 expectation was about whether or not ETF or GIB
3 would make the decision that the contingencies had
4 been met?
5 A Well, Mr. Conlin was present at the announcement
6 of the four contingencies on December 30th, and so
7 he would have had a role in assuring that they
8 were met immediately following that meeting.
9 Q Okay. But that isn't really answering my
10 question. My question is whether he had an
11 understanding about whether or not the issue
12 needed to come back to the board or not or whether
13 ETF was the one who was supposed to make the
14 decision.
15 MR. KILPATRICK: Objection with
16 regard to the extent it requires speculation,
17 but you may answer.
18 A Within the contingencies that were developed at
19 the meeting on the 30th, there was no end
20 statement about who would decide whether the
21 contingencies had been met. So it was, as I've
22 said before, an effort in progress to determine if
23 they had been met or not, and my understanding was
24 at whatever point the final contingency was met
25 that they were met. In fact, that's what I say on

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1 the next memo, which I have not yet seen.
 2 Q I'm sorry. Are we still talking about 33? Is
 3 that what you're looking at, Exhibit 33?
 4 A Now I'm talking about 33. My previous answer was
 5 not based on 33.
 6 Q Right. So the top email from you says, "Please go
 7 ahead with the memo"?
 8 A I'm sorry. Are you on 32 or 33?
 9 Q 33.
 10 A Okay.
 11 Q So is that what you're talking about, where you
 12 say, "Please go ahead with the memo," and that's a
 13 memo that's stating that the contingencies had
 14 been met?
 15 A Yes. I believe I said that before, that once the
 16 contingencies were met, they were met.
 17 (Exhibit No. 34 marked for
 18 identification)
 19 A Okay. I'm familiar with this.
 20 Q Okay. So the first email is the Lisa Ellinger one
 21 dated January 27th, 2017, to you. And it
 22 discusses an attached memo which I believe I've
 23 also included here, the January 31st, 2017, memo
 24 that addresses the exclusion. And as I understand
 25 it, this says that the memo is for informational

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1 purposes, no board action is required. That was
 2 based on your advice to GIB that it was up to ETF
 3 to make this determination of when the
 4 contingencies were met; is that right?
 5 A We would have done that together, myself and ETF.
 6 Q Okay. So they -- I mean, the memo itself from ETF
 7 to GIB is saying that the contingencies have been
 8 met; is that right?
 9 A Yes.
 10 Q And includes some attachments that -- for example,
 11 the Segal memo about costs and then the language
 12 for the addendum?
 13 A Yes, which is now the date has changed, but yes.
 14 The Segal information, by the way, had been
 15 previously provided verbally but then they put it
 16 in writing.
 17 Q To the board or to you?
 18 A To the board.
 19 Q And when was that provided orally to the board?
 20 A The mid-January meeting, I believe. If I could,
 21 whether Segal would have actually said that in the
 22 January meeting, I don't know the answer to that.
 23 But I knew what Segal's opinion was prior to
 24 seeing this letter from Segal, and it could have
 25 come from ETF staff.

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1 Q Okay.
 2 (Exhibit No. 35 marked for
 3 identification)
 4 A Okay.
 5 Q So this seems to be a response from you to Lisa
 6 saying to keep the DOJ memo confidential; is that
 7 right?
 8 A In the last sentence, yes. In the top last
 9 response sentence, yes.
 10 Q But this is the DOJ memo that was one of the four
 11 contingencies; is that right?
 12 A Yes, it is.
 13 Q Okay. Doesn't the board normally make the memos
 14 that it considers for purposes of board decisions
 15 public?
 16 A No, not always. There are confidential materials
 17 that are provided often and in many cases returned
 18 back to ETF at the end of a meeting.
 19 Q Are those confidential based on legal advice or
 20 other bases?
 21 A Legal and other.
 22 Q Did you speak to Mr. Conlin regarding the previous
 23 memo we were looking at, the correspondence memo,
 24 the January 31st correspondence memo?
 25 A Did I speak to Conlin? I don't know. I more

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1 likely would have spoken to Lisa about this.
 2 Q Okay.
 3 (Exhibit No. 36 marked for
 4 identification)
 5 A I'm not familiar with this memo.
 6 Q Okay. It was a little hard to tell whether or not
 7 you were copied. So you've never seen an email of
 8 this sort that goes from ETF SMB Insurance Submit
 9 to these various groups?
 10 A No. I have not seen this.
 11 (Exhibit No. 37 marked for
 12 identification)
 13 A I'm familiar with the back page of this.
 14 Q Okay. Well, in the email from Lisa to Herschel
 15 Day, she says that we've reached out repeatedly to
 16 Mike Farrell over the past few weeks to confirm
 17 that we're proceeding as directed by the board.
 18 Do you know what she's referencing in this email
 19 in terms of reaching out to you repeatedly?
 20 A No. I don't know exactly what she is talking
 21 about here, other than, as I stated earlier, it
 22 was unclear at the end of the December 30th
 23 meeting who or how or when it would be determined
 24 that the contingencies were met. And I believe
 25 that is reflected in other parts of the record.

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1 Q Okay. Did she talk to you about the issues that
2 Herschel Day raised in terms of the disruption of
3 care?
4 A Did she talk to me about that? No, not at all.
5 Q Did you speak to Herschel about that?
6 A Did I speak to Herschel? No.
7 Q Did he raise that issue at a board meeting?
8 A I don't know.
9 Q Did he raise it in discussion with the other board
10 members at a board meeting?
11 A I don't know.
12 Q Is that typical, that one board member, if they
13 are raising an issue, rather than reaching out to
14 another board member they would reach out to ETF
15 and raise the question?
16 A Very typical.
17 Q So is there a prohibition on board members
18 speaking directly to one another?
19 A I wouldn't call it a prohibition.
20 Q Is it discouraged?
21 A Well, I think we make it a public policy
22 initiative to not speak to board members directly
23 between meetings. It doesn't mean it doesn't
24 happen, though. I've talked about my discussions
25 with J.P. Wieske, for example. But those are rare,

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1 and I did not talk to Herschel about this at all.
2 (Exhibit No. 38 marked for
3 identification)
4 A Okay. This gets to what I just said.
5 Q You recall receiving this email from Lisa
6 Ellinger?
7 A Yes.
8 Q And do you know why she sent this email about the
9 GIB communications policy at this time?
10 MR. KILPATRICK: Objection to the
11 extent it calls for speculation, but you may
12 answer.
13 A We are regularly reminded about things like this,
14 and it's not just this. It's any -- for example,
15 public records request kinds of process or any
16 other legal process that the board could be faced
17 with. So this is not unusual. And I had seen
18 this prior to this time, this actual document. In
19 fact, it says it was revised in 2012, so I
20 probably had seen it in 2012. But the board
21 regularly gets reminders about how to handle media
22 and inquiries from members, inquiries from
23 carriers, whomever it might be.
24 Q Did you speak to Lisa about this email or about
25 the communications policy?

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1 A No. Not -- no. I would have just accepted it as,
2 oh, okay, that's a reminder.
3 Q Okay. And she's reminding you to refer all
4 communications -- or board members, I should say,
5 she's reminding board members to refer all
6 communications or contacts to the department?
7 A Absolutely. Yeah. If I could point something
8 out. In the first paragraph regarding discussion
9 about board members outside of the board meetings,
10 it says, "Board members are to contact the board
11 chair or ETF department if they wish to have a
12 specific issue discussed." So I believe it gives
13 latitude to board members to contact me if they
14 feel that they want an issue discussed.
15 Q Did any of the board members contact you about the
16 exclusion?
17 A Well, other than what I've previously talked about
18 with regard to J.P. I don't know that any other
19 board members would have contacted me about it.
20 Q And on the last page of the policy, I believe this
21 indicates what you talked about before. That the
22 secretary and the board chair are authorized to
23 speak on behalf of the board; is that right?
24 A I'm sorry. Are you on page 3 of this?
25 Q Page 3. Correct.

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1 A Yes. Yes. The secretary is authorized to speak
2 on behalf of the board, yes.
3 Q And it also says the board chair, which would be
4 you.
5 A I never do, though.
6 Q But you don't?
7 A I don't.
8 Q You have that authority, but you don't?
9 A Right. Just as I rarely talk to board members
10 between meetings.
11 (Exhibit No. 39 marked for
12 identification)
13 A Can I have a moment --
14 Q Sure.
15 A -- to talk to legal?
16 Q No.
17 A No? Okay. I'm asking.
18 Q I mean, you can talk after we complete the
19 question about it, but I would rather not take a
20 break now.
21 A Okay.
22 Q Is that okay?
23 A Yes. Is there a further question on 38?
24 Q Yes. I just want to ask if you've seen this
25 before.

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1 A 38?
2 MR. KILPATRICK: No, 39.
3 MR. ROTH: 39.
4 Q 39.
5 A 39. Let me look.
6 Q You had a question about 38 to counsel?
7 A Yes.
8 Q Could we talk about 39 and then we can take a
9 break?
10 A I haven't looked at 39.
11 Q Okay.
12 A Okay. I'm not familiar with this anyway, not at
13 all.
14 Q Okay. Do you know whether -- did you speak to
15 Lisa or anyone about the fact that some of the
16 plans express legal concerns about signing the
17 contract amendment or the addendum?
18 A I'm not aware of this at all.
19 Q Okay. I'm asking more generally, not just about
20 this specific email, whether you are aware that
21 any of the plans expressed concern about signing
22 the addenda.
23 A To me, no, and I don't know about Lisa but I will
24 tell you that in my industry decisions were being
25 made about whether to reinstate the exclusion or

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1 not, and, honestly, I don't know which plans did
2 reinstate it or which didn't. I assume they were
3 directed to all reinstate the exclusion, but I'm
4 not privy to the administration of the plan by any
5 of the carriers.
6 Q I'm sorry. You're saying that you believe that
7 all plans -- you mean the plans that contract with
8 GIB and ETF?
9 A Yes.
10 Q Were directed to reinstate the exclusion?
11 A Yes.
12 Q So you're not talking about other plans. You're
13 not saying that other plans who don't contract
14 with ETF were directed to reinstate the exclusion?
15 A No. Other plans were not specifically directed to
16 reinstate the exclusion.
17 Q I got it. Just wanted to make sure that I
18 understood what you were saying. So it sounds
19 like you want to take a break?
20 A Yes, please. Just five minutes.
21 MR. KNIGHT: Five minutes, sure.
22 (Recess)
23 MR. KNIGHT: Back on the record.
24 Q Again, you're still under oath. Was there
25 something you wanted to add about a previous

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1 question or correct a response to a previous
2 question?
3 A No.
4 Q Okay. Let's see where we were.
5 (Exhibit No. 40 marked for
6 identification)
7 A Okay. I'm slightly familiar with this.
8 Q So it looks like an email to you --
9 A Yeah. I'm familiar with the email, yes.
10 Q And she's referencing something posted on the
11 Wheeler report which seems to be this letter from
12 two state representatives. Am I saying that
13 correctly?
14 A That's why I say I'm slightly familiar. I know
15 that the link included here appears to be to the
16 Wheeler report. I don't know that I -- I mean, my
17 method for having seen this would have been to
18 click that link and not to have read it this way.
19 Q I will tell you that it is the memo that is
20 included at that link.
21 A Right. There was other media at the time, and
22 that's why I say that.
23 Q Okay. And I guess I'm just -- I mean, it
24 references -- or she says, "I am awaiting word
25 from our Secretary's office that we've been

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1 formally served." I take it she means served with
2 the legal complaint. Is that your understanding?
3 A That's what served means to me, yes.
4 Q But there is this letter from legislators which is
5 urging the board to change -- well, they say -- I
6 mean, you see it's urging a change. I take it in
7 getting rid of the exclusion. Is that your
8 understanding of what they're asking?
9 A Yes, that's my understanding of what they are
10 asking.
11 Q Did they write to you directly? I guess I'm not
12 really sure -- I don't know that much about the
13 Wheeler report. It looks like sort of a news
14 blog. Did you get the letter sent to you
15 separately from the Wheeler report?
16 A Separately, no. Did I receive it eventually?
17 Yes. Because we do get correspondence that comes
18 to the Group Insurance Board through ETF, and so
19 it would have been included as board packet
20 materials at a later date, and that's why I said I
21 know I saw this and I don't know when I actually
22 got it.
23 Q I see. So it ultimately would have been provided
24 to the board at a later date -- at the next board
25 meeting; is that right?

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1 A Yes.
2 Q Did the board take any action in response to this
3 letter from the legislators?
4 A No.
5 Q Did it discuss the letter?
6 A No. Not directly. This wasn't the only letter.
7 (Exhibit No. 41 marked for
8 identification)
9 A Okay. I'm familiar with these materials.
10 Q Okay. So this is one of the emails to the board,
11 then, and this was the May 19th, 2017, memo -- I'm
12 sorry, email to the board prior to an upcoming
13 meeting; is that correct?
14 A Yes.
15 Q Okay.
16 A Correct.
17 Q And I believe, as long as this is, I did not
18 try -- we did not try to copy every document from
19 this. I believe that what we've included here is
20 the minutes from the February 8th meeting. Why
21 don't we take a look at those first.
22 A Okay.
23 Q These memos include a discussion of the exclusion.
24 Do you see where I'm reading?
25 A Yes.

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1 MR. KILPATRICK: Do you mean the
2 minutes?
3 Q The minutes. I'm sorry. And do these minutes
4 accurately reflect what happened during the course
5 of the meeting as you recall?
6 A I have not read them in detail again, but yes, as
7 I scan them.
8 Q Okay. And then there is a statement that says
9 that Mr. Farrell noted that the board's
10 December 30th, 2016, decision could be revisited
11 at any date in the future as desired by the board.
12 Do you recall saying that?
13 A I did and I said it today too.
14 Q But I believe you said that has -- if I'm
15 remembering correctly, that that decision has not
16 been reconsidered?
17 A I believe it has been reconsidered.
18 Q Okay. And when was it reconsidered?
19 A In the May meeting.
20 Q In the May meeting there was reconsideration
21 given. This is where you talked earlier about
22 Mr. Day asking about getting rid of the exclusion?
23 A Correct.
24 Q And I believe you said there was no board action
25 taken on that request; is that correct?

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1 A I think I said I'd prefer to look at the minutes
2 of that to determine if and what board action was
3 made at that time. Whatever it was, nothing
4 changed.
5 Q Whatever consideration happened, the exclusion was
6 not -- was left in place?
7 A That's correct.
8 Q It was not ended at that point. Was there
9 discussion of the exclusion at the August 30th,
10 2017, meeting?
11 A I don't recall.
12 Q But in any event, whether there was discussion or
13 not, the exclusion still exists. It was not ended
14 at that point?
15 A That's correct. And whatever -- the meeting
16 minutes for the May meeting would likely have been
17 approved in the August meeting without discussion.
18 Q Do you happen to know whether GIB was or is a
19 plaintiff in the Texas litigation that we've been
20 talking about?
21 A Do I know? No, I don't.
22 MR. KNIGHT: Okay. I have no
23 further questions at this point.
24 MR. KILPATRICK: Okay. I would
25 like to take a little break and confer with

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1 counsel before we come back and possibly ask
2 some questions. Is that okay?
3 MR. KNIGHT: That's perfectly fine.
4 I may have more questions depending on your
5 questions.
6 MR. KILPATRICK: I understand.
7 (Recess)
8 MR. KILPATRICK: Back on.
9
10 EXAMINATION
11 By Mr. Kilpatrick:
12 Q Good afternoon, Mr. Farrell. The same rules apply
13 with regard to my questions as they did for
14 Mr. Knight's. If you don't understand a question,
15 please feel free to ask me to repeat it or to
16 rephrase and let me know that you don't understand
17 it. And give oral answers. Do you understand?
18 A Yes.
19 Q Great. Is there anything that you would like to
20 correct from your previous testimony?
21 A Yes, just a minor thing. I know I mentioned the
22 name of Heather Smith before at the governor's
23 office, and I want to clarify that my discussions
24 with her were unrelated to this matter.
25 The question was asked about who I talked to

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1 in the governor's office, and I think I used her
 2 name, but it was unrelated to this matter. It was
 3 related to the recommendation to take the plan
 4 that's self-insured during this same time window.
 5 That's all.
 6 Q Okay. I want to ask you a few questions about
 7 coverage exclusions in plans. Based on your
 8 experience as a broker, do coverage exclusions
 9 reduce overall costs for health insurance plans?
 10 A I wouldn't say they reduce them. They are
 11 completely avoided.
 12 Q What do you mean by that?
 13 A Well, a claim could be submitted for any purpose
 14 and the plan dictates whether the claim is going
 15 to be covered, subject to medical necessity, and
 16 exclusions play a part in that. So if a claim is
 17 submitted for an excluded treatment, then it is
 18 excluded and not covered.
 19 Q I guess but stepping back, for the purpose of
 20 exclusions, could you, based on your experience,
 21 let us know what you believe the purpose of
 22 exclusions are?
 23 A Oh. I think there is multiple reasons for
 24 including exclusions, including the fact that they
 25 would create cost for a plan.

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1 Q What would create cost for a plan?
 2 A Maybe an example would be easier. Somebody has a
 3 cosmetic surgery, for example, and a claim is
 4 submitted. Cosmetic surgery is an excluded for
 5 coverage item, so the plan does not bear the cost
 6 for covering a cosmetic surgery, and there are
 7 dozens of exclusions in a plan.
 8 Q So there are exclusions in the uniform benefits
 9 plan of the State of Wisconsin; correct?
 10 A Yes, there are.
 11 Q So does the state save money by having exclusions
 12 in its uniform benefits plan?
 13 A It avoids cost.
 14 Q It avoids cost. Does the state avoid costs by
 15 having the exclusion at issue here in its plan?
 16 A Yes.
 17 MR. KILPATRICK: I have no further
 18 questions.
 19
 20 RE-EXAMINATION
 21 By Mr. Knight:
 22 Q Mr. Farrell, were you aware of the Segal memo, for
 23 example, that estimated that there would be no
 24 cost from ending the exclusion --
 25 MR. KILPATRICK: Objection.

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1 Q -- to the state?
 2 MR. KILPATRICK: Objection to the
 3 extent it misconstrues the Segal memo. The
 4 deponent hasn't seen the Segal memo today.
 5 THE WITNESS: Did you say I have
 6 not seen the Segal memo?
 7 MR. KILPATRICK: To the extent you
 8 haven't seen the Segal memo he's referenced
 9 today.
 10 Q Have you seen the Segal memo?
 11 A Yes, I think I have. I also --
 12 Q And didn't the Segal memo conclude that the cost
 13 would be almost immeasurable for purposes of
 14 ending the exclusion?
 15 A Yes, and this is a reinstatement of Segal's
 16 opinion from maybe dating back as far as July when
 17 we first withdrew the exclusion. So that opinion
 18 from Segal had been -- I said earlier today that
 19 that opinion from Segal had been known previous to
 20 them releasing their memo.
 21 Q And the memo was ultimately a memo that said that
 22 the cost of providing this particular benefit, the
 23 coverage for gender dysphoria, was, what words
 24 should we use, minimal, extremely small?
 25 A I would say minimal.

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1 MR. KNIGHT: Okay. All right.
 2 Nothing further.
 3 MR. KILPATRICK: Nothing further
 4 from us either.
 5 (Adjourning at 4:03 p.m.)
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1 STATE OF WISCONSIN)
2 COUNTY OF DANE) ss.
3

4 I, Peggy S. Christensen, Registered Professional
5 Reporter and Notary Public in and for the State of
6 Wisconsin, do hereby certify that the foregoing
7 deposition of MICHAEL S. FARRELL was taken before me
8 on April 11, 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 17th day of April 2018.

20
21
22
23
24
25

Notary Public, State of Wisconsin
My Commission Expires August 7, 2020

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