

In The Matter Of:

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

*Deposition of Robert J. Conlin
April 18, 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 ROBERT J. CONLIN, 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 18, 2018, commencing at 9:02 a.m. and ending
 at 4:21 p.m.

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

5 AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN
 6 FOUNDATION, by
 7 LAWRENCE J. DUPUIS and ASNA KADRI KEELER,
 8 ACLU of Wisconsin Foundation,
 9 207 East Buffalo Street, Suite 325,
 Milwaukee, Wisconsin 53202,
 appeared on behalf of the Plaintiffs;

10 STATE OF WISCONSIN DEPARTMENT OF JUSTICE, by
 11 COLIN T. ROTH, STEVEN C. KILPATRICK, and
 12 JODY J. SCHMELZER,
 13 17 West Main Street,
 Madison, Wisconsin 53707,
 appeared on behalf of the Defendants.

14 Also Present: David Nispel, Diana Felsmann

15

16

17

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 9 Memorandum
 10
 11 (The original exhibits were attached to the original
 12 transcript and PDFs were provided to counsel)
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24 (The original deposition transcript was filed with
 25 Attorney Nicholas E. Fairweather)

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1 ROBERT J. CONLIN, called as a
 2 witness, being first duly sworn, testified on
 3 oath as follows:
 4
 5 EXAMINATION
 6 By Mr. Dupuis:
 7 Q Good morning, Mr. Conlin. My name is Larry
 8 Dupuis. I'm one of the lawyers for the plaintiffs
 9 in the case of Boyden versus Department of
 10 Employee Trust Funds, et al. Could you please
 11 state your full name for the record.
 12 A Robert Joseph Conlin.
 13 Q And can you spell Conlin?
 14 A C-o-n-l-i-n.
 15 Q Have you ever been deposed before?
 16 A No.
 17 Q Have you ever testified at a trial or a hearing
 18 before?
 19 A No.
 20 Q Have you ever given testimony in any other sort of
 21 proceeding? Arbitration, that sort of thing?
 22 A No.
 23 Q Okay. You're an attorney; correct?
 24 A Correct.
 25 Q Okay. So I'm sure your counsel went over some of

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1 these ground rules with you, but I'm going to do
 2 it again partly just to remind you but also so
 3 that we have a clear understanding of sort of when
 4 I ask questions and you give answers what the
 5 record means.
 6 So sort of the key rules are related to the
 7 fact that we have a court reporter, and she's
 8 trying to take down every word that we say. So we
 9 need verbal answers, not nods. Is that okay?
 10 A Yes.
 11 Q And similarly, if there is a yes or no question,
 12 answer with a yes or a no rather than an uh-huh.
 13 Even though it might be obvious from context or
 14 tone of voice, it doesn't come across on a
 15 transcript. All right?
 16 A Yes.
 17 Q All right. And then also try to avoid crosstalk.
 18 In normal conversation obviously you'll probably
 19 guess where my question is going, but wait until
 20 it actually gets all the way out before you start
 21 your answer, and I'll try to do the same, not ask
 22 another question until you're finished with your
 23 answer. All right?
 24 A Understood.
 25 Q If you don't understand a question, please let me

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1 know and I can either repeat or rephrase it. All
 2 right?
 3 A Okay. Yes.
 4 Q And if you do answer a question, I will assume
 5 that you understood it. All right?
 6 A Yes.
 7 Q And you're represented by Mr. Roth and other folks
 8 here at the DOJ in this case; is that right?
 9 A Yes.
 10 Q Mr. Roth, assuming he's going to be defending this
 11 the entire day, may interpose objections after I
 12 ask questions. In general, if you understand the
 13 question, you can answer the question, despite the
 14 objection. The only exception is if he actually
 15 directs you not to answer a question. Is that
 16 clear?
 17 A Yes.
 18 Q Is there any reason you can think of why you
 19 wouldn't be able to give full and complete answers
 20 and accurate answers today?
 21 A No.
 22 Q And you understand that you're under oath?
 23 A Yes.
 24 Q And that means that you need to tell the truth to
 25 the best of your ability; correct?

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1 A Yes.
2 Q Did you meet with your attorneys to prepare for
3 this deposition?
4 A Yes.
5 Q When was that?
6 A Two days ago.
7 Q Okay. And for how long?
8 A It was probably three hours.
9 Q Did you just have the one meeting to prepare for
10 the deposition?
11 A With counsel from DOJ, yes.
12 Q Okay. Did you have meetings with other counsel?
13 A I met with counsel from ETF.
14 Q Okay. Mr. Nispel or Ms. Felsmann?
15 A Correct.
16 Q When was that?
17 A That would have been Monday morning.
18 Q And about how long?
19 A A couple three hours.
20 Q Did you review documents in either of those
21 meetings?
22 A Yes.
23 Q Do you recall what documents you reviewed?
24 A I believe they were the documents that we
25 submitted as part of the response to your requests

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1 for documents.
2 Q So they're responses to the discovery requests?
3 A Correct.
4 Q Okay. I assume you didn't review all of those.
5 Do you recall what kinds of documents in
6 particular you looked at?
7 A I think most of them were memos to the Group
8 Insurance Board, emails related to them that I was
9 a party to.
10 Q Okay. Did you review minutes?
11 A Yes.
12 Q Did you review minutes of closed sessions?
13 A No. I don't -- actually, I don't recall if there
14 were closed session minutes in that. There may
15 have been.
16 Q So we'll be going over a number of documents in
17 the course of the deposition, and I'll be asking
18 you to identify them. And one thing I want to
19 just sort of let you know is that many of the
20 documents, especially the emails, because they
21 were produced in native format, so they were in
22 DOT email format, when we printed them, the person
23 who printed them, that person's name appears at
24 the top of the emails. So I'll be asking you to
25 identify them, and obviously you won't recognize

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1 that aspect of those emails. But if you recognize
2 the rest, then basically I'm representing to you
3 that we printed those out in the format that we
4 got them. All right?
5 A I understand.
6 Q We've also added some handwritten numbers for
7 identification on the bottom of some of these
8 documents, and, again, that's just for
9 identification purposes. They obviously weren't
10 on the documents originally. But, again, when I
11 ask you to identify documents or if you recognize
12 documents, I'm referring to the content, not those
13 additional things. All right?
14 A Understood.
15 Q So did you have a role in producing the documents
16 or searching for documents in response to our
17 discovery requests?
18 A I don't understand the question. So actually
19 producing the documents?
20 Q Well, let's start with did you have a role in
21 searching for documents that were responsive to
22 our discovery requests?
23 A No.
24 Q Okay. Did you have a role in assisting counsel in
25 identifying documents that would be responsive to

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1 our discovery requests?
2 A Maybe a few.
3 Q Okay. Did you personally search your email
4 accounts?
5 A Yes.
6 Q Okay. Did you receive a list of keywords or
7 something to use to identify emails? How did you
8 do the search?
9 A Is that the question? Okay.
10 Q Yes. How did you do your search?
11 A I searched my emails for things related to the
12 Group Insurance Board and the transgender issue
13 that came up.
14 Q And when you say you searched for, did you use
15 search terms that were specified for you or did
16 you decide on your own how to do that search?
17 A I have folders set up, sometimes by topics, by
18 boards, and I just looked through those.
19 Q Okay. Do you know if anyone else searched your
20 email accounts?
21 A Yes.
22 Q Okay. Did someone else?
23 A Yes.
24 Q Okay. And who did that, do you know?
25 A I believe our IT department using search terms

Page 13

1 searched the emails.
 2 Q Okay. Did you search any paper folders, paper
 3 files?
 4 A No.
 5 Q Does the department keep records in paper form?
 6 A Yes.
 7 Q Would there have been documents that you can think
 8 of that might have been responsive to the
 9 discovery requests that would not also be in some
 10 other form that was searched?
 11 A No.
 12 Q Okay. Did you search your computer directories
 13 other than email accounts for documents that would
 14 be responsive to the discovery requests?
 15 A No.
 16 Q Did your IT department, to your knowledge?
 17 A I believe so.
 18 Q All right. I'm going to, just because we're going
 19 to use a number of terms repeatedly throughout the
 20 course of this and some of them would be difficult
 21 to sort of define each time or fully spell out
 22 each time, I'm going to just try to get an
 23 understanding between us that this is what I mean
 24 when I use some of these terms.
 25 So when I use the term exclusion, unless I

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1 specify otherwise, I'm referring to the exclusion
 2 in the uniform benefits of coverage for
 3 procedures, services, and supplies related to
 4 surgery and sex hormones associated with gender
 5 reassignment. Okay?
 6 A Okay.
 7 Q When I say ETF or Employee Trust Funds, I'm
 8 referring to the Department of Employee Trust
 9 Funds rather than the Employee Trust Funds Board.
 10 If I am referring to the board, I will specify
 11 that. Is that all right?
 12 A Understood.
 13 Q Okay. GIB or Group Insurance Board, I'm referring
 14 to the board, the Group Insurance Board.
 15 A Yes.
 16 Q And OSHP would be the Office of Strategic Health
 17 Policy within the Department of Employee Trust
 18 Funds.
 19 A Yes.
 20 Q So I'm going to get a little background from you.
 21 Where do you live? Just what city or town?
 22 A I live in Madison.
 23 Q Where did you go to high school?
 24 A Durand Senior High School in Durand, Wisconsin.
 25 Q And where is Durand? I should know this, but I

Page 15

1 don't.
 2 A I'm not offended. Durand is in west central
 3 Wisconsin, kind of at an apex between Menomonie
 4 and Eau Claire.
 5 Q Okay. And when did you graduate?
 6 A 1984.
 7 Q And where did you go to college as an
 8 undergraduate?
 9 A Saint John's University in Minnesota.
 10 Collegetown, Minnesota. Smaller than Durand.
 11 Q And when did you graduate from Saint John's?
 12 A 1988.
 13 Q And what was your degree in?
 14 A History.
 15 Q And, like all good history majors, you went to law
 16 school.
 17 A I did.
 18 Q When did you do that?
 19 A I started that fall of '88. I graduated in 1991.
 20 Q And that was at UW; is that correct?
 21 A UW-Madison.
 22 Q Okay. So there is no graduate school or full-time
 23 employment between Saint John's and UW law school;
 24 is that right?
 25 A Correct.

Page 16

1 Q Okay. Have you had any other post-graduate
 2 education that either led to or may have led to a
 3 degree?
 4 A No.
 5 Q I take it you've had some sort of professional --
 6 continuing professional training over the course
 7 of time since you graduated from law school?
 8 A As part of law practice, yes.
 9 Q Okay.
 10 A Continuing legal education.
 11 Q And have you had education or training related to
 12 basically the duties of your job, the subject
 13 matter of your job currently?
 14 A Yes.
 15 Q Can you describe that in sort of general terms?
 16 A So we tend to participate in the International
 17 Foundation of Employee Benefit Plans certification
 18 program. They have a pension track and a
 19 healthcare track, both leading to a certificate in
 20 those, and I have both of those.
 21 Q So you said a pension track and a medical track?
 22 A Health insurance.
 23 Q Health, okay. When did you get those
 24 certifications?
 25 A Probably about ten years ago now.

Page 17

1 Q Okay. What was entailed in getting the health
 2 certification?
 3 A The health certificate involves -- I forget. I
 4 think it was four days of coursework, maybe it was
 5 two days of coursework. The topics range from
 6 things such as fiduciary duty, board governance
 7 matters, fundamentals of health insurance, like
 8 actuarial, difference in plan design types. I
 9 think it's intended to be a primer for new people
 10 coming in to those posts to ease the transition,
 11 not specifically to my post but folks dealing with
 12 those topic areas.
 13 Q Okay. You're not an actuary, are you?
 14 A No.
 15 Q Okay. How long have you worked for the Department
 16 of Employee Trust Funds?
 17 A I joined ETF in 2006. So 12 years now.
 18 Q Okay. I'd like just briefly for you to go through
 19 your job history between law school and ETF.
 20 Either direction, whichever is easier for you, if
 21 you want to go backwards, if you want to go
 22 forwards. Take your pick.
 23 A Sure. So after graduating from law school in
 24 1991, I took a position with Sauk County,
 25 Wisconsin in the corporation counsel's office. I

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1 was primarily responsible for child support and
 2 paternity, child support enforcement and paternity
 3 establishment. I was there for almost two years.
 4 At that point I took a position with the
 5 Wisconsin Legislative Council staff, a nonpartisan
 6 legal and policy shop for the legislature.
 7 Q And that was about what year?
 8 A '93.
 9 Q Okay.
 10 A I served in that capacity as a staff attorney and
 11 senior staff attorney until February of 2006,
 12 which is when I went to ETF as their director of
 13 legislation, communications, and planning.
 14 Q Okay. So in the Leg Council's office, did you
 15 have any particular experience related to -- or do
 16 work related to employee health insurance, state
 17 employee health insurance?
 18 A One of my assignments was with the Joint Committee
 19 on Employment Relations, which dealt with
 20 approving state employee contracts, labor
 21 agreements. That was the primary exposure to
 22 health-related employee benefits for state
 23 employees.
 24 Q Okay. It was around that time that the sort of
 25 uniform benefits approach went into effect; is

Page 19

1 that right? About '94, does that sound familiar?
 2 A That's my understanding.
 3 Q Okay. And at the time you were at Leg Council,
 4 were you working on -- was that a result of some
 5 statutory change or was it an ETF-generated
 6 change, to your knowledge?
 7 A I don't know. I was not working in that area at
 8 that time.
 9 Q You said you went to ETF to take the position of
 10 director of legislation, communications, and
 11 planning; is that right?
 12 A Correct.
 13 Q And what was entailed in that job? What were your
 14 basic responsibilities?
 15 A So legislation involved either shepherding through
 16 ETF-sponsored legislation or dealing with other
 17 legislation affecting ETF, communicating with
 18 legislators about issues that came up, constituent
 19 concerns.
 20 Communications primarily dealt with the
 21 agency's communications. Our newsletters to
 22 members, website content, things like that.
 23 Planning is the agency's strategic planning
 24 efforts and goals and target setting and all of
 25 that sort of thing.

Page 20

1 Q Okay. Does that position still exist?
 2 A I think it's been divvied up. The functions still
 3 exist in some capacity.
 4 Q But there is now a communications director, for
 5 example?
 6 A Right. We have a separate communications office.
 7 We have a separate legislative government
 8 relations director.
 9 Q And the strategic planning function, has that been
 10 absorbed elsewhere?
 11 A I would say that's kind of shared with several
 12 people at this point.
 13 Q The strategic planning, was that done primarily
 14 sort of ETF-wide or was that a process that
 15 happened with each board or program?
 16 A It was more of an ETF operations centric effort.
 17 At the time, and still currently, we share the
 18 strategic plan with the ETF board, but the
 19 planning didn't involve program planning. It was
 20 more how are we going to answer the phones, how
 21 are we going to improve customer service for our
 22 members.
 23 Q Okay. So it wasn't program or board specific
 24 really. It was more structural and -- yeah. I'll
 25 withdraw that question.

Page 21

1 How long were you in that position?
 2 A I took the position in February of '06, and I was
 3 appointed deputy secretary, I think, in October of
 4 '07.
 5 Q Okay. So about a year?
 6 A Year and a half-ish.
 7 Q And was the deputy secretary position also known
 8 as the chief operating officer or how did that
 9 come about?
 10 A I think the deputy secretary was used as a chief
 11 operating officer, responsible for the operations
 12 of the program areas. Customer service, those
 13 sorts of things.
 14 Q Okay. Were you ever formally -- did you ever
 15 formally have the title of chief operating officer
 16 at the Department of Employee Trust Funds?
 17 A Not formally. I think that was kind of a working
 18 concept.
 19 Q Okay. And how long were you deputy secretary?
 20 A From October of '07 through December of 2011.
 21 Q So when you were director of legislation,
 22 communications, and planning, to whom did you
 23 report?
 24 A I reported to what was then referred to as the
 25 executive assistant. Today it would be the

Page 22

1 assistant deputy secretary. Kind of the third
 2 person in charge of the agency.
 3 Q And did you have staff reporting to you?
 4 A Yes.
 5 Q Who reported to you?
 6 A So we had a communications specialist who worked
 7 on the newsletters and such. I believe during
 8 part of that time I had an attorney reporting to
 9 me, and then there may have been an LTE, limited
 10 term employee, or two throughout that time,
 11 communications specialists.
 12 Q Okay. And during the time you were deputy
 13 secretary, to whom did you report?
 14 A To the secretary.
 15 Q And who was that at the time?
 16 A Dave Stella.
 17 Q Was Dave Stella the secretary the entire time you
 18 were deputy secretary?
 19 A Yes.
 20 Q And who reported to you?
 21 A So the administrator of retirement services, the
 22 administrator of insurance services, I believe I
 23 had an attorney. I can't remember when legal
 24 started reporting to me, but at some point in
 25 there legal started reporting to me. And our

Page 23

1 Office of Policy, Privacy, and Compliance that we
 2 created sometime during that tenure reported to me
 3 as well, and that's all I can recall at this
 4 point. We made some organizational, structural
 5 shifts during that four years.
 6 Q Was the administrator of insurance services, did
 7 that function become or part of it become the
 8 director of the Office of Strategic Health Policy?
 9 A Yes.
 10 Q Do you know when that happened, roughly?
 11 A Yeah. That was while I was secretary, sometime
 12 probably in, you know, '12, '13, something like
 13 that years.
 14 Q Okay. So did the administrator of insurance
 15 services, was that person or that position
 16 responsible for dealing with the Group Insurance
 17 Board and its programs?
 18 A Yes.
 19 Q Okay. So I'd like you to take a look at the
 20 document we're going to mark Conlin Exhibit 1.
 21 (Exhibit No. 1 marked for
 22 identification)
 23 Q Do you recognize that document?
 24 A Yes.
 25 Q Did you prepare it?

Page 24

1 A I had a hand in preparing it.
 2 Q Did somebody else write a first draft of it or did
 3 you write the initial draft? Do you know how that
 4 happened?
 5 A I believe the evolution of this, we've had
 6 something along this line for a while, and so it's
 7 been more of an updating and kind of keeping it
 8 fresh sort of matter. I don't remember when the
 9 original was created.
 10 Q Was it created under your watch or was it -- did
 11 one exist before you started as secretary?
 12 A I believe something existed before I started as
 13 secretary.
 14 Q Okay. Would you say this document accurately
 15 summarizes your duties?
 16 A I think it's an accurate summary for purposes of
 17 the board. This is intended to be a guidepost for
 18 the boards that we work with. It's certainly not
 19 a complete list of the duties of the secretary.
 20 Q And when you say the boards, I think you used the
 21 plural.
 22 A Correct.
 23 Q So this is for both members of the Employee Trust
 24 Funds Board but also for the various attached
 25 boards, including the Group Insurance Board?

Page 25

1 A Correct.
 2 Q So one of your roles is ensuring effective
 3 administration and oversight of agency operations;
 4 is that correct?
 5 A Yes.
 6 Q And that includes the operation of the group
 7 health insurance program for state employees;
 8 correct?
 9 A Correct.
 10 Q And you're responsible for developing and
 11 recommending policy to a variety of bodies, but
 12 including the Group Insurance Board; correct?
 13 That's the third bullet point.
 14 A Yes. That falls within my umbrella.
 15 Q All right. And one of your obligations is to --
 16 or one of the things you do is maintain effective
 17 relationships with the governor's office, the
 18 legislature, other state and legislative agencies;
 19 is that correct?
 20 A One tries, yes.
 21 Q And does that include the Department of Justice?
 22 A Yes.
 23 Q And then you work with an array of third-party
 24 administrators, including, I assume, actuaries,
 25 although I don't know if I see that in here.

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1 Actuarial consultants; is that right?
 2 A Correct.
 3 Q And then also the health insurance plans, such as
 4 Navitus, the plan for medication coverage for
 5 state employees; is that correct?
 6 A Correct.
 7 Q And then also the various plans that provide
 8 health insurance coverage to state employees?
 9 A Correct.
 10 Q So this is, in some sense, a summary of duties and
 11 authority that come from other sources besides
 12 this, such as the statutes and administrative
 13 rules; is that correct?
 14 A Correct.
 15 Q Okay. I'll have you take a look at another
 16 document here.
 17 (Exhibit No. 2 marked for
 18 identification)
 19 Q I'm showing you what's been marked Conlin
 20 Exhibit 2. Actually, just take a look at the
 21 entire document quickly, if you can, because it's
 22 actually a conglomeration of state statutes.
 23 MR. ROTH: Are these all intended
 24 to be two-sided or just some of them?
 25 MR. DUPUIS: The first two are

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1 probably not two-sided. But after that,
 2 they're all two-sided.
 3 MR. ROTH: Oh, I see. I just want
 4 to make sure I have the same thing as the
 5 witness does.
 6 MR. DUPUIS: So 1504 and 1505 are
 7 just single-sided and 4003 is two-sided.
 8 MR. ROTH: Got it.
 9 MR. DUPUIS: And ends before it's
 10 complete, I think. I think there might be
 11 some additional.
 12 A It cuts off.
 13 Q I will not be asking you questions about anything
 14 that's not in there, I don't think.
 15 So I would like you to take a look at the
 16 second page of this compilation. So you're
 17 appointed by the ETF board under 15.05(1)(b); is
 18 that correct?
 19 A Well, I'm appointed under Chapter 40.
 20 Q So you are a secretary of a department; correct?
 21 A Correct.
 22 Q And you're not appointed by the governor; correct?
 23 A Correct.
 24 Q And you were appointed by the board of the
 25 Department of Employee Trust Funds; correct?

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1 A The Employee Trust Funds Board, correct.
 2 Q So are you saying that your appointment is not
 3 under 15.05(1)(b), do you know?
 4 MR. ROTH: I'll object to the
 5 extent it calls for a legal conclusion. You
 6 can answer if you can.
 7 A I understood your question to be appointed under
 8 that. 40.03(1)(c) says that the ETF board
 9 appoints me.
 10 Q Okay.
 11 A I understand 15.05(1)(b) to say if I am appointed
 12 under that, this applies.
 13 Q Okay. So let me just clarify that. So you are a
 14 secretary under 15.05(1)(b), but you were
 15 appointed by the ETF board under 40.03(1)(c), I
 16 believe?
 17 MR. ROTH: Again, I'll object to
 18 the extent it calls for a legal conclusion,
 19 but you can answer if you can.
 20 A I believe 15.05(1)(b) applies to me.
 21 Q Okay. So under that statute all of the
 22 administrative powers and duties of the department
 23 are vested in the secretary to be administered by
 24 him or her under the direction of the board, which
 25 in this case is referring to the ETF board; is

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1 that correct?
 2 A Yes.
 3 Q And the secretary, with the approval of the board,
 4 shall promulgate rules for administering the
 5 department and performing the duties assigned to
 6 the department; correct?
 7 A That's what it says.
 8 Q And those are your -- you do promulgate rules in
 9 conjunction with the ETF board and other boards;
 10 correct?
 11 A Correct.
 12 Q Okay. And then if you could look at 40.03(2)(a).
 13 It says you're in charge of the administration of
 14 the department and exercise, as head of the
 15 department, all powers and duties specified in
 16 15.04 and 15.05. So that's, in part, how you get
 17 back to the 15.05(1)(b) applying to you; correct?
 18 MR. ROTH: Object to the extent it
 19 calls for a legal conclusion, but you can
 20 answer.
 21 A Correct.
 22 Q And under 40.03(2)(a), it seems a little
 23 redundant, but it says you're in charge of
 24 administration of the department and exercise, as
 25 head of the department, all powers and duties.

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1 I'm sorry, we already did talk about that. I
 2 mean, do you see that as any different from your
 3 duties under 15.05(1)(b)?
 4 MR. ROTH: Same objection, but you
 5 can answer.
 6 A I don't understand the question.
 7 Q So 40.03(2)(a), that says you're in charge of
 8 administration of the department and exercise all
 9 powers and duties. Do you understand those powers
 10 and duties to be different from the powers and
 11 duties that are described in 15.05(1)(b), which
 12 is, again, just the term powers and duties?
 13 MR. ROTH: Same objection. You can
 14 answer.
 15 A I understand that the powers and duties in
 16 15.05(1)(b) are included within my powers and
 17 duties under 40.03.
 18 Q Okay. So under 40.03(2)(b), it indicates that you
 19 employ and select administrative, clerical, and
 20 other employees. So are you involved in the
 21 hiring of staff for ETF?
 22 A Yes.
 23 Q Including staff in OSHP?
 24 A The director of the Office of Strategic Health
 25 Policy, yes.

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1 Q Okay. And then you delegate the selection of
 2 staff below that level to that director; is that
 3 correct?
 4 A The director would have the hiring authority,
 5 would be the hiring authority for his or her
 6 staff, yes.
 7 Q Okay. And then you're also required to establish
 8 the internal organization of the department; is
 9 that correct?
 10 A Yes.
 11 MR. ROTH: Same objection. You can
 12 answer.
 13 A Yes.
 14 Q So that includes things like the transition from,
 15 conceivably, I don't know if I asked if you were
 16 responsible for this, but the administrator of
 17 insurance services and the establishment of OSHP.
 18 Did that happen under your watch as secretary?
 19 A Yes.
 20 Q Okay. So is that what you understand to -- Do you
 21 understand that sort of change to be included
 22 within your duties to establish the internal
 23 organization of the department?
 24 A Yes.
 25 Q Okay. And then under (f), you can delegate to

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1 other departmental employees any powers or duties
 2 of the secretary; is that correct?
 3 A Yes.
 4 Q But you're still ultimately responsible for
 5 carrying out the obligations of the department;
 6 correct?
 7 MR. ROTH: Same objection. You can
 8 answer.
 9 A I'm responsible for making sure these things get
 10 done, yes.
 11 Q Okay. And (h) indicates that you can request
 12 information from employees or employers,
 13 participating employers, as necessary for proper
 14 operation of the fund. Do you take that to
 15 include operation of the group health insurance
 16 programs or is it just referring to the trust fund
 17 for retirement?
 18 MR. ROTH: Same objection. You can
 19 answer if you can.
 20 A We use that authority primarily on the pension
 21 side but view it as broad enough to request, from
 22 employers especially, information that we need to
 23 administer our programs.
 24 Q Including the group health insurance programs?
 25 A Correct.

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1 Q Okay. And then (ig) -- I'm sorry. Yes, (ig)
2 indicates that the secretary shall promulgate,
3 with the approval of the Group Insurance Board,
4 all rules required for the administration of the
5 group health insurance and other programs under
6 the Group Health Insurance Board. Is that an
7 accurate summary of that obligation?
8 A Yes.
9 Q Okay. So the rulemaking process, is that
10 initiated by you as secretary for health insurance
11 purposes or is that initiated by OSHP staff or by
12 Group Health Insurance Board members?
13 A So administrative rulemaking is employed when we
14 need it. So if there is a program change or
15 administrative change that needs an administrative
16 rule, the concept might be initiated by OSHP or by
17 a change in the board. Typically the drafting and
18 preparation of the rule ultimately will fall to
19 legal services.
20 Q Okay. Can you think of some examples of program
21 or administrative changes that have required
22 rulemaking for the group health insurance programs
23 in your time as secretary?
24 A I don't believe we've done a lot of rulemaking for
25 the group health insurance program in my time.

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1 Nothing is coming to mind.
2 Q Would the -- go ahead.
3 A We've done some technical updates and things when
4 laws change, but I don't recall any new rulemaking
5 that we've done.
6 Q Was there any rulemaking involved in the
7 recommended but ultimately abandoned effort to
8 have group health insurance be a self-insured
9 program?
10 A Well, we never got that far, so I don't know if we
11 would have required any rulemaking. I believe our
12 belief was we had the authority we needed to do
13 self-insurance as it was, but that's where we
14 would get into the administrative detail of what
15 would need to happen and anything we couldn't deal
16 with through those self-insured contracts could
17 conceivably require rulemaking.
18 Q Okay. And the process of updating uniform
19 benefits and that sort of thing has never been
20 done through rulemaking in your time; is that
21 correct?
22 A Correct.
23 Q That's always been a function of ETF staff and
24 board and the GIB board?
25 A The Group Insurance Board would approve the

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1 changes to the uniform benefits, yes.
2 Q Okay. So under 40.03(2)(m), it's in the second
3 column on that same page, it says you shall have
4 all other powers necessary to carry out the
5 purposes and provisions of this chapter, unless
6 otherwise specified. Right?
7 A Unless otherwise specifically provided by this
8 chapter.
9 Q Right. So is it fair to say that you're
10 ultimately responsible for administering the
11 programs operated by the Department of Employee
12 Trust Funds?
13 MR. ROTH: Same objection. You can
14 answer.
15 A What do you mean by responsible?
16 Q You have the authority and the duty to administer
17 the programs of the Department of Employee Trust
18 Funds?
19 MR. ROTH: Objection to the extent
20 it calls for a legal conclusion and to the
21 extent it misstates the statutes. You can
22 answer if you can.
23 A Generally, yes.
24 Q Okay. And that includes the group health
25 insurance programs; correct?

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1 MR. ROTH: Same objection. You can
2 answer.
3 A Generally, yes.
4 Q Could you go back to the first page of this
5 document. And take a look at 15.04. Do you see
6 that?
7 A Yes.
8 Q And it lays out the duties of each head of a
9 department. Do you see that?
10 A Yes.
11 Q And 15.04 is one of the statutes that was referred
12 to in 40.03(2)(a) describing your powers and
13 duties; is that correct?
14 A Correct.
15 Q Okay. So these are -- The duties in 15.04(1) are
16 duties that you have as the secretary of the
17 Department of Employee Trust Funds; correct?
18 A Correct.
19 Q And if you look at (g), it talks about a
20 discrimination review. Do you see that?
21 A Yes.
22 Q You're required to examine and assess statutes,
23 procedures, rules and so forth of the department
24 to determine, and I'm quoting here again,
25 determine whether there is any arbitrary

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1 discrimination on the basis of a number of
2 protected classifications, including sex; is that
3 correct?
4 A Correct.
5 Q And to take remedial action if you find such
6 discrimination in those statutes, procedures,
7 rules of the department; is that correct?
8 A Correct.
9 Q Is there a process by which you discharge this
10 duty on any regular basis?
11 A So through the structure of the department, we
12 have various functions that are responsible for
13 reviewing our programs, reviewing changes in the
14 law, whether statutory, regulatory, judicial, to
15 keep our programs in compliance with the laws that
16 we're required to follow.
17 Q So are there -- so there is not sort of an annual
18 review of compliance with discrimination laws that
19 the department does?
20 A There is an ongoing review of our programs and
21 efforts to keep them in compliance with federal,
22 state, and local laws that we're subject to.
23 Q Okay. Was such an examination and assessment done
24 with regard to the exclusion at issue in this
25 case?

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1 MR. ROTH: Objection. Vague. You
2 can answer if you can.
3 A We identified a change in the law or a pending
4 change in the law at the federal level under the
5 Affordable Care Act, identified how it would
6 affect our programs and recommended a change to
7 them.
8 Q And you recommended that change -- the process of
9 recommending that change was Office of -- the OSHP
10 staff were following developments in the rules
11 under the ACA's nondiscrimination provisions;
12 correct? That was part of what was happening?
13 A Correct.
14 Q And then they made an assessment of whether those
15 regulations applied and had any effect on existing
16 programs; is that right?
17 A Yes. I believe that's the process that they
18 followed.
19 Q Okay. And then what was the -- so there was a
20 conclusion reached at some point that the
21 exclusion violated the Affordable Care Act
22 regulations; correct?
23 MR. ROTH: Objection. Lacks
24 foundation.
25 Q To the extent you know?

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1 A We concluded that we needed to change the
2 exclusion -- or eliminate the exclusion based on
3 those regulations.
4 Q And did you make recommendations to the
5 appropriate executive, legislative, or
6 administrative authority in connection with that
7 conclusion?
8 A The Group Insurance Board determines uniform
9 benefits, and they were the ones that could make
10 that change.
11 Q On the recommendation of ETF staff?
12 A Yes.
13 Q Were there any other laws besides the Affordable
14 Care Act -- nondiscrimination laws besides the
15 Affordable Care Act that you identified that -- or
16 your staff identified that the exclusion may have
17 violated?
18 MR. ROTH: I'll object and instruct
19 you not to answer to the extent it involves
20 communications with legal counsel at ETF.
21 Other than that, you can answer.
22 A I'm not aware of OSHP identifying anything other
23 than the ACA as requiring a change in the
24 exclusion.
25 Q The issue of Title VII liability did not come up?

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1 MR. ROTH: Same objection. You can
2 answer.
3 A Only with legal counsel.
4 Q Okay.
5 MR. DUPUIS: Could we go off the
6 record real briefly?
7 MR. ROTH: Sure.
8 (Discussion held off record)
9 MR. DUPUIS: Back on.
10 Q So you have authority to speak on behalf of the
11 Group Insurance Board; is that correct?
12 A On behalf of, yes.
13 Q Okay.
14 A From a communications perspective.
15 (Exhibit No. 3 marked for
16 identification)
17 Q In front of you is Conlin Exhibit 3, I believe; is
18 that correct?
19 A Yes.
20 Q And you were not on this email chain directly.
21 But the email has an attachment which includes the
22 Group Insurance Board's communications policy; is
23 that correct?
24 A Yes.
25 Q And does that look like an accurate version of the

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1 Group Insurance Board's communications policy?
2 A Yes.
3 Q As it was in effect at least as of January 19,
4 2012, through February 9, 2017, when this email
5 was sent?
6 A Yes.
7 Q Okay. Do you know, has it been revised since then
8 at all?
9 A We have kind of a regular, routine process to
10 review and revise these. I'm not sure if this one
11 has been revised or not.
12 Q Okay. So in the first line of the cover email, it
13 says, "In light of the increased traditional and
14 social media attention regarding the board's
15 recent actions on self-insurance and the
16 transgender exclusion, we want to remind you of
17 the communications policy." Do you see that?
18 A Yes.
19 Q Do you know, was this reminder occasioned by any
20 particular deviation from the communications
21 policy by GIB members?
22 A No. I think it was simply a reminder. We were
23 getting media inquiries, and I seem to recall that
24 media was reaching out to board members, and so it
25 was a time to remind them what their policy was.

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1 Q Okay. So as noted in the policy, all media
2 contacts are to be referred to the department; is
3 that correct?
4 MR. ROTH: I'm sorry. Can you
5 point out where you are?
6 MR. DUPUIS: This is in the email,
7 actually, the last paragraph of the email.
8 Q "As noted in the policy, please refer all
9 communications or contacts you receive," meaning
10 board members receive; correct?
11 A Can you repeat the question?
12 Q Yes. So is the policy to your understanding that
13 board members are to refer all communications or
14 contacts from media about GIB business to the
15 department.
16 If you look at the last paragraph of the
17 email?
18 A I'm looking at the policy.
19 Q Okay.
20 A You're in the email?
21 Q Yes.
22 A Yes, we asked them to refer the contacts to us.
23 Q Okay. And then the last page of the policy says,
24 "The department's secretary and the board chair
25 are the only two individuals authorized to speak

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1 on behalf of the board."
2 A Yes.
3 Q And is that still true?
4 A Yes.
5 Q Okay.
6 A That's still the policy, I believe.
7 Q Okay. The department's secretary can designate
8 another staff person. That's part of the policy
9 as well; correct?
10 A Yes.
11 Q Was there a particular staff person designated to
12 respond to questions about the exclusion?
13 A No.
14 Q So you were the primary person, at least
15 initially, to respond to questions about the
16 exclusion?
17 A Depending upon the question, we would determine
18 who the best person was to respond.
19 Q Okay. So in your current position, do you report
20 to anyone?
21 A I report to the ETF board.
22 Q Okay. What about the GIB board?
23 A They don't appoint me. I'm responsible for
24 communicating with them, but I don't report to
25 them. They're not my appointing authority.

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1 Q Okay. How would you characterize the relationship
2 between the GIB and the secretary's office?
3 MR. ROTH: Objection. Vague.
4 A As an attached board, we view our role as
5 supporting that board in its work. So our
6 relationship is one of working with them, kind of
7 the administrative piece of pulling off board
8 meetings, but also helping them oversee and set up
9 the health insurance program for state employees.
10 Q So in terms of staff employees of the department,
11 you're the top of the food chain at the Department
12 of Employee Trust Funds; correct?
13 A Food chain I suppose, yes.
14 Q I'm going to have you take a look at what's been
15 marked before as Pray Exhibit 1.
16 MR. ROTH: I'd just note for the
17 record it doesn't have the exhibit stamp on
18 it, but I will take your representation that
19 this was Pray Exhibit 1.
20 MR. DUPUIS: Yes. It's the same
21 document.
22 Q Do you recognize this document?
23 A Yes.
24 Q What is it?
25 A This appears to be what we would call a functional

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1 organizational chart for the department.
2 Q When you say functional organizational chart, what
3 do you mean by that? What's the functional aspect
4 of it?
5 A Well, it shows how -- it shows the relationships
6 between the various boards and the internal
7 workings of ETF, identifies for users the
8 different business units, I guess, within the
9 department and the various boards that the agency
10 works with.
11 Q Okay. So when the GIB makes a decision regarding
12 health insurance benefits, is part of your role to
13 execute that decision?
14 MR. ROTH: Objection. Vague.
15 A To see that the decisions are executed, I would
16 say, yes.
17 Q And that happens through ETF staff?
18 MR. ROTH: Objection. Vague.
19 A I'd say mostly through ETF staff. To the extent
20 it involves our vendors or insurance providers, it
21 may involve others in that.
22 Q In general do you have direct contact with the
23 health plans in the process of entering into
24 contracts and so forth with the department for
25 group health insurance programs?

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1 A Do I personally?
2 Q Yes.
3 A No.
4 Q It's primarily OSHP staff; is that correct?
5 A Correct.
6 Q Okay. So what is ETF's relation to state
7 employers or constituent employers? So, for
8 example, do the employers have any role in
9 establishing uniform benefits?
10 A Yes.
11 Q What is their role?
12 A It's often, I would say, advisory. First the
13 Group Insurance Board accepts communications from
14 employers, and so employers can contact the board
15 that way. We have -- Typically OSHP staff
16 conducts their committees or groups of various
17 stakeholders to get their feedback and input year
18 to year on changes that me might want or concerns
19 that they have about how the program is operating.
20 Q Were you aware of concerns among some employer --
21 well, actually, are all state agency employers
22 represented in the process of developing uniform
23 benefits?
24 A The Division of Personnel Management, formerly the
25 Office of --

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1 Q OSER?
2 A OSER.
3 Q Whatever that was.
4 A State Employment Relations office serves on the
5 board, so in that context the state employers are
6 actually represented on the board.
7 Q Are individual employers able to negotiate for
8 health insurance benefits that other state
9 employers are not able to provide? For example,
10 could UW provide coverage of services that are
11 excluded under the exclusion that we're talking
12 about today?
13 MR. ROTH: Object to the extent it
14 calls for a legal conclusion, but you can
15 answer.
16 A I don't know.
17 Q Okay. Are you aware of any instances in which any
18 constituent state employers have provided health
19 insurance coverage or coverage for medical
20 services that are not offered through the
21 Department of Employee Trust Funds?
22 A You said medical?
23 Q Medical or, I mean, anything within that sort of
24 medical range. So medical and pharmacy, for
25 example.

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1 A I'm not aware of that.
2 Q Were you aware of any UW staff raising concerns
3 about the exclusion causing problems with
4 recruitment and retention of faculty?
5 A When?
6 Q In 2014 or '15.
7 A I've since become aware of that. I was not aware
8 of that at the time.
9 Q When did you become aware of that?
10 A During this litigation, I believe.
11 Q So have you seen letters from Pam Oliver in the
12 department of sociology?
13 A I don't think I've seen the letter.
14 Q Okay. So state statutes provide that certain
15 state employees are eligible for employee benefits
16 administered by ETF; is that correct?
17 MR. ROTH: I'm going to object to
18 the extent it calls for a legal conclusion.
19 You can answer.
20 A That's my understanding, yes.
21 Q Does ETF establish eligibility criteria for state
22 employees to receive benefits outside of what is
23 in statute?
24 A Outside of what is in statute.
25 MR. ROTH: Objection. Vague.

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1 A Yeah, I guess I don't understand what you're
2 asking.
3 Q So not all state employees are eligible for group
4 health insurance, for example; is that right?
5 A I believe that's correct.
6 Q So certain part-time employees may not be
7 eligible?
8 A That's my understanding, correct.
9 Q Are those restrictions on eligibility all in
10 statute or does ETF -- well, to your knowledge,
11 are all of those criteria for eligibility
12 contained in statute?
13 MR. ROTH: Same objection. You can
14 answer.
15 A I believe the part-time eligibility is in statute.
16 Q Are there other eligibility criteria, so for
17 certain classes of employees?
18 A I don't know.
19 Q You don't know or no?
20 A I don't know.
21 Q You don't know. Okay. What about graduate
22 student TA's, for example, is that in the statute?
23 MR. ROTH: Same objection. You can
24 answer.
25 A There is a provision in the statute, I think, that

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1 requires that we come up with criteria for
2 teaching assistants and graduate assistants.
3 Q Come up with the eligibility criteria?
4 A I'm not sure on what the particulars of the
5 statute are.
6 Q Okay. Do you know, does UW itself have any role
7 in determining the eligibility criteria for which
8 employees get benefits?
9 A I don't know.
10 Q So is GIB part of ETF?
11 MR. ROTH: Objection to the extent
12 it calls for a legal conclusion. You can
13 answer.
14 A We consider it an attached board. I don't
15 consider it part of ETF.
16 Q The GIB is established in the same statutory
17 section that establishes the Department of
18 Employee Trust Funds; correct?
19 MR. ROTH: Same objection. You can
20 answer.
21 Q Same chapter?
22 A Chapter 40 lays out the duties of the Group
23 Insurance Board.
24 Q Okay. How would you describe the relationship
25 between ETF and GIB?

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1 MR. ROTH: Same objection. You can
2 answer.
3 A What do you mean by relationship?
4 MR. ROTH: Yeah. Also objection,
5 asked and answered.
6 Q So I believe you said that they are an attached
7 board; is that right?
8 A Correct.
9 Q And you view the role of the Department of
10 Employee Trust Funds to attach boards as, I
11 believe you might have said, supporting those
12 boards in their work?
13 MR. ROTH: Object to the extent it
14 misstates the testimony, but you can answer.
15 A I believe I said something like that.
16 Q And I believe you've also testified that part of
17 your role is executing the decisions made by GIB
18 regarding group health insurance and other
19 benefits under their purview; is that correct?
20 MR. ROTH: Same objection.
21 Q Is that correct?
22 A I believe I said making sure they're executed,
23 yes.
24 Q In your mind, what is the difference between
25 executing and making sure they're being executed?

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1 A I don't actually implement with my own hands the
2 decisions of the board. Staff do that in OSHP.
3 Making sure that we have the structures in place,
4 the staff in place, to do that execution is what I
5 mean by making sure they are executed.
6 Q Okay. But you're ultimately responsible as
7 secretary for ensuring that that happens?
8 MR. ROTH: Object to the extent it
9 calls for a legal conclusion. You can
10 answer.
11 A It's part of my job to make sure that happens,
12 yes.
13 Q So as part of their role, the GIB -- I'm sorry,
14 the department under your supervision recommends
15 the policies, including the uniform benefits by
16 which the group health insurance programs operate;
17 correct?
18 A Well, if the uniform benefit exists, staff are
19 responsible for implementing those benefits, and
20 if changes are needed or desired, they do make
21 recommendations for changes in those.
22 Q And then the GIB approves those changes or rejects
23 those changes, depending on -- they make the --
24 they decide whether or not to approve the
25 recommendations made by staff?

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1 A Correct.
 2 Q And when GIB adopts those policies, it's
 3 ultimately your responsibility to ensure that
 4 those policies are carried out?
 5 MR. ROTH: Same objection. You can
 6 answer.
 7 A Yes. We try to make sure that we're running the
 8 program as approved by the Group Insurance Board.
 9 Q So I'm going to turn more specifically to the
 10 relationship between OSHP and GIB. Would it be
 11 fair to say that OSHP essentially staffs GIB
 12 meetings?
 13 A We provide staff services to the Group Insurance
 14 Board, yeah. That's how I would characterize it.
 15 Q Okay. So that includes preparing agendas or at
 16 least drafts of agendas; correct?
 17 A Yes.
 18 Q Attending meetings; correct?
 19 A Yes.
 20 Q Providing information to GIB members on request or
 21 to the board on request?
 22 A Yes.
 23 Q Are minutes taken by OSHP staff or is that done in
 24 the secretary's office?
 25 A The minutes are taken by board liaisons, a

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1 position we call board liaison. They are not
 2 housed in OSHP.
 3 Q Okay. Are they housed in the secretary's office?
 4 A I think technically, yes, they report in to the
 5 assistant deputy secretary.
 6 Q Okay. Is that currently Pamela Henning?
 7 A The assistant deputy, yes.
 8 Q Okay. Does OSHP do policy analysis for GIB?
 9 A Yes.
 10 Q How does that work?
 11 A Could you be more specific?
 12 Q Well, yeah. I could specify the process for
 13 developing the uniform benefits, but I would
 14 actually like to get a better sense. I mean,
 15 policy analysis is part of the function of, I
 16 think under statute even, part of your role. So
 17 I'm just trying to get a sense of how you view
 18 policy analysis within the department and within
 19 OSHP.
 20 A So primarily, at least with respect to OSHP,
 21 policy analysis entails doing research into a
 22 particular topic, writing up the results --
 23 analyzing the results, writing up the results, and
 24 presenting it to the Group Insurance Board to
 25 support changes or modifications to board policy

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1 or programs that the board oversees.
 2 Q Okay. And that research work, does that happen
 3 only at the request of the GIB itself or do staff
 4 undertake that research independently?
 5 A It is not all directed by the Group Insurance
 6 Board.
 7 Q So sometimes it's staff generated?
 8 A Correct.
 9 Q As secretary, do you assign research and policy
 10 analysis to OSHP staff?
 11 A From time to time.
 12 Q Did you in the case of the exclusion?
 13 A No.
 14 Q Did that come from OSHP staff doing their work
 15 independently?
 16 A I don't know about independently, but the
 17 identification of the ACA regulations, as I
 18 understood it, started with OSHP and they had
 19 conversations with others in the department,
 20 including legal services, to identify the impact
 21 of that on our programs.
 22 Q Did you hire Lisa Ellinger as director of OSHP?
 23 A Yes.
 24 Q Okay. And she is no longer the director; correct?
 25 A Well, I hired her, to clarify, as director of the

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1 Division of Insurance Services. When that changed
 2 to OSHP, she was the incumbent.
 3 Q Okay.
 4 A And your second question was?
 5 Q She's no longer with ETF; is that correct?
 6 A Correct.
 7 Q Has the position been filled, the director
 8 position for OSHP?
 9 A Very soon, if not already this morning, yes. The
 10 recruitment is wrapping up.
 11 Q Okay. And there is an interim in the meantime; is
 12 that correct? Somebody sort of acting or interim?
 13 I don't know what the terminology is.
 14 A There is a deputy director of OSHP who is filling
 15 in, effectively serving as interim director.
 16 Q Okay. Who is that?
 17 A Eileen Mallow.
 18 Q Are you able to say who the new director will be
 19 or is that still secret?
 20 A It's still secret. If I'm allowed to have
 21 secrets.
 22 Q But it will be filled very soon, it appears?
 23 A I suspect the announcement will be coming out yet
 24 this week.
 25 Q Okay. Is it an internal hire? May I ask that?

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1 MR. ROTH: Larry, I mean, come on.
 2 MR. DUPUIS: It probably doesn't
 3 matter.
 4 MR. ROTH: I don't think it
 5 matters, and you'll find out soon enough.
 6 MR. DUPUIS: Okay. Please mark
 7 this.
 8 (Exhibit No. 4 marked for
 9 identification)
 10 Q Do you recognize what's been marked as Conlin
 11 Exhibit 4?
 12 A Yes.
 13 Q What is that?
 14 A This is the Group Insurance Board membership
 15 roster as of maybe November of 2017.
 16 Q Okay. And the third column -- or, I'm sorry, the
 17 fourth column identifies a statute and then sort
 18 of the position within the statute that each of
 19 the board members fills; is that correct?
 20 A Yes.
 21 Q So there are a certain number of people who are
 22 governor's appointees; is that right?
 23 A Yes.
 24 Q And some number have to be participants in the
 25 Wisconsin Retirement System; correct?

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1 A Yes.
 2 Q Okay. And it appears that some people are
 3 identified as designees; is that correct?
 4 A The statutes allow for a designee in certain
 5 situations.
 6 Q Okay. And the three that are marked as designees
 7 in this version are Stacey Rolston; is that
 8 correct?
 9 A Yes.
 10 Q And she is a designee of the administrator of the
 11 Division of Personnel Management; correct?
 12 A Yes.
 13 Q Do you know, is Ms. Rolston, do you know what her
 14 role -- is she an employee at the Division of
 15 Personnel Management?
 16 A That's my understanding.
 17 Q Okay. But she's not the administrator, I take it?
 18 A Correct.
 19 Q Okay. Do you know what her position is?
 20 A I believe she's the deputy administrator.
 21 Q Okay. And Waylon Hurlburt is also a designee and
 22 apparently a designee of the secretary of the
 23 Department of Administration; is that correct?
 24 A Correct.
 25 Q But, again, not the secretary him or herself;

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1 correct?
 2 A Correct.
 3 Q Do you know what Mr. Hurlburt's position with the
 4 Department of Administration is?
 5 A I believe he is the state budget director.
 6 Q Okay.
 7 MR. ROTH: I'm sorry, Larry, I
 8 could use a restroom break whenever you have
 9 a chance. Not like right now, but when you
 10 have --
 11 MR. DUPUIS: Let's just finish
 12 these two.
 13 MR. ROTH: Sure.
 14 Q And J.P., is that Wieske?
 15 A I like to think of it as Wieske, but I'm not sure
 16 how he pronounces his name.
 17 Q Okay. And, again, he's a designee -- or he's a
 18 designee of the commissioner of insurance, but he
 19 is not the commissioner of insurance himself, I
 20 take it?
 21 A Correct.
 22 Q Do you know what his role with the commissioner of
 23 insurance is?
 24 A I believe he is the deputy commissioner.
 25 Q Okay. And Bob Ziegelbauer is obviously not the

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1 governor but is a designee. Is he in the
 2 governor's office, to your knowledge?
 3 A No.
 4 Q Who is Bob Ziegelbauer?
 5 A Bob Ziegelbauer is the county executive of
 6 Manitowoc County.
 7 Q Okay.
 8 A I believe he's still the county executive, anyway.
 9 Q So he's not appointed by the governor in the same
 10 sense that some of these other positions are
 11 appointed by the governor; is that right?
 12 A He is the governor's designee. I assume the
 13 governor has designated him. I don't know how
 14 that differs from an appointment. But the
 15 position is not an appointment of the governor.
 16 It's the governor or the governor's designee.
 17 Q Are all of these board members currently serving?
 18 A Which board members are we talking about?
 19 Q Is Michael Farrell still on the board?
 20 A Yes.
 21 Q Is he still chair?
 22 A Yes.
 23 Q Okay. Is Stacey Rolston still on the board?
 24 A Yes.
 25 Q Still vice chair?

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1 A I believe so.
2 Q Is Herschel Day still on the board?
3 A Yes.
4 Q And is he still secretary?
5 A Yes.
6 Q So he was reappointed by the governor after May
7 2017?
8 A I don't believe he's been reappointed.
9 Q Is he filling a different slot in the membership
10 requirements?
11 A No.
12 Q So how is it he's still on the board if he hasn't
13 been reappointed and isn't taking another slot?
14 A Members serve until they're replaced.
15 Q Okay. And the governor has not replaced him?
16 A Correct.
17 Q But also has not reappointed him?
18 A Correct.
19 Q Most of the other folks are either through 2019 or
20 ex-officio; correct?
21 A It appears that way, yes.
22 MR. DUPUIS: We'll take a break.
23 MR. ROTH: That would be great.
24 (Recess)
25 MR. DUPUIS: Back on.

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1 Q So does ETF act on behalf of GIB for purposes of
2 receiving correspondence to the GIB?
3 A We have an email address set up, and I think on
4 the roster the address for contacting the Group
5 Insurance Board is in care of the board liaison at
6 ETF.
7 Q And does ETF accept service of process on behalf
8 of the board?
9 A I believe we do.
10 Q Okay.
11 (Exhibit No. 5 marked for
12 identification)
13 Q I'm handing you what's been marked Exhibit 5. Do
14 you recognize that document?
15 A Yes.
16 Q And what is it?
17 A This was an email that I sent to the Group
18 Insurance Board about --
19 Q And -- go ahead. I'm sorry.
20 A It's an email I sent to the Group Insurance Board.
21 Q And it's about an ACLU complaint filed against the
22 Group Insurance Board and several other
23 respondents. Do you see that?
24 A Yes.
25 Q And it was in July of 2016; correct?

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1 A Correct.
2 Q And you note that as of this writing you haven't
3 received a copy of the complaint on behalf of the
4 board and we anticipate seeking representation on
5 the board's behalf from the Department of Justice
6 as per our usual practice; is that right?
7 A That's what it says, yes.
8 Q And is that the usual practice, for ETF to seek
9 representation on the board's behalf?
10 A Yes.
11 Q And you say, "If you are contacted about this
12 matter, feel free to refer the calls to ETF"?
13 A Yes.
14 Q Is that consistent with the communications policy?
15 A Yes.
16 Q So did you understand this complaint to be an
17 Equal Employment Opportunity Commission complaint?
18 A I don't remember.
19 Q Okay. Do you recall being aware at this time that
20 the nature of the complaint was a Title VII
21 complaint?
22 A I don't remember.
23 Q Okay.
24 (Exhibit No. 6 marked for
25 identification)

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1 Q I'm showing you what's been marked as Conlin
2 Exhibit 6. Do you recognize that email chain?
3 You may not actually recognize the final email in
4 the chain. But you apparently sent the initial
5 email in the chain; is that right?
6 A Correct.
7 Q And this is also July 2016; is that correct?
8 A Correct.
9 Q And it's directed to -- your email is directed to
10 a number of ETF staff; correct?
11 A Yes.
12 Q But not to any board members; correct? Not to any
13 GIB board members; correct?
14 A Correct.
15 Q And you say, "We (GIB) are apparently being sued."
16 Do you see that?
17 A Yes.
18 Q So at least for purposes of this, you saw ETF as
19 synonymous with GIB?
20 MR. ROTH: Object to the extent it
21 calls for a legal conclusion. You can
22 answer.
23 A Yes.
24 Q Okay. Do you attend all GIB meetings?
25 A I'd say the vast majority, yes.

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1 Q What is your role in GIB meetings?
 2 A So my role, I would say, is to keep an eye on the
 3 operations of the board, make sure we have staff
 4 in the right place. When issues come up that are
 5 having to do with staff capacity or what ETF can
 6 do in a particular case, I speak on behalf of ETF.
 7 But largely I sit there and watch the proceedings.
 8 Q Do you have input into the GIB meeting agendas?
 9 A Yes.
 10 Q Do you have final say on what appears in the
 11 agendas?
 12 A No.
 13 Q Is there any individual who does have final say on
 14 what appears in the agendas?
 15 A I believe the agendas are all run by the board
 16 chair and any final, you know, tweaks or changes
 17 would come in that process.
 18 Q When you say that process, you mean the process
 19 of -- what process are you referring to?
 20 A The process of compiling an agenda for a Group
 21 Insurance Board meeting.
 22 Q How does that process start?
 23 A So staff would sit down -- a lot of what the GIB
 24 does is somewhat cyclical. So every year, for
 25 example, the February meeting will have similar

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1 items on it, the May meeting, the November --
 2 August meeting, the November meeting. And staff
 3 will sit down, figure out what needs to go on this
 4 meeting agenda, what's going to be covered under
 5 those topics. We pull the draft together largely
 6 at the staff level. We sit down with -- I'll sit
 7 down with the deputy secretary and the OSHP
 8 director and some others and walk through it, see
 9 if it makes sense, look at the time, look at,
 10 you know, who is going to be presenting, until we
 11 kind of get it to where we feel comfortable with
 12 it, and then the OSHP director, I think, discusses
 13 it with the board chair to make sure that he is
 14 okay with it.
 15 Q Do you sometimes communicate with the board chair
 16 about the agenda yourself?
 17 A I'm sure there are occasions. It's not a regular
 18 practice, I would say.
 19 Q Okay. So it's usually the OSHP director who is
 20 consulting with the board chair on the final --
 21 how the agenda looks in the final form?
 22 A Yes.
 23 (Exhibit No. 7 marked for
 24 identification)
 25 Q I'll show you what's been marked as Conlin

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1 Exhibit 7. Do you recognize this document?
 2 A Yes.
 3 Q And what is it?
 4 A It appears to be an email chain.
 5 Q And the email chain includes you on the chain; is
 6 that correct?
 7 A Yes.
 8 Q And the initial email in the chain is from
 9 Lisa Ellinger to Mr. Voelker, who is the deputy
 10 secretary; is that correct?
 11 A The which one?
 12 Q John Voelker is the deputy secretary?
 13 A John Voelker is the deputy secretary, yes.
 14 Q To you and to David Nispel, who is counsel to the
 15 board; is that correct?
 16 A Yes.
 17 Q Or counsel to the department; correct?
 18 A To the department.
 19 Q Okay. And it's an email about motions -- 8D
 20 motions for the chair agenda. Do you see that?
 21 A Yes.
 22 Q What is an 8D motion?
 23 A In this context, I would say it is a motion
 24 related to a topic to be taken up under 8D.
 25 Q Okay. Just making sure it wasn't some reference

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1 to a certain type of motion.
 2 So Ms. Ellinger sends this to you,
 3 Mr. Voelker, and Mr. Nispel and asks if you have
 4 any suggested edits to the following addition to
 5 the chair agenda. Do you see that?
 6 A Yes.
 7 Q What is the chair agenda?
 8 A So we prepare for the board chair a separate
 9 agenda that identifies various action items that
 10 need to happen. It's essentially an annotated
 11 version of the public agenda.
 12 Q Okay. And it indicates things that the chair is
 13 supposed to do or say to facilitate the process?
 14 A Yes.
 15 Q And in this case the agenda item that's being
 16 added to the chair agenda is a series of potential
 17 motions in the event that the board would like to
 18 revisit the gender identity benefit change. Do
 19 you see that?
 20 A Yes.
 21 Q So this would have been for the August agenda; is
 22 that correct? The August 2016 meeting agenda?
 23 A Well, the email is dated August 15th. I'm not
 24 sure this refers to a particular agenda date, does
 25 it?

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1 Q I don't know that -- it identifies, I believe --
2 yeah, it may not. Do you know when the August --
3 there is a regular August meeting of the Group
4 Insurance Board; correct?
5 A There is, yes.
6 Q Do you know when it was in August of 2016?
7 A I think it was around August 16th.
8 Q Okay. So this was likely for the August 16th
9 agenda; correct?
10 A That would make the most sense.
11 Q Do you recall the issue, the gender identity
12 exclusion coming up at the August meeting?
13 A I believe it was discussed in passing.
14 Q But the board did not actually take action at the
15 August meeting on the exclusion; correct?
16 A Correct.
17 Q The board had at the prior meeting, the July -- or
18 at a prior meeting, the July 12th, 2016, meeting,
19 removed the exclusion from the uniform benefits,
20 correct, effective 2017?
21 A Correct.
22 Q And these motions were in the event the board
23 wanted to reconsider that change; correct?
24 A I believe so, correct.
25 Q Do you recall who requested that these potential

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1 motions be included in the board chair's agenda?
2 A No.
3 Q Was it staff?
4 A It's normally our responsibility to pull together
5 the chair agenda. So I think Lisa drafted these
6 for that purpose.
7 Q Okay. Do you have any understanding of why she
8 drafted those?
9 MR. ROTH: Objection. Lacks
10 foundation. You can answer.
11 Q I asked do you have. Do you have an
12 understanding?
13 A It was my understanding that -- well, we had
14 received a memo to the board dated August 10 on
15 this subject, and in anticipation of potentially
16 discussing that topic, we prepared the motion.
17 Q Okay. And that memorandum was from the Wisconsin
18 Department of Justice; is that correct?
19 A Correct.
20 Q And basically that was the memorandum that
21 indicated that the Department of Justice's view
22 was that the ACA anti-discrimination provisions
23 were invalid or otherwise did not apply to ETF;
24 correct?
25 MR. ROTH: Objection. Lacks

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1 foundation. You can answer.
2 A I hesitate to characterize all the conclusions in
3 the memo. The upshot for us was they suggested
4 that the board reconsider its action of July 12th.
5 Q Okay. So your view was that the Department of
6 Justice was suggesting that the board reconsider
7 that decision?
8 A Yes.
9 Q Is that based solely on the content of the memo or
10 was that based on communications that you had with
11 Department of Justice staff?
12 A That was based on the memo.
13 Q Did you approve these additions to the chair
14 agenda, if you remember?
15 A I don't recall specifically saying I approve.
16 Q Okay. In general, do you review action items and
17 motions on board agendas?
18 A Yes.
19 Q And you generally have an opportunity to object if
20 you have an objection to those motions?
21 A Yes.
22 Q And you didn't object, at least to these motions,
23 to your knowledge?
24 A Correct.
25 Q In this case, in the case of Exhibit 7, you did

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1 not direct, I believe -- did you direct
2 Ms. Ellinger to draft these motions?
3 A I don't believe so.
4 Q Do you sometimes direct her in the process of
5 putting together agendas?
6 A Direct her in what way?
7 Q Direct her on what items to include in an agenda?
8 A The agenda setting is really kind of a
9 collaborative process. Like I explained before,
10 staff will put together a draft outline of the
11 agenda, and then we'll collaboratively get
12 together, fill in any gaps, add any other things
13 that we think need to be added, and get the agenda
14 signed off on that way.
15 Q Okay. So in that process, you may actually say,
16 Let's add this agenda item, for example?
17 A Sure.
18 (Exhibit No. 8 marked for
19 identification)
20 Q I'm showing you what's been marked as Conlin
21 Exhibit 8. This is a January 30th, 2017, email
22 from Sara Brockman to Cheryllynn Wilkins. Who is
23 Ms. Brockman?
24 A So Sara Brockman was the board liaison for the
25 Group Insurance Board. Somewhere in here she

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1 became a policy analyst for OSHP, still had some
2 liaison duties with the board, so things were,
3 perhaps, routing through her still. I don't
4 remember when that change occurred. But primarily
5 responsible for board liaison duties.
6 Q And then Cheryllynn Wilkins is who?
7 A So she is another board liaison. She primarily
8 handles the ETF and related retirement boards.
9 Q Okay. And then in this email it says, "The
10 uniform benefits related to gender reassignment
11 memo is ready for Bob's review." Is she referring
12 to your review, if you know?
13 MR. ROTH: Objection. Lacks
14 foundation.
15 A Is ready for Bob's review. Yes.
16 Q It's referring to you?
17 A I think that Bob is me.
18 Q Okay. And there are two, I believe, attachments
19 to this memo. Do you see those?
20 A Yes.
21 Q One of them is a Segal Consulting memorandum. Do
22 you see that?
23 A Yes.
24 Q And the second is a contract amendment. Do you
25 see that? Reinstating the benefit exclusion?

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1 A Yes.
2 Q Okay. Do you routinely review memos that go to
3 the GIB?
4 A Yes.
5 Q Okay. Do you recall reviewing the Segal
6 Consulting memorandum attached to this document?
7 A I reviewed the memo, yes.
8 Q Okay. Do you do anything upon review of these?
9 Do you say we need more? What role do you have
10 besides just looking at them, if any?
11 A So typically when I review memos, I'm reviewing
12 it -- I try to put myself in a board member's
13 place. I read it as though I may see this stuff
14 four times a year. Read it for clarity,
15 understanding, is this something that they can
16 understand, does it leave gaping questions for the
17 board.
18 Clarity, grammar, punctuation, all of that
19 sort of stuff I try not to spend too much time on
20 it, but reading it in the context of a board
21 member and do I understand what it is that we are
22 trying to convey to board members.
23 Q Okay. And would it be -- and at that point you
24 might have some feedback if there were things that
25 you felt were not sufficiently clear for board

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1 members?
2 A Could be, yes.
3 Q And would that be true -- this memo happens to be
4 a memo from a consultant. But would that also be
5 true of staff memos?
6 A Would what also be true?
7 Q That you review them and look at them for clarity
8 and --
9 A Yes. So that's primarily with staff memos.
10 Consultant memos you can't make more clear
11 sometimes. I review it to make sure I understand
12 it, that it's saying things that we are asking
13 for, but I generally don't spend time reviewing a
14 consultant memo in anticipation of making edits to
15 it or changes to it.
16 Q Okay.
17 A But, yes, staff work.
18 Q And then the other attachment is a notice and
19 acknowledgment of the change in policy -- or the
20 change in the uniform benefits to reinstate the
21 exclusion; correct?
22 A Correct.
23 Q Did you review that document before it was
24 finalized?
25 A I believe so, yes.

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1 Q Would you have reviewed it before January 30th,
2 2017?
3 A I may have seen drafts of it.
4 Q I believe you said you attend virtually all GIB
5 meetings. Are there meetings you haven't attended
6 that you know of?
7 A When I don't attend, it's because I'm at another
8 meeting: legislative hearing, another board
9 meeting, something like that.
10 Q Were there any meetings in -- GIB meetings in 2016
11 or 2017 that you did not attend that you know of?
12 A Not that I recall.
13 (Exhibit No. 9 marked for
14 identification)
15 Q I'm showing you what's been marked as Conlin
16 Exhibit 9. Do you recognize this document?
17 A Yes.
18 Q What is it?
19 A It is an email from me to various staff.
20 Q Okay. And various ETF staff; correct?
21 A Correct.
22 Q And it's in response to an email from Ms. Ellinger
23 about her proposed board memo on the transgender
24 issue. Do you see that?
25 A Yes.

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1 Q And you say in your email that if I were Mike --
2 and I assume you're referring to Mr. Farrell, the
3 board chair; is that correct?
4 A Yes.
5 Q -- I would not want the memo from Department of
6 Justice shared because it's arguable attorney-
7 client privilege. Do you see that?
8 A That's what I say, yes.
9 Q And that's the Department of Justice memo about
10 whether reinstating the benefit would violate the
11 department's -- or the GIB's fiduciary duties;
12 correct?
13 A I believe so, yes.
14 Q The GIB established a condition under which the
15 exclusion would be reinstated; correct? A series
16 of contingencies?
17 A Correct.
18 Q And one of those contingencies was that the
19 department obtain -- or the GIB obtain a memo on
20 whether such a reinstatement would violate the
21 board's fiduciary duties; correct?
22 MR. ROTH: Object. Lacks
23 foundation and to the extent it misstates the
24 language of the actual contingency.
25 A I don't have the contingency in front of me, but

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1 it involved getting a memo from DOJ.
2 Q So the GIB meets quarterly in the normal course of
3 things; is that correct?
4 A Correct.
5 Q But it will have special meetings as needed to
6 discuss issues that may come up between the
7 regularly scheduled meetings; is that correct?
8 A It can, yes.
9 Q How often does that happen in your experience?
10 A Not infrequently.
11 Q It happens pretty much every year, you would say?
12 At least something comes up that you need to have
13 a special meeting?
14 A I would say in the last two or three years, they
15 have had more special meetings to deal with RFP
16 evaluations, self-insurance type things. And when
17 I'm talking about special meetings here, I'm
18 talking about things off of the quarterly cycle
19 that you referenced.
20 Q Okay. And you mentioned that the agendas for the
21 meetings are somewhat cyclical. So certain types
22 of issues are dealt with the same time every year?
23 A Yes.
24 Q And the uniform benefits, potential changes to
25 uniform benefits, that process begins for staff,

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1 at least, beginning in late winter or early spring
2 of any given year. Is that a fair general
3 statement?
4 A It's my understanding essentially the process
5 doesn't stop. It just keeps going. But, yeah,
6 for the next plan year, it starts primarily in the
7 winter prior to.
8 Q Okay. And as part of that process, ETF staff,
9 after doing policy analysis, ultimately makes some
10 recommendations to the board about what changes to
11 uniform benefits to adopt; correct?
12 A If there are changes to be adopted, yes.
13 Q And what meeting or meetings are those changes
14 generally considered at?
15 A We have -- we tend to introduce the concepts, at
16 least of late, introduce the concepts at the
17 February meeting, come back with more flushed out
18 recommendations at the May meeting, and then if
19 there are any final technical things that need
20 adjusting, kind of true that up at the August
21 meeting. That's, I would say, a broad, general
22 description of how it typically works.
23 Q So you said of late. Would that include 2016 for
24 the 2017 plan year?
25 A Well, 2016 we had a whole bunch of additional

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1 meetings because we were dealing with the
2 self-insurance thing. And so I don't know that
3 there was normalcy to 2016.
4 Q Were the uniform benefits changes recommended and
5 adopted in the 2016 -- May meeting in 2016 or
6 2017, the bulk of them, anyway?
7 A I would have to review an agenda for that.
8 Q Okay. So in general, then, ETF staff make
9 recommendations on uniform benefits and GIB
10 approves or rejects those recommendations at one
11 of its meetings or multiple meetings if necessary;
12 correct?
13 A Correct.
14 Q And when a proposed change is adopted, it normally
15 takes effect the beginning of the following
16 calendar year, which is also known as the plan
17 year; is that right?
18 A In the typical course, yes, prospective changes
19 for the next year.
20 Q Are plan benefits normally -- health benefits
21 normally pretty stable throughout a year?
22 MR. ROTH: Objection. Vague.
23 Q How often are benefits changed during the course
24 of the year?
25 A It's not typical for them to be changed throughout

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1 the course of the year unless there are
2 legislative changes, legal rulings, something
3 along those lines.
4 Q So legislative changes that would require a change
5 in benefits?
6 A Let me clarify my previous answer. Changes within
7 the year, the plan year, would be unusual. What
8 we talked about before in terms of changing for
9 the following year, that can happen throughout the
10 year preceding the plan year.
11 Q Okay.
12 A So, I'm sorry, your question was?
13 Q I'm not sure.
14 (Question read)
15 Q So the kinds of changes that you're talking about
16 as legislative changes would be things that are
17 directing that some benefit be granted or some
18 benefit be removed?
19 A That's what I had in mind, yes.
20 Q Is it unusual to remove a benefit during a plan
21 year?
22 MR. ROTH: Objection. Vague.
23 A I don't think it happens often.
24 Q Are there contractual problems with removing a
25 benefit after it's already been agreed to?

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1 MR. ROTH: Objection. Vague and to
2 the extent it calls for a legal conclusion.
3 You can answer if you can.
4 A Our position is that the contractual obligation of
5 the health plans is to provide and cover uniform
6 benefits, whatever they are, during the plan year,
7 including any changes that are made during that
8 year.
9 Q Is there a difference between expanding benefits
10 during the plan year and reducing benefits during
11 the plan year?
12 MR. ROTH: Same objection. You can
13 answer.
14 A I don't think so.
15 Q Is reducing -- or eliminating a benefit during the
16 plan year more rare than adding a benefit during
17 the plan year?
18 A Probably.
19 Q Other than the exclusion at issue in this case,
20 can you think of another time that a benefit has
21 been eliminated after a plan year has begun?
22 A Not off the top of my head, no.
23 Q Okay. So after the board approves the uniform
24 benefits for the coming year, a contract that
25 incorporates those benefits is sent out to the

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1 private health insurance companies who will pay
2 claims for state employees; correct?
3 A They will provide the health coverage, yes.
4 Q All right. And does ETF have a role in enforcing
5 those contracts?
6 MR. ROTH: Objection. Vague.
7 A So we expect that the uniform benefits will be
8 offered by the health plans. If a member seeks
9 those benefits and they're not provided, they have
10 an appeals process that we operate, and we would
11 expect the plans then to do that. So, yeah, we
12 make sure that the plans are offering the benefits
13 that are covered by uniform benefits in that
14 situation.
15 Q Aside from the appeals process, are there other
16 ways that ETF staff enforce the contracts?
17 MR. ROTH: Same objection.
18 A We regularly audit the self-insured plans.
19 Q And the self-insured plans would be the pharmacy
20 benefit and dental benefit?
21 A So the self-insured plans would be the pharmacy
22 benefit, the dental benefit, and prior to 2018
23 there was what was known as the Standard Plan that
24 was kind of the nationwide coverage piece which
25 was self-insured.

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1 Q So ETF then oversees the administration of the
2 health insurance benefits for state employees;
3 right?
4 MR. ROTH: Objection. Vague.
5 A I don't know what you mean by oversees in this
6 context.
7 Q Well, you oversee the contracts that provide the
8 health insurance for state employees; correct?
9 A Yes.
10 Q Okay. And deal with appeals of denials of claims
11 under the health insurance program; correct?
12 A Yes.
13 Q Enter into the contracts on behalf of GIB?
14 A I think the GIB chair signs the contracts.
15 Q And the department, though, is the point of
16 contact for those contracts; correct?
17 MR. ROTH: Objection. Vague.
18 A If by point of contact you mean who do the plans
19 deal with, who do the members deal with in regard
20 to the plans, yes.
21 Q So you delegate a lot of the policy analysis work
22 on health insurance benefits to OSHP; is that
23 correct?
24 A Yes.
25 Q But if an issue is important enough, you would get

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1 personally involved; is that right?
 2 A That's a fair statement.
 3 Q You were personally involved in the process that
 4 led to the elimination of the exclusion; correct?
 5 A Yes.
 6 Q And you were personally involved in the process
 7 that led to the ultimate reinstatement of the
 8 exclusion; correct?
 9 MR. ROTH: Objection. Vague and to
 10 the extent it calls for a legal conclusion.
 11 A Personally involved? I was somewhat involved on
 12 the administrative end of things, yes.
 13 (Exhibit No. 10 marked for
 14 identification)
 15 Q I'm showing you what's been marked as Conlin
 16 Exhibit 10. Do you recognize that document?
 17 A Yes.
 18 Q And this is an email from you to Michael Farrell
 19 and Lisa Ellinger; correct?
 20 A Yes.
 21 Q And it's in response to an email from Mr. Farrell
 22 to the two of you; correct?
 23 A Yes.
 24 Q In which he's asking if all the contingencies are
 25 met; correct?

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1 A He's asking if we've concluded gathering the final
 2 bits of information regarding the gender issue.
 3 Q And the subject is "Are all contingencies met?"
 4 A That is the subject, yes.
 5 Q Okay. And your response is that you're reviewing
 6 the matter but your current thinking is this, that
 7 you just received the AG's opinion, and I take it
 8 that's the opinion on the board's fiduciary
 9 duties; correct?
 10 A I believe that to be the case, yes.
 11 Q And then you say, "the next milestone is to
 12 'negotiate' with the plans," and you put negotiate
 13 in quotation marks; correct?
 14 A Correct.
 15 Q Why did you put negotiate in question marks?
 16 A Because we were not actually going to negotiate
 17 the change. As I indicated before, when uniform
 18 benefits change, the plans are expected to offer
 19 and cover those uniform benefits.
 20 Q So essentially it's a notice that requires them to
 21 sign an acknowledgment, not really a negotiated
 22 change in benefits with the plans?
 23 MR. ROTH: I'm going to object to
 24 the extent it calls for a legal conclusion,
 25 but you can answer.

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1 A Yes. We don't negotiate benefit changes with the
 2 health plans.
 3 Q And when you say we, you mean the GIB and the ETF?
 4 A Yes.
 5 Q And you say you expect that to go to the plans in
 6 the not too distant future. Had there already
 7 been a draft of the acknowledgment form or notice
 8 form, or whatever you want to call it, by this time?
 9 A I don't recall.
 10 Q So when you say negotiate with the plans, was
 11 there any intent to communicate with the plans
 12 other than sending them this notice?
 13 A I think at this point the plans were all aware of
 14 the action of the Group Insurance Board.
 15 Q How did they become aware of it?
 16 A The meeting on January 30th -- or December 30th
 17 was public and published, got media attention. I
 18 don't know if we made another communication to the
 19 plans. We had put out public communications on
 20 what action the Group Insurance Board had taken,
 21 and I assume the plans saw that.
 22 (Exhibit No. 11 marked for
 23 identification)
 24 Q I'm showing you what's been marked as Exhibit 11.
 25 MR. ROTH: Sorry. I just have a

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1 question. Do you know if this highlighting
 2 was in the original?
 3 MR. DUPUIS: I assume it was, yes.
 4 MS. KADRI: Yes.
 5 MR. ROTH: Okay.
 6 Q Do you recognize this document?
 7 A Vaguely, yes.
 8 Q Can you describe what it is?
 9 A So the email is from -- There is an email from
 10 Lisa Ellinger to me and others at ETF indicating
 11 that the amendment to the contract which
 12 reinstated the exclusion went to the health plans
 13 on January 31.
 14 Q And then attached to this document is a copy of
 15 the contract amendment; is that correct?
 16 A Yes.
 17 Q Okay. So the second sentence of the paragraph
 18 following the language of the exclusion says, "We
 19 request that an official with authority to bind
 20 the plan sign this form and return it to the
 21 Department of Employee Trust Funds." Do you see
 22 that?
 23 A Yes.
 24 Q Why was that line included?
 25 MR. ROTH: Object to the extent it

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1 calls for a legal conclusion, and if the
 2 answer reflects communication with agency
 3 counsel, I'll instruct the witness not to
 4 answer. If it doesn't, you can answer.
 5 A I didn't want a mail clerk signing this and
 6 sending it back on behalf of the health plan. We
 7 wanted somebody with the authority to acknowledge
 8 that they got it.
 9 Q So when you say -- so did you view this as binding
 10 without a signature?
 11 A Yes.
 12 Q To your knowledge, did any of the plans object to
 13 the reinstatement of the exclusion?
 14 A I was made aware that I think it was two plans
 15 didn't sign the acknowledgment and one may have
 16 made some edits on it.
 17 Q So this contract amendment went out on Department
 18 of Employee Trust Funds letterhead with your name
 19 on it; correct?
 20 A Yep.
 21 Q And that's because ETF essentially administers the
 22 GIB's decisions for purposes of group health
 23 insurance for state employees; correct?
 24 A Correct.
 25 Q So after the uniform benefits package is

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1 established for a coming year, the insurance
 2 companies contract to provide coverage to state
 3 employees; correct?
 4 A Yes.
 5 (Exhibit No. 12 marked for
 6 identification)
 7 Q I'm showing you what's been marked Conlin
 8 Exhibit 12. And I don't know that you're actually
 9 on this email. I believe probably not, but I
 10 didn't actually look. But do you recognize this
 11 sort of an email?
 12 A No.
 13 Q Okay. I'd like you to take a look at the
 14 attachment. And I'll represent to you this is an
 15 excerpt of a 208-page document, but the title page
 16 is included and the first, I believe, nine pages
 17 and then some selected pages from the 208-page
 18 document. The title page is Terms and Conditions
 19 for Comprehensive Medical Plan Participation in
 20 the State of Wisconsin Group Health Benefit
 21 Program and Uniform Benefits for the 2016 Benefit
 22 Year. Do you see that?
 23 A Where are you again? The title page?
 24 Q The first page. The title page.
 25 A Yes.

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1 Q So is this essentially the contract or an excerpt
 2 of the contract that the plans enter into to
 3 provide health insurance coverage to state
 4 employees through ETF?
 5 A It appears to be.
 6 Q Okay. So if you look at the third page of the
 7 attachment, it's Contract by Authorized Board. Do
 8 you see that?
 9 A Yes.
 10 Q And it's on State of Wisconsin Department of
 11 Employee Trust Funds letterhead; correct?
 12 A Yes.
 13 Q And the first paragraph of the contract language
 14 indicates that this contract is entered into by
 15 and between the State of Wisconsin Group Insurance
 16 Board. Do you see that?
 17 A Yes.
 18 Q And the contractor, known as the health plan. And
 19 then the next statement is, "The State of
 20 Wisconsin Department of Employee Trust Funds
 21 department is the sole point of contact for board
 22 contracting." What does that mean?
 23 MR. ROTH: Object to the extent it
 24 calls for a legal conclusion, but you can
 25 answer.

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1 A I think this is notice to folks that we are -- the
 2 contracting entity is to deal with us on any
 3 matter that comes up under the contract.
 4 Q And when you say us, you mean the Department of
 5 Employee Trust Funds?
 6 A The Department of Employee Trust Funds.
 7 Q Okay. And on the next page, there is signature
 8 blocks. And it looks like the State of Wisconsin
 9 Department of Employee Trust Funds by authorized
 10 board name and by Jon Litscher. Do you see that?
 11 A Yes.
 12 Q So the Group Insurance Board is signing,
 13 effectively on behalf of the State of Wisconsin
 14 Department of Employee Trust Funds?
 15 MR. ROTH: Objection to the extent
 16 it misstates the document and calls for a
 17 legal conclusion.
 18 A That's not my understanding of what this is.
 19 Q What's your understanding of how that works?
 20 A The authorized board is the Group Insurance Board.
 21 As part of our role in providing support to the
 22 board, we provide the contract vehicle, but it is
 23 a contract by the board for the board with the
 24 named health plan.
 25 Q Okay. The next paragraph -- or the next page is

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1 Certification to Health Insurance Issuer for
 2 Disclosure of PHI to the Department. Do you see
 3 that?
 4 A Yes.
 5 Q And it defines the Group Insurance Board as the
 6 plan sponsor. Do you see that?
 7 A Yes.
 8 Q And then it says, "Whereas, the Department of
 9 Employee Trust Funds acts on behalf of the plan
 10 sponsor to administer the employee health
 11 insurance plan pursuant to the authority delegated
 12 by the State of Wisconsin to the secretary of the
 13 department under 40.03(2)(b) and by employees of
 14 the department under 40.03(2)(f)." Do you see that?
 15 A Yes.
 16 Q So the employee health insurance plan is
 17 administered by the Department of Employee Trust
 18 Funds; correct?
 19 A Yes.
 20 Q I'd like you to take a look at, a few pages in,
 21 there is a table of contents with the page number
 22 1-1 at the bottom. Do you see that?
 23 A Yes.
 24 Q Wait a minute. Actually, never mind. If you look
 25 at the next page, 3-2, it's a table of contents

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1 and Attachment A is a description of benefits. Do
 2 you see that?
 3 A I see the line, yes.
 4 Q So is that -- and then I'll direct you to 4-1. Do
 5 you see that?
 6 A Yes.
 7 Q And this is the uniform benefits cover sheet. So
 8 is this -- Is it fair to say that the uniform
 9 benefits are incorporated into the contract
 10 using -- I mean, basically in this format. Who
 11 actually puts together the uniform benefits, this
 12 document that starts on 4.1 -- or 4-1?
 13 A Who puts it together?
 14 Q Yes.
 15 A ETF staff.
 16 Q Okay. And it says that the health plans must
 17 provide the uniform benefits described in this
 18 attachment; right?
 19 A Yes.
 20 Q So the health plans don't have any opportunity to
 21 alter or vary the uniform benefits for state
 22 employees?
 23 A That's what the second sentence says, yes.
 24 Q And then I'd like you to take a look at 4-3,
 25 page 4-3, the next page. There is a section

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1 exclusions and limitations --
 2 A Yes.
 3 Q -- on page 4-44. Then if you look at page 4-44,
 4 the first exclusion is for surgical services,
 5 procedures, services, and supplies related to
 6 surgery and sex hormones associated with gender
 7 reassignment; right?
 8 A That's what it says, yes.
 9 Q Okay. So this was for the 2016 plan year; correct?
 10 A It appears that way.
 11 Q Okay.
 12 A The cover sheet is, anyway.
 13 Q And for the 2017 plan year, that exclusion -- when
 14 the contracts went out initially, that exclusion
 15 did not appear; correct?
 16 A I do not know. I assume that to be the case.
 17 Q Okay. Do you have any role in preparing these
 18 contracts?
 19 A No.
 20 Q Do you review them?
 21 A Not really. The -- yeah. Not really.
 22 Q Do you know who does?
 23 A ETF staff, including OSHP staff, and I believe
 24 legal services reviews it, probably our
 25 procurement shop.

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1 Q Does ETF receive any federal funding?
 2 MR. ROTH: Objection. Vague.
 3 A I understand that we get reimbursed for some of
 4 our programs from the federal government.
 5 Q Does that include Medicare Part D?
 6 A I am not sure on the specifics.
 7 Q Okay. Do you know what Medicare Part D is?
 8 A It's a Medicare program.
 9 Q And do you know that -- Are you familiar with it
 10 beyond that? Do you know that it subsidizes
 11 pharmacy benefits?
 12 A I know it's a pharmacy component of Medicare. How
 13 it operates, I don't know.
 14 Q The pharmacy benefit for state employees is a
 15 self-insured benefit; is that correct?
 16 A Correct.
 17 Q Which means that the state pays the claims, and if
 18 the money that comes in doesn't cover it, they
 19 have the risk, the state has the risk; correct?
 20 MR. ROTH: Objection. Vague.
 21 A That's perhaps one element of self-insurance.
 22 But, yes, the state pays the claims for the
 23 pharmacy program.
 24 Q What else is a component of a self-insurance
 25 program as opposed to the fully insured programs

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1 for healthcare?
 2 A You might have reinsurance programs. The key
 3 feature of our self-insured piece is it's not
 4 wrapped within the medical component of the fully
 5 insured health program. So it is separate and
 6 distinct and identified as a pharmacy piece as
 7 opposed to medical plus pharmacy.
 8 Q So you don't know if Medicare subsidies come
 9 directly into ETF accounts?
 10 A I believe they do.
 11 Q Okay. So you believe the money from Medicare --
 12 from the federal government, Department of Health
 13 and Human Services, comes directly into ETF
 14 accounts for purposes of the Medicare Part D
 15 subsidy?
 16 MR. ROTH: Objection. Lacks
 17 foundation.
 18 Q To the extent you know?
 19 A That's my general understanding.
 20 Q And those subsidies offset some of the cost of
 21 coverage of pharmacy benefits for state employees?
 22 MR. ROTH: Same objection.
 23 A I don't know how the particulars of it work.
 24 Q Okay. Are there any other ETF programs that
 25 receive Medicare funding?

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1 A I do not know.
 2 Q Okay. What about Medicaid funding? Is there any
 3 federal Medicaid funding that comes in to ETF
 4 health programs?
 5 A I can't think of any, but I don't know for sure.
 6 MR. DUPUIS: Actually, why don't we
 7 take a break, if that works for others.
 8 (Lunch recess)
 9 (Attorney Schmelzer and
 10 Attorney Kilpatrick exited the
 11 proceedings)
 12 MR. DUPUIS: Back on.
 13 Q So we're back on the record, and you understand
 14 that you're still under oath?
 15 A Yes.
 16 Q Okay. Are you familiar with the term transgender?
 17 A Yes.
 18 Q What's your understanding of the meaning of
 19 transgender?
 20 A It's a condition in which your gender identity
 21 doesn't match up with your biological sex.
 22 Q Okay. How did you come to that understanding?
 23 A Reading things.
 24 Q When did you come to that understanding?
 25 A Over the last several years, I suspect.

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1 Q So before the exclusion came up in 2016, though?
 2 A Yes.
 3 Q Do you know any transgender people?
 4 A Yes.
 5 Q Are they friends? Relatives? Coworkers?
 6 A Acquaintance.
 7 Q Are you familiar with the term gender dysphoria?
 8 A Yes.
 9 Q What's your understanding of that term?
 10 A I understand that to mean the mental and emotional
 11 conflict that is caused by having a gender
 12 identity that's different than your biological
 13 sex.
 14 Q And did your understanding of that term come from
 15 reading as well?
 16 A Yes.
 17 Q Any other sources?
 18 A Perhaps from educational sessions we had within
 19 the department.
 20 Q Did you have educational sessions specifically on
 21 gender identity issues?
 22 A Yes.
 23 Q When was that?
 24 A Probably toward the end of 2015.
 25 Q What was the -- was it related to benefits issues

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1 or was it more generic type training? What was
 2 the content?
 3 A It was more generic. I can't remember if it was
 4 our affirmative action committee or others in the
 5 department that set up just an educational one or
 6 two sessions on transgender issues generally.
 7 Q So the acquaintance that you have who is
 8 transgender, has that person ever talked to you
 9 about gender dysphoria?
 10 A No.
 11 Q Are you familiar with the term gender confirmation
 12 surgery?
 13 A Yes.
 14 Q And what is your understanding of that?
 15 A Generally it's surgical procedures that may change
 16 one's biological sex or indications of sex to
 17 better match the gender identity that the person
 18 has.
 19 Q Do you view that as synonymous with sex
 20 reassignment surgery when we talk about --
 21 A I understand that's what it used to be
 22 traditionally called or sex change.
 23 Q And are you familiar with the term hormone therapy
 24 in the context of gender dysphoria treatments?
 25 A I'm familiar with it, yes.

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1 Q And what is your understanding of hormone therapy
2 for purposes of treating gender dysphoria?
3 A Well, it's the administration of various hormones,
4 as I understand it, to help with the transition
5 from a biological -- from the biological sex to
6 the gender identified by the individual.
7 Q And, again, the source of your understanding of
8 that, is that from reading, an acquaintance, or
9 training?
10 A Probably all of the above.
11 Q So the HHS final regulations implementing
12 Section 1557 of the Affordable Care Act were
13 issued in May of 2016; is that right? Do you
14 recall that?
15 A That's my understanding, yes.
16 Q Okay. Did you request a review of those
17 regulations by ETF staff?
18 A I don't believe I requested a full review. I
19 asked -- When I had heard about them, I asked what
20 effect those regulations would have on us.
21 Q Who did you ask?
22 MR. ROTH: I'll object and instruct
23 the witness not to answer to the extent it
24 reveals privileged attorney-client
25 communications.

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1 MR. DUPUIS: I just asked who at
2 this point.
3 MR. ROTH: That's fair.
4 A Legal counsel.
5 Q Okay. And that was the department's legal
6 counsel, I take it?
7 A Correct.
8 Q So either Mr. Nispel or Ms. Felsmann or someone in
9 that office?
10 A Correct.
11 Q Did you review the HHS regulations yourself?
12 A I don't believe I've read the entirety of the
13 regulations. I have reviewed excerpts of them.
14 Q Okay. So after the regulations came out, at some
15 point OSHP staff recommended that the exclusion be
16 eliminated from the uniform benefits; correct?
17 A Correct.
18 Q And the GIB voted at the July 2016 board meeting
19 to remove the exclusion; correct?
20 A That's my recollection.
21 (Exhibit No. 13 marked for
22 identification)
23 Q I'm showing you what's been marked as Conlin
24 Exhibit 13. Do you recognize that document?
25 A Yes.

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1 Q What is it?
2 A These are minutes or draft minutes from the
3 July 12th, 2016, Group Insurance Board meeting.
4 Q And if you look at pages 3 and 4 of those minutes,
5 there is a description of the discussion of the
6 exclusion and the staff's recommendation to remove
7 the exclusion; correct?
8 A Yes.
9 Q Okay. And you attended this meeting; correct?
10 A Yes.
11 Q Do you recall being at the meeting?
12 A Yes.
13 Q Okay. And ultimately the board passed the removal
14 of the exclusion unanimously; correct?
15 A That's what the minutes reflect, yes.
16 Q And is that your recollection?
17 A Yes.
18 Q Do you recall any dissenting voices during the
19 discussion?
20 A I don't recall any board members having any
21 objections to it.
22 Q Do you remember any board member speaking in favor
23 of it, besides making the motion, obviously?
24 A No.
25 Q Do you recall Ms. Pray's presentation to the board

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1 about the reasons for the policy change?
2 A Yeah.
3 Q You don't recall any questions of her?
4 A I really don't recall any questions about this
5 issue in response to the memo.
6 Q Okay. Now, in August -- had you anticipated any
7 reservations or objections from GIB members about
8 this proposal?
9 A I didn't anticipate anything specific, but I
10 anticipated that the topic of both the ACA and
11 removal of the exclusion could be something that
12 could be a contentious issue.
13 Q Were you surprised that it didn't turn out to be
14 contentious?
15 MR. ROTH: Objection. Misstates
16 the testimony and it lacks foundation.
17 A I was pleased that there was no objection, that it
18 passed. I thought we did a good job of laying out
19 the issue. So, yeah, I was pleased that the
20 board -- we got through it without any contention.
21 Q At that point, at least. Right?
22 MR. ROTH: Objection. Vague.
23 Q So ultimately there was some pushback; correct?
24 MR. ROTH: Objection. Vague.
25 A The board ultimately reinstated the exclusion.

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1 Q Right. But the first consideration of reinstating
2 the exclusion -- well, did you have any
3 communications with board members before the July
4 meeting expressing any concerns about removing the
5 exclusion?
6 A Not that I recall, no.
7 Q Do you recall having any communications with board
8 members immediately after the July meeting, like
9 in the couple of weeks after the July meeting
10 about the removal of the exclusion?
11 A I don't recall any.
12 Q Okay. Did you receive any communications from the
13 Department of Justice in the weeks following the
14 July meeting about the exclusion?
15 A I did not.
16 Q Did anybody in ETF that you know of?
17 A I believe Lisa Ellinger did.
18 Q Do you know the content of those communications?
19 A The message that I remember receiving from Lisa is
20 that a contact had been made from the Department
21 of Justice and they were looking to get a memo to
22 the Group Insurance Board.
23 Q And did she say what that memo was going to say?
24 A She did not know what it was going to say is what
25 she told me.

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1 Q Okay. Did she characterize the communication with
2 DOJ as an objection to the decision of the board?
3 A I don't recall her saying that.
4 Q Okay. In substance, did she indicate that she
5 thought this would complicate implementation of
6 the elimination of the exclusion?
7 A No.
8 Q Okay. How did she communicate that to you? Was
9 it by email or phone?
10 A I suspect it was by email. It may have been in
11 one of our check-in meetings verbally.
12 Q Did you receive any communications from the office
13 of the governor about the removal of the exclusion
14 in the weeks following the July meeting?
15 A No. I don't recall any.
16 Q Any from the Department of Administration?
17 A Not that I recall.
18 Q Any from the Office of the Commissioner of
19 Insurance?
20 A Not that I recall.
21 Q So I believe you testified that at the August
22 meeting there was possibly some cursory discussion
23 of the exclusion but that the board didn't take
24 any action at that time on reinstating the
25 exclusion?

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1 A I believe that's what I said, yes.
2 Q By mid-August there was a memo from the Department
3 of Justice and a memo from ETF legal counsel about
4 whether or not -- and both of them dealt with
5 whether or not ETF was a covered entity, ETF or
6 GIB were covered entities for purposes of the ACA
7 regulations; correct?
8 MR. ROTH: Objection. Lacks
9 foundation.
10 A There were two memos dealing with the issue of
11 transgender issues, and I think they both in some
12 capacity covered the covered entity issue.
13 Q Okay. Was there any other communication from DOJ
14 staff to you other than that memo about DOJ's
15 purpose in providing the memo?
16 A DOJ didn't communicate with me.
17 Q Did DOJ communicate with anyone else about the
18 purpose for providing that memo?
19 MR. ROTH: Objection. Lacks
20 foundation.
21 A Not that I'm aware of.
22 Q So was it your view that the Department of Justice
23 was asking the GIB to reverse its position on the
24 exclusion?
25 A If I recall the memo, it was asking for the board

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1 to reconsider its action.
2 Q Okay.
3 MR. DUPUIS: Could we get a copy of
4 it? I thought we had one.
5 MR. ROTH: You want the August 10th
6 memo?
7 MR. DUPUIS: Both. There is some
8 document --
9 MR. ROTH: Yeah. One document has
10 them together.
11 MR. DUPUIS: Let me just see if
12 this is it. This is it. Never mind. I
13 found it.
14 Q I'm going to have you take a look at what's been
15 previously marked as Farrell Exhibit 6. And,
16 again, this doesn't have the yellow tabby on it,
17 but I'll represent that this is a copy of Farrell
18 Exhibit 6. Do you recognize that document?
19 A Yes.
20 Q And this is a correspondence memorandum from
21 December 29th, but it includes documents from
22 earlier in the process of discussing the board's
23 discussion of this matter; correct?
24 A Yes.
25 Q So it includes the August 10th memo from the

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1 Wisconsin Department of Justice, Andy Cook;
 2 correct?
 3 A Yes.
 4 Q And that's the memo we've been talking about as
 5 the memo asking the board to reconsider its
 6 decision; correct?
 7 MR. ROTH: Objection to the extent
 8 that it misstates the document and the
 9 testimony.
 10 A This is the memo I understood you to be talking
 11 about when you were asking me questions, yes.
 12 Q Yes. Okay. And then the next document is an
 13 August 11th memo from Mr. Nispel and Ms. Felsmann;
 14 correct?
 15 A Yes.
 16 Q And that's essentially a response to the DOJ's
 17 memo; correct?
 18 A Essentially, yes.
 19 Q Okay. Had you ever received a memo from the DOJ
 20 on a uniform benefit issue before the memo on the
 21 exclusion?
 22 A Not that I recall, no.
 23 Q Did you view this memo as taking the position that
 24 the GIB had to reverse its decision on the
 25 exclusion?

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1 A No.
 2 Q Is it your view at any time that the board was
 3 legally compelled to reinstate the exclusion?
 4 MR. ROTH: Object to the extent it
 5 calls for a legal conclusion. You can
 6 answer.
 7 A No.
 8 Q When did you become -- So you're aware that the
 9 State of Wisconsin was a party to a lawsuit in a
 10 federal district court in Texas challenging the
 11 regulations at issue in this case under Section
 12 1557?
 13 A I became aware of that, yes.
 14 Q Okay. When did you become aware of that?
 15 A I don't recall exactly.
 16 Q Is the Department of Employee Trust Funds a party
 17 to the lawsuit in Texas?
 18 A Not that I'm aware of.
 19 Q Was the Group Insurance Board a party to the
 20 lawsuit?
 21 A Not that I'm aware of.
 22 Q And I assume you personally were not a litigant in
 23 the case?
 24 A Not that I'm aware of.
 25 Q There was a November meeting of the GIB as well;

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1 correct?
 2 A Probably, yes.
 3 Q Do you know if that meeting -- if this issue came
 4 up at the November meeting?
 5 A I don't recall.
 6 (Exhibit No. 14 marked for
 7 identification)
 8 Q I'm showing you what's been marked as Conlin
 9 Exhibit 14. Do you recognize this document?
 10 A Yes.
 11 Q And what is this?
 12 A So it's a chain of two emails. The first one is
 13 from me to our internal management team
 14 essentially sharing my monthly secretary's report
 15 that I provide for the ETF board.
 16 Q And the second in terms of top to bottom was
 17 actually the first email in the chain; correct?
 18 A That is my cover email, essentially, to the ETF
 19 board.
 20 Q Okay. Do the Group Insurance Board members
 21 receive your monthly secretary's report?
 22 A I send it to the ETF board. To the extent there
 23 are members of the ETF board that are on the Group
 24 Insurance Board, they would receive it then.
 25 Q At the time was there crossover between the ETF

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1 board and the GIB?
 2 A Yes.
 3 Q Can you go back to Exhibit --
 4 MR. ROTH: 4.
 5 Q That sounds right. And can you identify which of
 6 the board members were also on the ETF -- GIB
 7 members were also on the ETF board?
 8 A Yes.
 9 Q And who are they?
 10 A Stacey Rolston is on the ETF board, and Bob
 11 Ziegelbauer would be on the ETF board.
 12 Q And -- go ahead.
 13 A I think that's it.
 14 Q Was Stacey Rolston's role on the ETF board also in
 15 her capacity as designee of the administrator of
 16 the Division of Personnel Management?
 17 A I believe so. We have a similar thing for the ETF
 18 board that would tell me specifically. If you
 19 have that, I would be happy to review that, but I
 20 believe it's --
 21 Q Unfortunately, I don't believe we have it. Do you
 22 know, is Mr. Ziegelbauer also, is he a
 23 gubernatorial appointee to the ETF board?
 24 A Bob Ziegelbauer is the designee of the governor.
 25 Q For the ETF board as well?

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1 A Yes.
2 Q Okay. So your monthly secretary's report is
3 attached to this email, Conlin Exhibit 14. And on
4 the second page of that memo you discuss a new
5 issue that has cropped up for GIB in the third
6 paragraph under Miscellaneous, Group Insurance
7 Board. Do you see that?
8 A Yes.
9 Q And that new issue is the coverage for certain
10 transgender medical services and procedures;
11 correct? That's what you wrote?
12 A Correct.
13 Q And then further down the sentence starting with,
14 "Thus, effective in January, medically necessary
15 transgender services will be a covered benefit,"
16 do you see that?
17 A Yes.
18 Q And that was as a result of the unanimous GIB vote
19 to eliminate the exclusion; correct?
20 A That's what that's referring to, yeah.
21 Q So you say that we anticipate that the change will
22 have only a small financial effect on the health
23 program. Do you see that?
24 A Yes.
25 Q And what is the basis for your saying that?

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1 A I believe there was an indication from Segal
2 Consulting, the actuary, based on work in other
3 states that it was likely that this would be only
4 a small financial impact.
5 Q Then you say on page 2, "After the July GIB
6 meeting, the Wisconsin Department of Justice asked
7 the GIB to reconsider its position, arguing that
8 the federal regulations are not valid as they go
9 beyond the regulatory authority of the
10 promulgating agency." Do you see that?
11 A Yes.
12 Q And you say, "The GIB deferred action on the
13 matter at its August meeting, but the matter may
14 come up again later this year." And then you
15 provide the memos.
16 Are those the two memos we've talked about,
17 the August 10th and August 11th memos, to your
18 knowledge?
19 A I believe so.
20 Q Then you say, "Whatever the merits of the legal
21 arguments, the matter puts the GIB members, who
22 are fiduciaries, in an interesting spot." Do you
23 see that?
24 A Yes.
25 Q What is your basis for saying that?

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1 MR. ROTH: Object to the extent it
2 calls for a legal conclusion, but you can
3 answer.
4 A So GIB members essentially had legal opinions from
5 two sets of attorneys that differed in their
6 outcome. One of the duties of fiduciaries
7 generally is to follow the law. There was
8 disagreement between the attorneys on what the law
9 was and what the law required, so I felt that GIB
10 members were going to have to figure that out in
11 some way and that following the law implicates
12 fiduciary duties, at least on some basic level.
13 Q Had ETF simply continued to cover benefits, would
14 there have been a fiduciary problem with fiduciary
15 duties?
16 MR. ROTH: Object to the extent it
17 calls for a legal conclusion. You can answer.
18 A I guess I don't understand what you mean by ETF
19 continued to cover benefits.
20 Q Had the exclusion remained eliminated from the
21 plan in 2017, would there have been any question
22 of a violation of fiduciary duties over that
23 issue?
24 MR. ROTH: Objection. Calls for
25 speculation and to the extent it calls for a

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1 legal conclusion. You can answer.
2 A I don't know. I would have to ask legal counsel
3 about that.
4 Q The DOJ memo didn't say that it would be illegal
5 for the department -- or for GIB to cover these
6 treatments for gender dysphoria, did it?
7 A Not that I recall.
8 Q ETF counsel in the memo said that it would, in
9 fact, violate the legal duties -- or violate the
10 law to continue the exclusion; correct?
11 MR. ROTH: Object to the extent it
12 misstates the evidence.
13 A ETF's legal opinion was essentially that we should
14 remove the exclusion.
15 Q Right. So if there is no -- if on one side there
16 is a possible violation of the law, that's ETF
17 staff attorneys' position; correct?
18 MR. ROTH: Same objection.
19 A Again, ETF's legal opinion was we should get rid
20 of the exclusion.
21 Q Because there was the possibility that there would
22 be liability for violating anti-discrimination
23 laws; correct?
24 MR. ROTH: Same objection.
25 A The ACA regulations, violating the ACA

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1 regulations.
 2 Q Right. Go back again to Farrell Exhibit 6, and
 3 Attachment B and page 4. You see in the last two
 4 paragraphs that the EEOC takes the position that
 5 Title IX's prohibition against sex discrimination
 6 includes discrimination on the basis of gender
 7 identity? Do you see that?
 8 A Yes.
 9 Q So it wasn't just the ACA liability that was a
 10 concern. There was also some concern about
 11 liability for violations of other federal
 12 anti-discrimination laws; correct?
 13 A I think this was counsel pointing out the fact
 14 that we had these two cases pending and
 15 summarizing the EEOC position.
 16 Q And the EEOC's position was that it prohibits
 17 discrimination on the basis of gender identity;
 18 correct?
 19 MR. ROTH: Objection. Lacks
 20 foundation.
 21 A This memo says EEOC takes the position that
 22 Title IX's prohibition against sex discrimination
 23 includes discrimination on the basis of gender
 24 identity.
 25 Q Okay. So is it not fair to say that this memo

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1 indicates that there is some risk of liability in
 2 reinstating the benefit -- I mean, reinstating the
 3 exclusion?
 4 MR. ROTH: Objection to the extent
 5 it calls for a legal conclusion and misstates
 6 the evidence. You can answer.
 7 A I think this memo was indicating that there may be
 8 liability if the exclusion is not removed.
 9 Q And nothing in the DOJ memo suggests that there
 10 will be liability if the exclusion remains
 11 removed; correct?
 12 A I believe that's a fair statement.
 13 Q Do you remember, did you take a position at either
 14 the August or November meetings on what the GIB
 15 ought to do in the situation?
 16 A Did I take a position?
 17 Q Yes.
 18 A My position and ETF's position was reflected in
 19 the ETF memo on the matter.
 20 Q I'll show you what's been previously marked as
 21 Pray Exhibit 13. Do you recognize this document?
 22 A Yes.
 23 Q And what is it?
 24 A These are draft minutes from the Group Insurance
 25 Board's December 13th, 2016, meeting.

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1 Q And you attended that meeting; correct?
 2 A Correct.
 3 Q And the first item on the agenda was consideration
 4 of November 30th, 2016, open and closed meeting
 5 minutes. So there was a November meeting;
 6 correct?
 7 A Yes. There must have been.
 8 Q Okay. Was the December 13th meeting a special
 9 meeting?
 10 A Well, I guess it comes down to what we mean by
 11 special. This was not a normal quarterly meeting,
 12 but because we were dealing with the
 13 self-insurance matter, we had scheduled irregular
 14 meetings throughout the year. It was previously
 15 scheduled, though.
 16 Q Okay. So if you look at pages 8 and 9 of the
 17 minutes, this is a discussion of the exclusion;
 18 correct? Or these minutes reflect the discussion
 19 of the exclusion by the GIB; correct?
 20 A Yes.
 21 Q And Ms. Ellinger referred the board to the memo
 22 Discussion and Consideration of 2017 Uniform
 23 Benefits, and I believe it refers to item 6 for
 24 the December 13th meeting, which is effectively
 25 what's the second page onward of Farrell

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1 Exhibit 6; correct?
 2 A Yes.
 3 Q Okay. And then it says, "The item was added to
 4 the December 13th meeting agenda at the request of
 5 a board member, as the Wisconsin Department of
 6 Justice indicated the intent to send
 7 representation to the board meeting to discuss the
 8 issue." Do you know who the board member was who
 9 requested that this item be added to the agenda?
 10 A My recollection is that it was J.P. Wieske.
 11 Q Do you know, did you hear that from Mr. Wieske
 12 yourself, or how did you -- why do you say it was
 13 Mr. Wieske?
 14 A I think that may have been communicated through
 15 Lisa Ellinger.
 16 Q Okay. Do you know if she heard directly from
 17 Mr. Wieske?
 18 A That I don't know.
 19 Q Did the DOJ contact you directly about appearing
 20 at this meeting?
 21 A I don't recall that, no.
 22 Q Do you know if they contacted -- if DOJ contacted
 23 Ms. Ellinger directly?
 24 A I don't know.
 25 Q So you're not sure if Mr. Wieske conveyed that

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1 information that the DOJ indicated an intent to
2 send a representative?
3 A Yeah. I don't know the extent of the
4 communication that actually came in to Lisa on
5 that matter.
6 Q So from the time of the July 12th meeting until
7 this December 13th meeting, had you heard from
8 Mr. Wieske directly about the issue of the exclusion?
9 A I don't recall hearing from him.
10 Q By email, phone, any form of communication?
11 A On this topic? Not directly.
12 Q Did you hear that he had been communicating
13 indirectly about it? Actually, let me rephrase
14 that. Did you hear indirectly about him bringing
15 this issue up to ETF staff or GIB members?
16 A Yes.
17 Q Okay. What did you hear and when?
18 A Well, again, I think Lisa Ellinger indicated that
19 he had asked for this transgender topic to be
20 placed on the agenda.
21 Q Okay. And that was for the December meeting. But
22 were there any prior contacts that you're aware of
23 between Mr. Wieske and other ETF staff?
24 A Between July and this date?
25 Q Right.

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1 A I don't recall.
2 Q Okay. What about contacts from the Department of
3 Justice? Did you receive any direct contacts from
4 the Department of Justice between July 12th and
5 December 13th, 2016, on this topic?
6 A I don't think so. I mean, there was probably some
7 back and forth on logistics for this, which I
8 don't think I was involved in. I'm sure someone
9 from ETF was.
10 Q Do you remember, did you hear from anyone in
11 the governor's office between July 12th and
12 December 13th, 2016, about the exclusion?
13 A No. Not that I recall.
14 Q From anyone at the Department of Administration
15 from July 12th to December 13th, 2016?
16 A Not that I recall.
17 Q Anyone else from the Office of the Commissioner of
18 Insurance besides Mr. Wieske?
19 A Not that I'm recalling, no.
20 Q So on page 9 of this memo -- or, I'm sorry, these
21 minutes, it says, "Mr. Potter stated that the
22 August 10th memorandum was authored by the DOJ at
23 the request of the governor's office for the
24 benefit of the board." Do you recall him saying
25 that?

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1 A Yes.
2 Q Had you known that before?
3 A No.
4 Q Okay. Did he say who in the governor's office had
5 asked DOJ to write that?
6 A No.
7 Q Did he say why the governor's office asked the DOJ
8 to write this memo?
9 A I don't recall him saying that.
10 Q Okay. Mr. Potter noted the State of Wisconsin has
11 joined a federal lawsuit in Texas challenging the
12 HHS final regulations pertaining to Section 1557.
13 Had you been aware of the lawsuit before this time?
14 A I believe so.
15 Q Do you know when you became aware of the lawsuit?
16 A I suspect it was sometime between July and
17 December 13th. I recall seeing either a news
18 article or something indicating that we were
19 involved in this.
20 Q When you say we, at that point was --
21 A The state.
22 Q Okay. So you're not referring to GIB being --
23 A I was referring to the State of Wisconsin joining
24 the federal lawsuit in Texas.
25 Q Okay. Do you recall any comments by board members

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1 during this discussion?
2 A Comments? I mean, I think the board discussed
3 what they should do next, which was follow DOJ's
4 advice and move forward as though the exclusion
5 was being removed.
6 Q Did somebody ask DOJ what to do?
7 A I know Potter said that we should carry on or, as
8 indicated in here, proceed with the
9 implementation, follow the law as it currently
10 stands. I think there may have been questions
11 about what that means, which became clarified that
12 we should continue on with the exclusion removed,
13 if that's English, I guess.
14 Q This is a lot of double negatives and triple
15 negatives, unfortunately. Did you make any
16 comments or ask any questions during the course of
17 this discussion?
18 A I may have asked that question about what are you
19 saying in terms of carrying on. I don't remember
20 if I did, but I remember the question being asked.
21 Q Was there any policy discussion or discussion of
22 whether or not the board should consider -- should
23 even consider rescinding the benefits regardless
24 of what happened with the Texas lawsuit?
25 A I don't believe so.

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1 Q Did anybody say this is just the right thing to
 2 do, to cover these benefits?
 3 A Well, we had just been told to cover the benefits.
 4 I mean --
 5 Q Did you have a personal view about whether these
 6 benefits should be covered? Not as a matter of
 7 legal requirement but as a matter of policy,
 8 employee benefits policy?
 9 A I was okay with it.
 10 Q The issue had come up before; correct? Before the
 11 2016 ACA regulations were finalized?
 12 MR. ROTH: Objection. Vague.
 13 A I don't know what you're referring to. I don't
 14 recall what you're referring to.
 15 Q Some of the union groups had been requesting --
 16 bargaining units had been requesting that this
 17 coverage be included as far back as 2006. Does
 18 that sound familiar?
 19 MR. ROTH: Objection. Lacks
 20 foundation. You can answer.
 21 A 2006?
 22 Q If you know.
 23 A I don't recall seeing anything like that.
 24 (Exhibit No. 15 marked for
 25 identification)

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1 Q I'm showing you what's been marked Conlin
 2 Exhibit 15. Do you recognize this document?
 3 A Yes.
 4 Q What is it?
 5 A It is an email from John Voelker, the deputy
 6 secretary, to Mike Farrell, with a copy to me.
 7 Q Okay. And this is an email sent on December 29th,
 8 2016; correct?
 9 A Correct.
 10 Q And attached to that is a board -- an agenda for a
 11 meeting on December 30th, 2016, of the GIB;
 12 correct?
 13 A Correct.
 14 Q And the only item on that agenda is discussion and
 15 consideration of 2017 uniform benefits, benefits
 16 and services related to gender reassignment or
 17 sexual transformation. Do you see that?
 18 A Yes.
 19 Q And was that the only topic of consideration at
 20 the December 12th meeting -- or December 30th
 21 meeting, as you recall?
 22 A Well, it's not the only thing on the agenda.
 23 Q All right. What else was on the agenda?
 24 A There is call to order, future items, and
 25 adjournment. These are also a topic on the agenda.

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1 Q The purpose of this meeting, though, was to
 2 discuss the exclusion; correct?
 3 A Yes.
 4 Q Were any future items for discussion raised?
 5 A I don't recall specifically.
 6 Q So turning back to the email, Mr. Voelker says,
 7 "we have confirmation of participation for seven
 8 members, so we have a quorum." Do you see that?
 9 A Yes.
 10 Q Are you usually worried about a quorum for
 11 meetings?
 12 A Well, we always worry or have a concern of a
 13 quorum if we want to get business done. If the
 14 board is interested in taking action, they need a
 15 quorum.
 16 Q Do you usually send emails back and forth about
 17 whether you have a quorum?
 18 A If there is a quorum challenge, yes. Like if we
 19 don't have -- if we think we may not have a
 20 quorum, we'll certainly advise the chair, so it's
 21 not unusual that we would communicate about quorum
 22 issues.
 23 Q This meeting was called on unusually short notice;
 24 correct?
 25 A Correct.

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1 Q Basically you learned about the meeting on
 2 December 28th at after 5:00 p.m.; is that right?
 3 A It was late in the afternoon.
 4 Q Was that in response to -- well, who asked for the
 5 meeting to be held?
 6 A The board chair.
 7 Q Did he communicate with you about that?
 8 A Yes.
 9 Q By telephone?
 10 A Yes.
 11 Q Did he say why he wanted the meeting?
 12 A To consider the exclusion.
 13 Q Did he say why he wanted to consider -- reconsider
 14 the exclusion?
 15 A I don't recall that he said anything about that.
 16 Q So he called you after 5:00 p.m. or late afternoon
 17 on December 28th and said I want to have a meeting
 18 about the exclusion?
 19 A No.
 20 Q What did he say? Did he call you on December 28th?
 21 A No.
 22 Q How did you hear about this?
 23 A Hear about what?
 24 Q You said you had a phone call with Mr. Farrell
 25 about setting this meeting up; correct?

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1 A Correct.
2 Q When was that?
3 A Sometime in the morning of the 29th.
4 Q Okay. But you had heard about it before, that he
5 was going to be making this request?
6 A That's correct.
7 Q Okay. How did you hear about it?
8 A On the late afternoon of the 28th, I got a phone
9 call from Secretary Neitzel from the Department of
10 Administration.
11 Q Okay. And what did Secretary Neitzel say to you?
12 A He said that he was giving me a heads up that I
13 would be getting a call from the board chair
14 likely the next morning requesting a meeting of
15 the Group Insurance Board for Friday afternoon,
16 which would have been the 30th.
17 Q And did he say what the topic was going to be?
18 A I believe he said the HHS rule or the transgender
19 issue or something that gave me an indication of
20 what it was going to be about.
21 Q Did he say why now or why the meeting needed to
22 happen so quickly?
23 A I don't believe he said specifically why.
24 Q Is there anything else you recall about the
25 content of that conversation with Mr. Neitzel?

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1 A Yes.
2 Q What else do you recall?
3 A When he told me that I would be getting a call to
4 set up a board meeting, or for the chair to set up
5 a board meeting, I essentially said you've got to
6 be kidding me. His response indicated that he
7 wasn't calling to negotiate but advising me that
8 the board chair would be calling. I indicated to
9 him that this was not making me happy and I said,
10 "Well, we can certainly set up a board meeting.
11 Given the week of the year that it is and the late
12 notice on this, we don't have facilities reserved,
13 I can't guarantee we're going to have a quorum,"
14 and I said, "you know, if you want the meeting,
15 then you're going to make sure those things happen
16 and if I need help getting a room for the meeting,
17 I may need to call you," and he didn't seem to
18 think any of those were going to be a problem.
19 Q Did you have any discussion on your view --
20 anything else you recall about that conversation?
21 A I told him that this was not going to look good
22 scheduling a meeting at the last minutes at the
23 end of the year to take up a controversial topic.
24 Q Did he respond to that?
25 A I think he said something like he understood or

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1 acknowledged my concerns.
2 Q Did Mr. Neitzel indicate why he wanted to do it on
3 such short notice?
4 A I don't recall if he did.
5 Q Did Mr. Farrell the next day?
6 A At some point there was an indication that there
7 might be a decision coming from Texas, but I don't
8 remember where I learned that.
9 Q Did Mr. Neitzel indicate that anyone had asked him
10 to call you about this?
11 A No.
12 Q Did you ask about that?
13 A No.
14 Q Between December 13th and 29th -- I'm sorry.
15 Between December 13th and December 28th, did you
16 receive any communications from Department of
17 Justice staff about the exclusion?
18 A I don't recall receiving any.
19 Q Okay. What about from Mr. Wieske?
20 A I don't recall receiving any.
21 Q Did Mr. Farrell bring it up at any point during
22 that period of time?
23 A Bring what up?
24 Q The exclusion again, between December 13th and
25 December 28th?

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1 A I don't think I talked to him between that. I'm
2 not aware of him raising the issue in that
3 timeframe.
4 Q Okay. Did anyone from the governor's office
5 between December 13th and December 28th raise this
6 issue with you?
7 A No. Not that I recall.
8 Q So the morning of December 29th you had a phone
9 call with Mr. Farrell; is that correct?
10 A 29th, yes.
11 Q Okay. And can you describe the content of that
12 conversation?
13 A So he called, like, right away in the morning, and
14 I think I indicated I was expecting to hear from
15 you. He said he wanted us to schedule a meeting
16 for Friday afternoon with the topic of the
17 nondiscrimination rule transgender issue. I think
18 I again said this was likely to be controversial
19 and it's the last day of the year and we don't
20 have staff around, but he indicated that he would
21 like that meeting scheduled and do what we could
22 to get facilities set up and what we needed to do
23 to get the meeting called and scheduled.
24 Q Do you recall anything else about what he said
25 during that conversation?

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1 A During that conversation, no.
 2 Q So you had that conversation. Did you then talk
 3 to Mr. Voelker about getting a room and trying to
 4 figure out who could attend?
 5 A Yes.
 6 Q Okay. And at the point when he got a sufficient
 7 number of people confirmed that they could attend,
 8 he sent this email; is that right?
 9 A Yes.
 10 Q And he said that -- And this is an email to
 11 Mr. Farrell, and he said that you will be --
 12 Mr. Bob Conlin will be following up with you by
 13 phone on the agenda and a couple other meeting
 14 issues; is that right?
 15 A Correct.
 16 Q Did you follow up with Mr. Farrell by phone?
 17 A Yes.
 18 Q Okay. When was that?
 19 A Not terribly long after this.
 20 Q Okay. And what did you talk about?
 21 A So we talked about the agenda. We talked about
 22 the department's concern that the board consult
 23 with their legal counsel on the matter at this
 24 meeting, and even though he wanted the discussion
 25 point and action item on the transgender issue, I

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1 suggested that we include as well a discussion
 2 item or an item to discuss with legal counsel the
 3 ramifications of any action they may decide to
 4 take.
 5 Also we talked with him about the heading of
 6 the discussion item. It seems to me that in the
 7 past we had simply referred to the HHS
 8 discrimination rule or something like that. I
 9 wanted to clarify, given the crunch of time, a
 10 more specific topic of discussion, and I think we
 11 talked about phone connections for people to call
 12 in, board members and that sort of thing.
 13 Q So was the agenda revised? The attachment here
 14 indicates the action item. Was there any further
 15 revision to the agenda based on your discussion?
 16 A Yes. I seem to recall a different final agenda.
 17 Q Was there a notice that the board might go into
 18 closed session on the final agenda?
 19 A Yes, I believe so.
 20 Q Did you have any other conversations with
 21 Mr. Farrell about this before the meeting on
 22 December 30th?
 23 A Before the meeting. No. I think when we arrived
 24 at the meeting, the conversation was what's the
 25 game plan and talked about open session, go into

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1 closed session, come back into open session, deal
 2 with the discussion topic just to kind of make
 3 sure he understood what was going on. We talked
 4 about the phone connections that we were using,
 5 and I think that's -- you know, a typical
 6 premeeting, making sure we have all of our ducks
 7 in a row.
 8 Q On December 28th and 29th after -- was there a
 9 discussion among ETF staff about the scheduling of
 10 this meeting and plan to reconsider the removal of
 11 the exclusion?
 12 A Yes.
 13 Q Can you describe that discussion?
 14 A I think after I got the call from Secretary Neitzel
 15 on Wednesday afternoon, I gave John Voelker the
 16 heads up that we were going to have to pull off a
 17 board meeting. Called Lisa Ellinger and told her
 18 we needed to prepare -- I think discussion at some
 19 point turned to do we need materials for this,
 20 what do we do, what does the board expect. I
 21 think that resulted in us putting together the
 22 cover sheet with the attached memos that we may
 23 have discussed before.
 24 Q Is that Farrell Exhibit 6?
 25 A Yes.

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1 Q Lower right-hand corner.
 2 A Yes.
 3 Q Were possible motions drawn up in advance of the
 4 meeting?
 5 A I don't recall seeing those.
 6 Q Did Ms. Ellinger -- What was Ms. Ellinger's
 7 reaction when you told her?
 8 A She was not happy.
 9 Q When you say not happy, what do you mean?
 10 A She was upset. It's like, are we still dealing
 11 with this issue? Last day of the year, no staff
 12 in. I mean, it was, I think, a typical reaction
 13 to last-minute sorts of requests like this to pull
 14 off a full board meeting with 24 hours' notice.
 15 Frustration, I would say.
 16 Q Did you view the attempt to remove the
 17 exclusion -- I mean, to restore the exclusion to
 18 be politically motivated?
 19 MR. ROTH: Objection. Vague.
 20 Lacks foundation.
 21 A I'm not sure I formed an opinion on that.
 22 Q Is it your view that GIB was required to reinstate
 23 the exclusion?
 24 MR. ROTH: Object to the extent it
 25 calls for a legal conclusion. You can answer

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1 if you can.
2 A I did not understand that there was a requirement
3 that the GIB reinstate the exclusion.
4 Q Did you have an understanding of why DOJ wanted
5 GIB to reinstate the exclusion?
6 A It was contained in the memo. That's what we had
7 had in front of us.
8 Q Did you ever ask anybody why did they want to take
9 these benefits away from a handful of people?
10 A I think internally we had that discussion
11 probably, within -- amongst ETF staff.
12 Q And what was your view?
13 A Didn't know.
14 Q What other views did you hear and from whom?
15 A I think people were largely confused, why the
16 whole process.
17 Q Did people talk about -- Did people express views
18 that it was discriminatory to take away these
19 benefits?
20 A I don't recall that coming up.
21 Q Unfair?
22 A I think people were largely frustrated with the
23 process that we were going through on this and
24 sensing that it was being done at the last minute.
25 Q Did anybody express their view that this was

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1 politically motivated?
2 A I think there were a number of theories like that.
3 Q Is that one of your theories?
4 MR. ROTH: Objection. Asked and
5 answered.
6 A Like I said, I didn't form opinions on that.
7 Q This consumed a lot of your time and energy,
8 didn't it?
9 A It did.
10 Q And you didn't form any opinion about what was
11 appropriate or inappropriate to do in this case?
12 MR. ROTH: Objection. Asked and
13 answered.
14 A I've worked in and around the legislature for
15 25 years. Policymakers do things that I don't
16 agree with all the time, and at some point you
17 just look beyond that and do your job. We knew
18 this was going to be -- or thought this was going
19 to be a controversial topic when we prepared for
20 the July meeting. It turned out not to be at that
21 time. And the controversy came later.
22 Q Did you do anything at any of these meetings after
23 the July meeting to try to persuade board members
24 one way or the other about what to do about
25 reinstating the exclusion?

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1 MR. ROTH: Objection. Asked and
2 answered.
3 A To persuade them? The only conversation I had
4 even close to that was after the December 13th
5 meeting when I suggested to J.P. Wieske that they
6 could always use the budget process to get this
7 exclusion reinstated rather than bringing it back
8 to the Group Insurance Board, because it had been
9 on a recurring theme. The exclusion was taken
10 out, and then the effort to revisit it kept
11 happening and it was my -- put this thing to rest,
12 essentially. The board made its decision, move on.
13 Q Had you ever experienced any process that was --
14 well, let me ask this question instead.
15 Was there ever any other GIB meeting on such
16 short notice in your tenure at ETF?
17 A I don't recall any.
18 Q Can you think of any other situation where the
19 board has reversed a decision on uniform benefits
20 that it made previously in the year?
21 A They have modified decisions as the year went on.
22 I don't recall a reversal.
23 (Recess)
24 MR. ROTH: I could put that on the
25 record if you want me to --

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1 MR. DUPUIS: Sure, that you had a
2 discussion?
3 MR. ROTH: Yeah. We had a
4 discussion during the break with the witness
5 about his answer to a prior question and he's
6 going to take an opportunity to amend his
7 response.
8 A So you asked me about communications from the
9 Department of Justice during various time periods.
10 I don't remember the exact time period, but
11 sometime around the 13th, the meeting of the 13th,
12 I reached out to the Department of Justice for
13 logistical information generally and talked
14 about --
15 MR. ROTH: Well, let me stop you
16 there. He's going to disclose that the
17 conversation happened, but I'm going to
18 instruct the witness not to answer with
19 respect to the contents of the conversation
20 with DOJ on that call. So he's telling you
21 that the call happened.
22 MR. DUPUIS: I can ask a few
23 questions.
24 MR. ROTH: Sure. Please.
25 Q Were you seeking legal advice from the person you

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1 called at DOJ?
2 A That wasn't the intent of my call.
3 MR. DUPUIS: There is no privilege,
4 then.
5 MR. ROTH: Well, let's put it this
6 way. I understand the content of the call
7 because I had a conversation with my client
8 about it, and it clearly relates to the
9 advice that DOJ was giving with respect to
10 the GIB's upcoming potential reconsideration
11 of the exclusion, which is why we're sitting
12 here today. GIB was sued for its decision,
13 as well as Mr. Conlin in his individual
14 capacity. So perhaps when he picked up the
15 phone to talk to DOJ --
16 MR. DUPUIS: There was no lawsuit
17 pending against GIB at that point.
18 MR. ROTH: Well, everyone
19 understood that there was a chance for
20 litigation, which is why we went into closed
21 session on the 13th and which is why DOJ
22 attended that GIB session to advise them on
23 how to -- well, I'm not going to go farther
24 than that. But that was the purpose of the
25 DOJ communication at the closed session and I

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1 think it's also --
2 MR. DUPUIS: Okay.
3 MR. ROTH: -- pretty much the same
4 for Secretary Conlin and now he is sued in
5 his individual capacity based on the GIB's
6 ultimate decision.
7 MR. DUPUIS: Okay. Let's see if we
8 can parse this, because I think we've
9 established that not all communications with
10 counsel are privileged.
11 MR. ROTH: I understand.
12 MR. DUPUIS: And we've established
13 that GIB, ETF, and Mr. Conlin were not
14 clients -- were not litigants in the Texas
15 litigation.
16 MR. ROTH: Uh-huh.
17 MR. DUPUIS: And I think we've
18 established that policy discussion --
19 discussions about policy matters --
20 MR. ROTH: Yeah.
21 MR. DUPUIS: -- are fair game, even
22 if they're conveyed by lawyers.
23 MR. ROTH: Uh-huh.
24 MR. DUPUIS: And I think we
25 probably agree that, maybe not, but that

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1 nothing in the DOJ's position up to this
2 point in any way compelled the GIB or ETF to
3 reinstate the exclusion. So I would like to
4 ask him questions about -- not about legal --
5 the department's legal assessment of the
6 legal consequences of an action but --
7 MR. ROTH: Okay.
8 MR. DUPUIS: -- about policy
9 considerations, including the state's
10 position in the Texas litigation. So that
11 has nothing --
12 MR. ROTH: The second part I don't
13 understand, about policy considerations.
14 What about the state's position in the Texas
15 litigation? I don't understand.
16 MR. DUPUIS: The state's position
17 in the Texas litigation, whether that was a
18 motivating factor in DOJ's efforts to get the
19 GIB to reinstate the exclusion. That's not
20 legal advice to them.
21 MR. ROTH: You can ask questions
22 about policy, but if you're going to get into
23 the state's legal strategy with respect to
24 its Texas litigation --
25 MR. DUPUIS: I'm not going to ask

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1 about the legal strategy. I'm going to ask
2 whether the DOJ said to Mr. Conlin that we
3 want the GIB -- or we would prefer that the
4 GIB change this so that we can maintain our
5 position in the Texas litigation. It's not
6 strategy, not -- it's just a question of fact.
7 MR. ROTH: Well, can I take a
8 second with the witness, because I don't want
9 to give him an instruction that's going to
10 cause you to move to compel with no basis
11 whatsoever because he's not going to give an
12 answer that's even going to satisfy you in
13 the sense of, you know, is he -- I don't know
14 if he's going to say yes or no to that.
15 Before I can assess to instruct him not to
16 answer, I would like to know what he would
17 say to that.
18 MR. DUPUIS: Okay. One thing,
19 maybe we can mark this, I don't know if it's
20 necessary to mark it, but this was an
21 instruction that we used in -- this is a long
22 time ago now, but it was a case, and it was
23 in the eastern district but it was a case
24 involving attorney -- an attorney speaking
25 with -- the city attorney speaking with the

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1 common council in a closed session and this
2 was the instruction that we used to sort out
3 the distinction between legal privileged
4 communications in that context and
5 nonprivileged communications in that context.
6 MR. ROTH: Okay. I'll just talk to
7 the witness for one second. Is that okay?
8 Are you going to object to me just --
9 MR. DUPUIS: I'm not going to
10 object to you talking to the witness.
11 MR. ROTH: Just one second.
12 (Recess)
13 MR. ROTH: You can ask. We'll go
14 back on the record. You can ask the question
15 as you've phrased it to me. I mean, you can
16 ask the policy part and then you can ask the
17 second part also.
18 MR. DUPUIS: Okay.
19 Q So during that discussion -- So do you recall what
20 day it was that you called DOJ?
21 A No.
22 Q Okay. Do you know who you talked to at DOJ?
23 A Yes.
24 Q Who was it?
25 A Delanie Breuer.

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1 Q Okay. Is that a man or a woman, do you know?
2 A A woman, I believe.
3 Q Okay. And about how long did you speak with her?
4 A Five or ten minutes.
5 Q Okay. Did you call with the intent of obtaining
6 legal advice from the Department of Justice?
7 A No.
8 Q Without revealing what -- any advice that the
9 attorney may have given with regard to the
10 department's or the board's liability for
11 reinstating or not reinstating the exclusion, can
12 you tell me what you discussed with Ms. Delanie?
13 A Yes.
14 Q Okay. What did you discuss, and speak slowly so
15 Mr. Roth --
16 MR. ROTH: I've got my hand on the
17 button.
18 Q -- can object if he feels he needs to.
19 A After we had received the August 10th memo, we had
20 hoped that somebody from DOJ would show up to
21 explain the memo at the August 10th -- or the
22 August 16th meeting. We felt -- staff felt it was
23 important for the board to hear from DOJ on the
24 matter. DOJ did not take that opportunity to show
25 up to explain the memo.

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1 I believe there may have been another attempt
2 or request sometime in there to have DOJ show up.
3 I reached out to Delanie to say, how can we get
4 you to come in and talk to the board about this.
5 I had no experience with her. She didn't know me.
6 It was more of a logistics, goodwill sort of thing
7 so that I could facilitate for the board them
8 hearing from counsel.
9 Q Was there any discussion in that call of why DOJ
10 as a policy matter was interested in the
11 department -- in the board reinstating the
12 exclusion?
13 A No.
14 Q I know -- Actually, I think I already asked this
15 but I'm going to ask it again. About how long was
16 the conversation?
17 A Five to ten minutes.
18 Q Is there anything else that did not involve legal
19 advice related to reinstatement of the exclusion
20 of the benefit in that conversation?
21 A I don't believe so.
22 Q I'll show you what's been previously marked as
23 Pray Exhibit No. 14. Do you recognize that?
24 A Yes.
25 Q What is it?

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1 A It's draft minutes from the December 30th, 2016,
2 Group Insurance Board meeting.
3 Q Did you attend that meeting?
4 A Yes.
5 Q So did the minutes reflect a discussion by
6 Mr. Potter discussing the July 12th board action
7 and -- so was Mr. Potter at this meeting?
8 A Yes.
9 Q Okay. The open session minutes that we have in
10 front of us, does this reflect accurately your
11 recollection of the discussion prior to the board
12 going into closed session?
13 A Yes.
14 Q Did any board members speak during the open
15 session about reinstatement of the exclusion?
16 A I don't recall anyone speaking on that.
17 Q So the last paragraph before the motion to go into
18 closed session indicates that the chair announced
19 that the board would convene in closed session
20 pursuant to exemptions contained in Wisconsin
21 Statute 19.85(1)(g) to confer with legal counsel
22 concerning advice about strategy to be adopted
23 with respect to litigation in which the board is
24 or is likely to become involved; correct?
25 A Correct.

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1 Q Do you have an understanding of what that
2 litigation -- what litigation is referred to
3 there?
4 A I think it was likely this one.
5 Q This one was not pending at the time, was it?
6 A Likely to become involved.
7 Q Okay.
8 A Or any other similar litigation.
9 Q Was the -- you were not in -- after the board went
10 into closed session, you were not in the closed
11 session; correct?
12 A I think I was in for the first five minutes or so
13 and came back in the last ten minutes or so.
14 Q During the time that you were in the closed
15 session, without revealing communications for the
16 purpose of receiving legal advice about this
17 litigation or any similar anticipated litigation,
18 was there any discussion of reasons for or against
19 removing the exclusion?
20 A I don't recall any discussions during the portion
21 that I was there.
22 Q You don't recall any discussion or any discussion
23 that was not legal?
24 A On those topics. On those topics.
25 Q Okay. And when you say on those topics, you mean

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1 topics other than litigation. Because I'm asking
2 if there was any discussion about policy
3 considerations or the Texas litigation but not
4 this litigation or litigation like it.
5 A The beginning of the meeting did not include those
6 discussion topics as I recall it.
7 Q Okay. The beginning of the closed session?
8 A Correct.
9 Q What about the end of the closed session when you
10 went back in?
11 A Could you repeat the question?
12 Q So any reasons for or against adopting -- or
13 reinstating the exclusion other than discussions
14 about legal consequences for litigation, such as
15 this litigation or other similar litigation, but
16 not including the Texas litigation?
17 A No, I don't believe so.
18 Q Okay. Can you tell us why the GIB reinstated the
19 exclusion?
20 MR. ROTH: Objection. Lacks
21 foundation.
22 Q To the extent you know?
23 A I don't know. I was not there during the closed
24 session. So I don't know what they talked about.
25 Q They had discussions about this topic previously;

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1 correct?
2 A The topic, yes.
3 Q Had it ever come up that some people wanted to
4 reinstate the exclusion?
5 A I think there had been comments by a board member
6 or two that we should -- or the board should
7 reconsider its July 16th decision based upon the
8 DOJ memo of August 10th.
9 Q Did any of them raise issues about the cost of
10 these benefits being a problem?
11 A I seem to recall a comment by a board member that
12 the board ought to reconsider its positions -- or
13 its position based on the legality of the federal
14 regulations, the potential cost, and the efficacy
15 or nature of the services covered by the exclusion.
16 But it was a very short statement such as that.
17 Q Do you recall which board member said that?
18 A I think it was J.P. Wieske.
19 Q This was after the department had already received
20 an estimate from Segal, the actuary, on the likely
21 cost of providing such benefits; correct?
22 A I don't recall the timing exactly.
23 Q And the Segal -- But you do recall a Segal -- or
24 Segal. I don't know why I always say Segal.
25 MR. ROTH: Steven Segal,

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1 presumably.
2 MR. DUPUIS: That's probably why.
3 I wish that weren't the case.
4 MR. ROTH: That's okay. Everyone
5 has their guilty pleasures.
6 Q So you're familiar with the Segal memo that
7 concluded that the cost was negligible?
8 MR. ROTH: Objection to the extent
9 it misstates the evidence and lacks foundation.
10 A Which memo are you referring to?
11 Q Well, there are several memos.
12 A That's why I ask.
13 Q Are you familiar with the memo that -- I'm going
14 to show you what's previously been marked as Pray
15 Exhibit 19. This is an email chain that begins
16 with some questions from Herschel Day on July 13th
17 to Lisa Ellinger. It doesn't appear that you were
18 actually on this email chain.
19 But in this, Ms. Ellinger's response to
20 Mr. Day's question about an actuarial cost
21 estimate for the benefit change that was made on
22 July 12th, she says, "We did ask Segal to provide
23 an actuarial estimate and Tara was prepared to
24 share if there were any questions on the cost.
25 Based on the work Segal has conducted in other

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1 states, they noted the cost impact is typically
2 less than 0.1 percent." Do you see that?
3 A Yes.
4 Q "Given the negligible cost, we did not create a
5 line item for this benefit change in the bid
6 submissions." Do you see that?
7 A Yes.
8 Q So was it your understanding around the time of
9 the adoption -- or of the elimination of the
10 exclusion that it would have a negligible cost
11 impact?
12 MR. ROTH: Objection. Lacks
13 foundation.
14 Q Were you aware that there was a Segal assessment
15 that the cost would be negligible, in the vicinity
16 of less than 0.1 percent?
17 MR. ROTH: Same objections. You
18 can answer if you can.
19 A Lisa had shared with me that Segal had suggested
20 that it was a negligible cost impact.
21 Q Okay. So that was your understanding at the time?
22 A Yes.
23 Q Was that it was a negligible cost impact. Okay.
24 Do you recall anybody responding to Mr. Wieske's
25 suggestion that the exclusion should be

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1 reconsidered?
2 A No. I don't recall.
3 Q So aside from -- I understand that you weren't in
4 the closed session. But aside from that, do you
5 have an understanding of why the board reinstated
6 the exclusion?
7 MR. ROTH: Objection. Asked and
8 answered.
9 A No.
10 Q So after the board came out of closed session,
11 Mr. Hurlburt made a motion to reinstate the
12 exclusion contingent on the occurrence of several
13 events; correct?
14 A Correct.
15 Q And Mr. Wieske seconded the motion, and two
16 members voted against, the remaining present
17 members voted for; correct?
18 A Yes.
19 Q Did anybody in open session discuss their
20 reasoning for voting for or against this motion?
21 A I do not recall.
22 Q You don't recall anyone speaking or you just don't
23 recall one way or the other?
24 A I don't recall anyone expressing their opinions or
25 giving reasons for why they voted a particular way.

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1 Q Has anyone who was in the closed session talked to
2 you about what happened during the closed session?
3 A No.
4 Q Have any board members subsequently explained why
5 they voted the way they did on that motion?
6 A I don't recall anyone doing that.
7 Q I'm not sure how I asked the question so I'm going
8 to ask did anyone who was in the closed session,
9 not just board members, but anyone who was in the
10 closed session discuss -- ever discuss with you
11 what took place in the closed session? Don't tell
12 me what they said. Just whether.
13 A No.
14 Q Did anyone at DOJ ever give you a reason why GIB
15 should reinstate the benefits, again not legal
16 advice about whether it was permissible legally or
17 what defenses you might have if somebody sued you
18 over it, but whether as a matter of policy GIB
19 should reinstate the benefit?
20 A No.
21 Q I mean, I'm sorry, reinstate the exclusion.
22 A No.
23 (Exhibit No. 16 marked for
24 identification)
25 Q I'm showing you what's been marked as Conlin

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1 Exhibit 16. Do you recognize this email and its
2 attachment?
3 A Yes.
4 Q So can you describe what it is?
5 A So this is an email chain. The first one is an
6 email from me to ETF's leadership team conveying
7 my January 2017 secretary's report to the ETF
8 board.
9 Q And the attachment is your secretary's report;
10 correct?
11 A Correct.
12 Q And under (3) in that attachment, the second
13 paragraph under Group Insurance Board, the heading
14 Group Insurance Board, you talk about the GIB
15 meeting on rather short notice on December 30th to
16 discuss with legal counsel various matters
17 involving a federal regulation that essentially
18 required the coverage of certain benefits and
19 services related to gender reassignment or sexual
20 transformation. Do you see that?
21 A Yes.
22 Q And then you say, "At the December 30th meeting,
23 the GIB voted to rescind those benefits in the
24 event the regulation was enjoined and certain
25 other conditions were met." Correct?

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1 A Yes.
 2 Q And those are the contingencies that are in the
 3 motion of Mr. Hurlburt that was approved on
 4 December 30th; correct?
 5 A Yes.
 6 Q You say, "The next day, the federal court enjoined
 7 the regulation and we are busy working on the
 8 other conditions." Do you see that?
 9 A Yes.
 10 Q What did you mean by you were busy working on the
 11 other conditions and who is we?
 12 A Well, we was staff of ETF. At the time we were --
 13 one of the conditions or contingencies was that we
 14 have essentially an actuarial opinion on the cost.
 15 We were working with Segal to get that. And we
 16 were waiting for the other contingencies to
 17 happen.
 18 Q At this point were you anticipating that the GIB
 19 would meet again to determine whether or not the
 20 contingencies were met?
 21 A No. There was some question about whether the
 22 board had intended that -- or not the board
 23 intended it, but I think Lisa Ellinger, that was
 24 her leading. I understood the motion that the
 25 board made and approved to kind of be self-executing

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1 once the conditions were met.
 2 Q But one of the conditions was that ETF had to
 3 obtain an estimate that would confirm that it did
 4 not have a -- did not increase the cost, at least,
 5 of premiums in order to satisfy one of the
 6 conditions?
 7 A That's correct.
 8 Q I'm going to show you what's been marked
 9 previously as Pray Exhibit 15. Do you recognize
 10 this document?
 11 A I don't think I've seen this whole document
 12 before. I don't recall seeing it.
 13 Q Do you recognize the format of the document or at
 14 least the second and what I believe is the initial
 15 email in the chain which is a January 4th email
 16 from ETF SMB Insurance Submit and the subject is
 17 ETF OSHP weekly notice 2017:01?
 18 A I understand we do these. I'm not a regular
 19 recipient of those email blasts.
 20 Q Okay. I would like you to take a look at one of
 21 the documents that was an attachment to this
 22 email. It's the last sheet, last two pages of the
 23 document. Do you recognize that document? It
 24 starts with Clarification: GIB action related to
 25 health coverage based on gender identity.

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1 A I may have seen this in some context.
 2 Q Okay. Do you know who put this together?
 3 A I don't know for sure, but I believe it would be
 4 OSHP staff.
 5 Q So in the middle of the document, there is a
 6 sentence that says, "The following provides an
 7 update on each of the contingencies as of
 8 January 4th, 2017." Do you see that?
 9 A Yes.
 10 Q So this, again, lays out the contingencies that
 11 were in the motion that was approved by the board
 12 on December 30th, correct, and the status of
 13 whether or not each of those contingencies was met
 14 at that time?
 15 A I believe it's a paraphrasing of the
 16 contingencies.
 17 Q Okay. Are you aware of any other change in
 18 uniform benefits that was contingent on the
 19 occurrence of other events?
 20 A I can't think of any, no.
 21 Q Do you know where these contingencies came from?
 22 A No.
 23 Q This wasn't part of a motion that you put
 24 together, the motion that Mr. Hurlburt made?
 25 A No.

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1 Q Okay. So the first item in the list says the
 2 contingency regarding a court ruling or
 3 administrative action that enjoins or rescinds the
 4 HHS rule has been met. "A federal judge issued a
 5 preliminary injunction on December 31st, 2016."
 6 Correct?
 7 A Yes.
 8 Q So as of January 4th, one contingency had been
 9 met. The second contingency is regarding
 10 compliance with state law, Section 40.03(6)(c);
 11 correct?
 12 A Correct.
 13 Q And the provision here says, "This statute
 14 provides parameters for modifications to benefits:
 15 Modifications must be either required by law, or
 16 reduce premium costs for the state or its
 17 employees in the current or any future year." Do
 18 you see that?
 19 MR. ROTH: I'm going to object to
 20 the extent that misstates the statute, but
 21 you can answer.
 22 MR. DUPUIS: Yeah. I'm going to
 23 ask him that.
 24 A I can read that, yes.
 25 Q Is that your understanding of what the statute

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1 provides?
 2 MR. ROTH: Object to the extent it
 3 calls for a legal conclusion.
 4 A No.
 5 Q Okay. What is your understanding?
 6 A I believe the statute refers to maintains or
 7 reduces benefits.
 8 Q Okay.
 9 A Or costs.
 10 Q Number 3 says, "The GIB has not directed ETF to
 11 renegotiate 2017 contracts with the health plans
 12 at this time." Was it your understanding that the
 13 third contingency required ETF to renegotiate
 14 contracts?
 15 A No.
 16 Q What was your understanding?
 17 A That we would provide some notice to the plans
 18 that uniform benefits had been changed by action
 19 of the Group Insurance Board.
 20 Q Taking a look back at the minutes of the
 21 December 30th meeting, which are Pray Exhibit 14,
 22 on page 3 of that document. The motion as
 23 characterized here says, "Mr. Hurlburt moved to
 24 reinstate the current exclusion ... contingent on
 25 all of the following," and then the third bullet

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1 point is "Subject to renegotiation of contracts
 2 that maintain or reduce premium costs for the
 3 state." Do you see that?
 4 A Yes.
 5 Q So that does suggest there needs to be
 6 renegotiation of contracts, does it not?
 7 A I think the understanding of renegotiation in this
 8 context was to provide the change in the uniform
 9 benefits as the contract requires the health plans
 10 to administer uniform benefits.
 11 Q Was there any discussion either among staff or
 12 between staff and board that you're aware of that
 13 explicitly stated that?
 14 MR. ROTH: I'll object to the
 15 extent it reflects discussion with legal
 16 counsel, and I'd instruct you not to answer
 17 on that basis. Otherwise, you can answer, if
 18 there was no conversation with counsel.
 19 A At the December 30th meeting, I think Lisa
 20 Ellinger or I suggested that we don't renegotiate
 21 over benefit provisions, that the uniform benefit
 22 is what the plans are contractually obligated to
 23 provide.
 24 Q And then back to Pray Exhibit 15. Number 4 says,
 25 "The DOJ has not issued a final opinion at this

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1 time." Correct?
 2 A Yes.
 3 Q So it was a matter of the public motion that an
 4 opinion of the DOJ on the fiduciary duties -- the
 5 fiduciary consequences of reinstating the benefit
 6 was a condition of the action that they took
 7 publicly; correct?
 8 A Yes.
 9 Q And ultimately did you see a memo from DOJ
 10 regarding whether or not the DOJ had an opinion
 11 that the action taken does not constitute a breach
 12 of the board members' fiduciary duties?
 13 A I did not receive it from DOJ.
 14 Q Did you receive it?
 15 A Yes.
 16 Q You weren't in the closed session; correct?
 17 A Parts of it.
 18 Q Were you in any part of the closed session that
 19 discussed board members' fiduciary duties?
 20 A No.
 21 Q How did you get a copy -- You did see a copy of
 22 the opinion; correct?
 23 A Yes.
 24 Q How did you get that?
 25 A I believe it was forwarded to me by Mike Farrell.

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1 Q Was it forwarded to all board members?
 2 A I don't know that.
 3 Q Before the exclusion was reinstated, did board
 4 members have an opportunity to react to the memo
 5 on whether or not it would breach their fiduciary
 6 duties to take the action to rescind -- I'm sorry,
 7 to reinstate the benefit? I mean reinstate the
 8 exclusion.
 9 A Could you restate the question?
 10 MR. ROTH: Yeah. Try it again.
 11 Q Yes. Did board members have an opportunity to
 12 respond to the DOJ opinion that reinstating the
 13 exclusion did not constitute a breach of their
 14 fiduciary duties?
 15 MR. ROTH: Objection. Vague.
 16 Q Before the reinstatement went into effect?
 17 MR. ROTH: Same objection.
 18 A I think they could have always commented. We did
 19 not have another board meeting.
 20 Q So they couldn't have taken action based on any
 21 comments?
 22 A Correct.
 23 Q Did anybody communicate with -- Did any board
 24 members communicate with you about their reactions
 25 to the DOJ opinion?

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1 A Not with me, no.
2 Q Did they with anyone else at ETF that you're aware
3 of?
4 A I seem to recall that Herschel Day had some
5 communication with Lisa Ellinger. I don't
6 remember specifically what it was.
7 Q Okay. Do you believe that the contingencies are
8 justifications for reinstating the exclusion?
9 MR. ROTH: Objection. Vague.
10 A I guess I don't know what you mean by
11 justifications.
12 Q Do they constitute policy justifications for a
13 decision on uniform benefits?
14 A I did not think of them that way. I just looked
15 at them as contingencies. Once those things are
16 met, the exclusion would be reinstated.
17 Q So ultimately ETF made the determination when each
18 of the contingencies was met; correct?
19 A Correct.
20 Q This has also been previously marked as Pray
21 Exhibit 16. Do you recognize that document?
22 A Yes.
23 Q And what is it?
24 A It's an email from Lisa Ellinger dated January 20,
25 2017, to myself and several other ETF staff. The

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1 subject is uniform benefits.
2 Q Okay. And in this email, Ms. Ellinger expresses a
3 fear that ETF moving forward without -- again, on
4 reinstating the exclusion, without additional
5 board discussion makes this seem ETF-driven. And
6 she asks for at the 2/8 board meeting could we
7 present this contract amendment along with follow-
8 up info on the other three contingencies and get
9 board confirmation that they believe the
10 contingencies have been met and we should proceed
11 with the contract amendment. Do you recall her
12 raising that issue?
13 A Yes.
14 Q "I would like the board to retain ownership of
15 this issue." Do you know why she was concerned
16 about it looking too ETF driven?
17 MR. ROTH: Objection. Lacks
18 foundation.
19 A I don't know exactly what she was thinking, no.
20 Q Did she discuss this with you beyond what's in
21 this email?
22 A Yeah. We talked about what our understanding was
23 of the motion that the board adopted and she felt
24 since it was a board decision they ought to
25 confirm it, as she indicates here. It was not my

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1 recollection that that's what the board's motion
2 did, and so we had discussions about that.
3 Q Did you share the concern about it appearing --
4 the process appearing too ETF driven?
5 A No. It was an execution of what the board's
6 decision was. Like with uniform benefits, we
7 administer the board's decisions.
8 Q So going back to what was marked as Conlin
9 Exhibit 10, this was prior to the email from
10 Ms. Ellinger that we just looked at; correct? Do
11 you recognize this email?
12 A Well, it's your question whether it was prior,
13 yes. And, yes, I recognize this email, as I
14 indicated before.
15 Q So by this time had you already determined that
16 basically ETF was going to take all the actions
17 necessary to determine whether the contingencies
18 had been met and, therefore, implement the GIB's
19 motion?
20 MR. ROTH: Objection. Vague.
21 A It was my understanding all along that ETF was
22 determining whether the contingencies had been
23 met, without the need to go back for board
24 confirmation.
25 Q I'd like you to take a look at another document

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1 that I'm going to have marked.
2 (Exhibit No. 17 marked for
3 identification)
4 Q Taking a look at what's been marked Conlin
5 Exhibit 17, do you recognize this email?
6 A It's not an email.
7 Q I'm sorry. This document?
8 A Yes.
9 Q What is it?
10 A This was a memo dated January 30th from me to the
11 Group Insurance Board regarding the exclusion and
12 the uniform benefits for gender reassignment.
13 Q And in this document you say, "This memo is for
14 informational purposes only. No board action is
15 required." Is that right?
16 A Yes.
17 Q In fact, the action had effectively taken place by
18 this time; correct? You had determined that all
19 of the contingencies were met?
20 A That is what the memo is telling the board, yes.
21 Q And the final contingency to be met was sending
22 the contract amendment to all participating health
23 plans to reinstate the benefit exclusion; correct?
24 A Correct.
25 Q It says, "Upon consultation with the board chair

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1 that contingencies 1, 2, and 4 were addressed.
2 ETF issued the contract amendment." Do you see
3 that? The last paragraph?
4 A Yes.
5 Q Who consulted with the board chair?
6 A I think it may have been a combination of Lisa and
7 I.
8 Q Okay. So did you consult with the board chair
9 about each of the contingencies?
10 A Each of the contingencies. I don't recall how we
11 did the full consultation.
12 Q So, again, in Conlin Exhibit 10, which is your
13 email exchange with Mr. Farrell about are all
14 contingencies met, you say you got the AG's
15 opinion and the next milestone is negotiating with
16 the plans. Do you see that?
17 A Uh-huh.
18 Q By that time had all of the contingencies been
19 met?
20 A That was 10, you said?
21 Q Yes. Sorry.
22 A I believe at that point we were still waiting for
23 the final Segal report.
24 Q Was there consultation with Mr. Farrell beyond
25 emails with him on this matter?

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1 A I don't think I had any phone calls with him.
2 Q The attached memorandum from Segal Consulting on
3 page 3 gives a financial impact. Do you see that?
4 A Yes.
5 Q It says, "Based on approximately" -- this is the
6 paragraph following the table. It says, "Based on
7 approximately \$1.3 billion of non-Medicare
8 premiums, the cost for the State of Wisconsin
9 Group Health Insurance Plan is estimated to be
10 0.007 percent to 0.018 percent of premium costs."
11 Do you see that?
12 A Yes.
13 Q So this confirms that it was a relatively small
14 cost to provide these benefits; correct?
15 MR. ROTH: Objection. The document
16 speaks for itself.
17 Q In your view?
18 A Had they maintained the removal of the exclusion,
19 yes.
20 Q And Attachment B to that memo, that's the final
21 version of what went out; is that correct?
22 A I would have to think so, yes.
23 MR. DUPUIS: Okay. So, Colin, is
24 it fair to say that you would object to any
25 questioning about the content of the memo

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1 from the DOJ regarding the board's fiduciary
2 duties?
3 MR. ROTH: Yeah. Yeah. I would.
4 Q Back in your September secretary's report, you
5 noted that, and this was before the contingencies
6 or anything else had come into existence, you
7 indicated that GIB board members would be put in
8 an interesting spot if there were a change to
9 reinstate the exclusion; correct? If you want,
10 you can look at it again.
11 A What exhibit was that?
12 Q That was --
13 MR. ROTH: 14.
14 Q It is 14, yes.
15 A It's getting so that doesn't help.
16 Q This is on page 2 of the memo -- or the report.
17 A Uh-huh. I don't believe I said anything about
18 removing the exclusion or reinstating the
19 exclusion put members in a difficult spot. I was
20 referring to the fact that they had competing
21 legal arguments in front of them and they needed
22 to figure out what to do with that.
23 Q But, once again, taking one course would not
24 really create any risk of liability; correct?
25 MR. ROTH: Objection. Asked and

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1 answered. Calls for a legal conclusion.
2 A They could have, as we discussed, maintained the
3 removal of the exclusion, yes.
4 Q And there would have been no risk of liability for
5 doing that; correct?
6 MR. ROTH: Same objections.
7 A Yeah, I don't know.
8 Q None that you were made aware of?
9 A Correct.
10 Q So nothing in state law that you're aware of
11 forbids the ETF or GIB from providing coverage for
12 hormone therapy and gender conformation surgery
13 for transgender employees?
14 MR. ROTH: Same objections.
15 A I'm not aware of any prohibition in state law.
16 Q Are you aware of any prohibition in federal law?
17 MR. ROTH: Same objections.
18 A Prohibiting the provision of those services --
19 Q Right.
20 A -- was the question?
21 Q Coverage of those services.
22 A Coverage. Yeah, I'm not aware of any prohibition.
23 Q And the Texas injunction did not require GIB or
24 ETF to reinstate the exclusion; correct?
25 MR. ROTH: Same objections.

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1 A That's my understanding, that it did not require
 2 them to reinstate the exclusion.
 3 (Exhibit No. 18 marked for
 4 identification)
 5 Q Taking a look at what's been marked as Conlin
 6 Exhibit 18, do you recognize this document?
 7 A I don't know that I've seen this before.
 8 Q Okay. Who is Tarna Hunter?
 9 A Tarna Hunter is our legislative director.
 10 Q So in response to a question from somebody in
 11 North Carolina asking what would happen if an
 12 injunction were issued in the Texas case
 13 effectively, she says, "If there were an
 14 injunction, whether to continue offering the
 15 benefits would a policy decision for the Group
 16 Insurance Board." Correct? Do you see that?
 17 A Where is that?
 18 Q That's on the first page. She says, "Hi, Matthew.
 19 The basic answer to the question is that if there
 20 were an injunction, whether to continue offering
 21 the benefits would be a policy decision for the
 22 Group Insurance Board."
 23 A She says that, yes.
 24 Q Is that your view as well?
 25 MR. ROTH: Same objections.

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1 A Yes.
 2 Q Did you ever explain that to GIB members?
 3 A I believe that -- I did not personally. I believe
 4 that in one of the memos to the board the legal
 5 staff put together there may have been a mention
 6 that nothing compelled the board to reinstate the
 7 exclusion.
 8 Q Do you recall what memo that would have been?
 9 Take a look at what was marked as Farrell
 10 Exhibit 6, which isn't necessarily easy to find.
 11 It looks like this, the December 29th memo.
 12 A Yes.
 13 Q It's on page 5.
 14 A Yes.
 15 Q It says, "As a result, whether the HHS rule is
 16 found to be invalid, the GIB would still have had
 17 the authority under state law to make" those
 18 changes -- "these changes to the uniform benefits"?
 19 A Yes.
 20 Q Do you recall there ever being any discussion of
 21 that at board meetings?
 22 A I don't recall any specific discussion of that, no.
 23 (Exhibit No. 19 marked for
 24 identification)
 25 Q Do you recognize what's been marked as Conlin

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1 Exhibit 19?
 2 A Yes. These are minutes, draft minutes of the
 3 February 8th, 2017, Group Insurance Board meeting.
 4 Q And you attended that meeting?
 5 A Yes.
 6 Q Okay. Can you take a look at pages 4, 5, and 6.
 7 I'm sorry, 4 and 5. The minutes reflect
 8 additional discussion of the exclusion and the
 9 actions taken on December 30th and the
 10 reinstatement of the exclusion thereafter. Does
 11 this, to your recollection, accurately reflect the
 12 discussion about those topics during the meeting?
 13 A To the best of my recollection, yes.
 14 Q So Herschel Day, who is -- is he the secretary or
 15 the treasurer? The secretary of the GIB raised a
 16 number of concerns about the action that was
 17 taken; correct?
 18 MR. ROTH: Objection. The document
 19 speaks for itself.
 20 A He makes comments in here about the board's
 21 decision.
 22 Q And he expresses a concern that if the preliminary
 23 injunction is eventually lifted, that could
 24 increase the board's risk of liability for breach
 25 of fiduciary duty. Do you see that? It's the

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1 paragraph starting "Mr. Day stated that in his
 2 opinion."
 3 A Yes, I see that.
 4 Q Do you recall that discussion?
 5 A Yes, vaguely.
 6 Q Did anyone respond to that comment?
 7 A Well, I believe Mr. Nispel did.
 8 Q And that's what's reflected here in the minutes
 9 that he --
 10 A In the minutes, correct.
 11 Q Did anyone else express an opinion about Mr. Day's
 12 comments that aren't reflected in the minutes?
 13 A I don't recall any.
 14 Q Okay. So Mr. Farrell says -- A little further
 15 down, "Mr. Farrell noted that the board's
 16 December 30th, 2016, decision can be revisited at
 17 any date in the future as desired by the board."
 18 Did anybody respond to that, any board members or
 19 staff respond to that observation?
 20 A Not that I recall. That was kind of the period at
 21 the end of the discussion.
 22 Q At a subsequent meeting, Mr. Day did make a motion
 23 to reinstate the benefits for the 2018 calendar
 24 year; correct?
 25 A I seem to recall that, yes.

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1 Q And his motion ultimately did not carry; is that
 2 correct?
 3 A Correct.
 4 Q So the exclusion remains in the uniform benefits
 5 to this date; correct?
 6 A Yes.
 7 Q Do you routinely work with the governor's office
 8 on issues of ETF and GIB policy?
 9 A I wouldn't say routinely. But occasionally.
 10 Q Is there anyone in particular in the governor's
 11 office you have had contact with on this issue?
 12 A On this issue?
 13 Q Yes.
 14 A The exclusion?
 15 Q Yes. Sorry.
 16 A I don't recall having any contact with the
 17 governor's office on the exclusion.
 18 Q Okay.
 19 (Exhibit No. 20 marked for
 20 identification)
 21 Q Do you recognize this document?
 22 A Yes.
 23 Q What is that?
 24 A It's an email chain. The top email is an email
 25 from Mark Lamkins of ETF to myself and other ETF

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1 staff regarding the governor's office response to
 2 the ACLU lawsuit.
 3 Q And this is referring to the ACLU's -- the current
 4 lawsuit that we're here about today, if you know?
 5 MR. ROTH: Objection. Lacks
 6 foundation.
 7 A I would want to look at the link to see what the
 8 complaint is, but it's my understanding that this
 9 is about the time that this lawsuit was filed.
 10 Q Do you know who Tom Evenson is?
 11 A I believe -- well, I know who he is. I believe
 12 he's the communications director or was
 13 communications director or had something to do
 14 with communications in the governor's office.
 15 Q And Mr. Lamkins is the communications director for
 16 ETF; is that correct?
 17 A He's ETF's communications director.
 18 Q To your knowledge, was there any consultation
 19 between the governor's office and Mr. Lamkins or
 20 anyone else in ETF about responding to the
 21 lawsuit, the Boyden lawsuit?
 22 A I don't believe so.
 23 Q So Mr. Evenson says to Patrick Marley -- who is a
 24 Journal Sentinel reporter; correct?
 25 A I believe so, yes.

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1 Q -- "We believe the policy adopted by the GIB is a
 2 reasonable measure that protects taxpayers from
 3 funding sex changes for state employees and
 4 complies with both the state and federal law." Do
 5 you agree with that message?
 6 A That's what the message says.
 7 Q Do you agree with it?
 8 A No.
 9 Q Why not?
 10 A Like I said, I was okay with removing the
 11 exclusion.
 12 Q Do you have any -- do you know how much -- aside
 13 from the Segal memos, do you have any knowledge of
 14 how much hormone therapy costs?
 15 A No.
 16 Q How about gender confirmation surgery?
 17 A I believe there was some reference in the
 18 complaint in this matter about what one of the
 19 plaintiffs played for it, the 20 to 40,000 dollar
 20 range, but I don't have any independent knowledge
 21 of that.
 22 Q Okay. Did ETF staff ever suggest to GIB members
 23 that costs of these services would be a reason to
 24 retain or reinstate the exclusion?
 25 MR. ROTH: I'm sorry. Can you read

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1 the question?
 2 (Question read)
 3 MR. ROTH: Thank you.
 4 A Not that I'm aware of.
 5 Q Were you concerned about the costs of providing
 6 these benefits?
 7 A No.
 8 Q Were insurers worried about the cost?
 9 MR. ROTH: Objection. Lacks
 10 foundation.
 11 Q To the extent you know?
 12 A No one -- none of the plans mentioned it to me.
 13 Q This is Farrell Exhibit No. 32. Do you recognize
 14 this document?
 15 A Yes.
 16 Q What is it?
 17 A So it is a string of emails. The most recent one
 18 at the top being a message from Lisa Ellinger to
 19 myself and several other ETF staff regarding
 20 communications she's had with Mike Farrell.
 21 Q Okay. So this was an email from Ms. Ellinger --
 22 it started with an email from Ms. Ellinger to
 23 Mr. Farrell, and you weren't copied on that
 24 initial email; correct?
 25 A Correct.

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1 Q And that was a January 23rd email?
2 A Yes.
3 Q And she talks about in her email the previous game
4 plan being to bring all of this to the 1/18 board
5 meeting to get confirmation from the board that
6 the contingencies were met and affirmation that
7 ETF staff should go ahead with the contract
8 amendment, and she says, "I think that process
9 still makes sense, as I do not want ETF to get
10 ahead of the board, and I want to make sure the
11 board is in agreement on the contingencies before
12 reinstating the exclusion." Do you see that?
13 A Yes.
14 Q So at this point you were already -- you had
15 already expressed your view that that wasn't
16 necessary; correct?
17 A I had expressed my view that I didn't think that's
18 what the board intended, to come back and reaffirm
19 its contingencies, that the contingencies had been
20 met.
21 Q And that seems to be Mr. Farrell's view and
22 Mr. Hurlburt's view as well; is that correct?
23 A According to this email, yes.
24 Q And then you were linked in on this email chain
25 toward the end, or after the exchange between

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1 Mr. Hurlburt and Mr. Farrell; correct?
2 A Yes.
3 Q Were you surprised to see that there was still
4 some disagreement on Ms. Ellinger's part about
5 where things were going?
6 MR. ROTH: Objection. Vague.
7 A When she first expressed what she thought her
8 opinion was or what she thought the next steps
9 would be, I indicated that I didn't think that's
10 what the board had intended. I think this was
11 part of the effort to clarify what the board
12 intended with the chair.
13 Q Who is Waylon Hurlburt? I think we've talked
14 about him a little bit. But was he the
15 designee -- the DOA designee prior to -- let me
16 ask you this. When did he come on the board?
17 A He first came on the board as a designee for the
18 December 30th, 2016, meeting. Subsequent to that
19 he was appointed full-time to the board or
20 designated full-time to the board. I don't
21 remember exactly when that was, but he was
22 replacing Michael Heifetz who had been the
23 previous budget director.
24 Q Budget director for the Department of
25 Administration?

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1 A State budget director, yes.
2 Q So at the July meeting at which the board voted to
3 eliminate the exclusion, Mr. Wieske voted for the
4 motion to remove the exclusion; correct?
5 A I believe we said it was a unanimous vote at the
6 time, so, yes, if he was there. I think he was
7 there.
8 Q Mr. Hurlburt wasn't on the board at that point; is
9 that correct?
10 A Correct.
11 Q But his predecessor, if the predecessor was there,
12 voted for that motion to remove the benefit -- or
13 remove the exclusion?
14 A Do you have the minutes from that meeting?
15 Q Yeah. We do have it. It is Exhibit No. 13.
16 A Is that my 13 or somebody else's 13?
17 Q It's Conlin 13. Sorry.
18 A Yes, it appears that Michael Heifetz was there and
19 presumably voted for it.
20 Q And Mr. Wieske, just to confirm, it looks like he
21 was there as well?
22 A It does, yes.
23 Q So DOA has essentially a slot on the GIB board;
24 correct?
25 A The secretary does, I believe technically, yes.

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1 Q Okay. And aside from the person who is either the
2 secretary or the secretary's designee on the
3 board, do you have other communications with DOA
4 on a regular basis?
5 A Fairly regular basis.
6 Q Okay. What is the nature of the DOA's -- your
7 relationship with the DOA?
8 A So DOA is affectionately known as the department
9 of all. They run a number of central services for
10 state government. IT, some human resources stuff,
11 IT projects like the STAR system that they
12 implemented, they're responsible for the new
13 building that we just moved into. So there are
14 lots of opportunities to stay in contact with them
15 on a host of issues.
16 Q Aside from, again, the membership on the GIB
17 board, are there ways that you work with DOA on
18 GIB-related matters on a regular basis?
19 A So me personally or ETF?
20 Q Let's start with you personally.
21 A So the issue of self-insurance was a big deal in
22 '15, '16, and '17. When the board made the
23 recommendation to go to self-insurance, there was
24 a provision in law that requires that the Joint
25 Finance Committee sign off on any contract.

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1 Essentially they had veto over the decision.
 2 So in order to garner the legislature's
 3 approval or Joint Finance's approval on that, DOA
 4 and the governor's office basically took ownership
 5 of that issue and asked us to serve as kind of the
 6 policy wonks behind that, so we worked closely
 7 with them during that process.
 8 The state budget office is usually keenly
 9 interested in how premium costs and trends are
 10 going, so they typically follow along and are in
 11 communication with OSHP about what they see as --
 12 I assume they're trying to determine impacts on
 13 the state budget and things like that, so there
 14 are elements like that where we would be in
 15 contact with them on GIB-related issues.
 16 Q Does DOA typically get involved in -- other than,
 17 again, the involvement of the designee, involved
 18 in uniform benefits determinations that the board
 19 makes?
 20 A I don't know exactly what you mean by typically
 21 get involved in. But the Division of Personnel
 22 Management is certainly responsible for
 23 understanding those benefits for administering to
 24 state employees or whatnot.
 25 Q And the Division of Personnel Management is within

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1 DOA?
 2 A Is within DOA, correct.
 3 Q Again, aside from Mr. Wieske or whoever from the
 4 Commissioner of Insurance office is on the board,
 5 does ETF deal routinely with the Office of the
 6 Commissioner of Insurance?
 7 A ETF staff do in the sense of member complaints
 8 about their healthcare coverage often fall between
 9 OCI -- Office of Commissioner of Insurance or ETF,
 10 so there is frequent communication on that level.
 11 Ted Nickel, the Commissioner of Insurance, is on
 12 one of the retirement boards, so I see him
 13 quarterly or whenever that board meets.
 14 But other than that, there is -- on health
 15 regulations, I think sometimes staff have
 16 communications back and forth in terms of
 17 interpretations and new regulations, how they're
 18 administering new state laws and things like that.
 19 So I think there is communication on that level
 20 that happens.
 21 Q I'll show you what's been previously marked Pray
 22 Exhibit 18. Do you recognize this email chain?
 23 A I don't think I was ever copied on this, so I'm
 24 not sure if I've seen it in some capacity or not.
 25 Q So it starts with an email from Mark Lamkins with

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1 a notice of the reinstatement of the gender
 2 reassignment exclusion, and the description on
 3 that site at the time apparently said, according
 4 to Ms. Ellinger, "Since the state of Wisconsin is
 5 a participant in a federal lawsuit challenging
 6 this requirement, the Wisconsin Department of
 7 Justice urged the GIB to reinstate the exclusion."
 8 Do you see that? It's on the top of the next
 9 page.
 10 A Yes.
 11 Q And Lisa -- Further on, Ms. Ellinger expresses her
 12 view that that is inaccurate by saying that, "This
 13 was actually pushed by J.P. every step of the way
 14 and I'm not sure DOJ would appreciate being framed
 15 as the owner." Do you see that?
 16 A Yes.
 17 Q Do you know what she meant by "J.P. pushing this
 18 every step of the way"?
 19 A I don't know what she meant, no.
 20 Q Do you agree that Mr. Wieske was behind the
 21 attempt to reinstate the exclusion?
 22 MR. ROTH: Objection. Lacks
 23 foundation.
 24 A I believe that J.P. was certainly interested in
 25 revisiting the exclusion or revisiting the board's

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1 decision to get rid of the exclusion.
 2 Q And what is your basis for saying that?
 3 A Comments he made during the board meeting that I
 4 referred to earlier. I think there may have been
 5 an email or two I saw where -- or had been
 6 informed somehow that he had asked to have it put
 7 on a number of agendas during that six-month period.
 8 Q Do you have an understanding of why Mr. Wieske
 9 wanted to revisit the issue?
 10 A No.
 11 Q He voted in July to remove the exclusion; correct?
 12 A I believe so, yes.
 13 Q But he obviously changed his position by December
 14 of 2016; correct?
 15 A Well, he voted to reinstate the exclusion in
 16 December, yes.
 17 Q Do you know why he changed his position?
 18 MR. ROTH: Objection. Asked and
 19 answered.
 20 A No.
 21 Q Do you have an understanding of Mr. Wieske's
 22 relationship with the governor?
 23 A No.
 24 Q How about with the attorney general?
 25 A No.

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1 (Exhibit No. 21 marked for
 2 identification)
 3 Q Looking at what's been marked as Conlin
 4 Exhibit 21, do you happen to recognize this email?
 5 A No.
 6 Q Do you know who Brian Webb is?
 7 A I do not.
 8 Q Do you know what NAIC is?
 9 A I do not know what that is.
 10 Q Did you at any point ask Mr. Wieske to make
 11 inquiries into what other states were doing with
 12 regard to exclusions of -- exclusions similar to
 13 the exclusion in this case?
 14 A I didn't, no.
 15 Q Did you direct anyone in your office to make
 16 inquiries of other states about what was happening
 17 with regard to the transgender issue?
 18 A So we had Lisa ask Segal what their experience
 19 was, and I think they came back with a Maryland
 20 study, and I think we made inquiries to other
 21 state agencies, such as Medicaid, about how they
 22 were handling the matter.
 23 (Exhibit No. 22 marked for
 24 identification)
 25 Q I'm showing you what's been marked Exhibit 22. Do

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1 you recognize that document?
 2 A Nope. No. I don't think I've ever seen this
 3 before.
 4 Q Okay. So were you aware that Mr. Wieske and --
 5 well, do you know who Casey Himebauch is?
 6 A Yes.
 7 Q Who is that?
 8 A So Casey I think used to be in the governor's
 9 office in some policy capacity, perhaps. I don't
 10 know what his title was exactly. I think he has
 11 since moved on from that.
 12 Q So this set of emails or chain of emails on the
 13 top of the first page is a December 29th, 2016,
 14 email which is responding to a December 29th,
 15 2016, email from a little bit earlier in the day
 16 and it's about sex reassignment surgery. It looks
 17 like they're talking about messaging about who
 18 does or doesn't cover the exclusion, what sorts of
 19 exchanges, including President Obama's exchange,
 20 apparently, have an exclusion on gender
 21 reassignment. Were you aware of any such
 22 discussion going on?
 23 A No.
 24 Q Do you know if this became part of any messaging
 25 on the part of the governor's office or the Office

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1 of the Commissioner of Insurance?
 2 A I don't know.
 3 Q Did you feel pressure from the Department of
 4 Justice to reinstate the exclusion?
 5 MR. ROTH: Objection. Vague.
 6 A No.
 7 Q Do you think GIB members felt pressure from the
 8 Department of Justice to reinstate the exclusion?
 9 MR. ROTH: Objection. Lacks
 10 foundation.
 11 Q To the extent that you know?
 12 A I don't know how Group Insurance Board members
 13 felt about that.
 14 Q Do you think ETF staff members felt pressure from
 15 the DOJ to make this change?
 16 MR. ROTH: Same objection.
 17 A No.
 18 Q They were unhappy about the timing of the
 19 decision, though, I take it?
 20 A Sure. Yes.
 21 (Exhibit No. 23 marked for
 22 identification)
 23 Q Taking a look at Exhibit 23, do you recognize that
 24 document?
 25 A Yes.

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1 Q Okay. And what is it?
 2 A It's another string of emails, the most recent
 3 being an email from Lisa Ellinger on January 4,
 4 2017, to myself and several other ETF staff
 5 apparently regarding some work that Segal was
 6 doing in regard to the contingencies in the GIB
 7 motion.
 8 Q Okay. And this is specifically with regard to the
 9 cost estimate portion -- or cost contingency;
 10 correct? It's highlighted on the second page in
 11 the email.
 12 A Yes.
 13 Q Okay. And the attachment is a cost estimate that
 14 was done for, I believe, North Carolina; is that
 15 correct?
 16 A Yes. I believe that's true, yes.
 17 Q Okay. About halfway down there is an email from
 18 Ms. Ellinger saying that she's also sending along
 19 an IFEBP December article Expanding the Definition
 20 of 'Sex Discrimination' in Health Care to:
 21 Transgender Health Benefits, and it says the
 22 article actually suggested that expanding these
 23 benefits could lead to cost savings. Do you see
 24 that?
 25 A Yes.

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1 Q Are you familiar with that IFEBP article?
2 A I believe I read parts of it, yes.
3 Q Okay. How did it lead to cost savings, do you
4 know?
5 A My recollection is that the theory was that you
6 provide certain treatments now that avoid certain
7 conditions later.
8 Q Is that a common phenomenon in health insurance
9 benefits?
10 MR. ROTH: Objection. Vague.
11 Lacks foundation.
12 A I've heard of it before, yes.
13 Q Certain preventative -- kinds of preventative care
14 can reduce the risk of other consequences if you
15 don't take care of it early; correct?
16 MR. ROTH: Same objections.
17 A Preventative care, yeah, certainly.
18 Q And some other kinds of treatments for conditions
19 can reduce the costs of later having to treat
20 something that wasn't treated early; correct?
21 MR. ROTH: Same objections.
22 A It makes sense to me.
23 Q What is IFEBP?
24 A I believe that it is the International Foundation
25 of Employee Benefit Plans.

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1 Q Okay. So I believe you indicated that you are
2 aware that a couple of the plans objected to the
3 reinstatement of the exclusion; is that correct?
4 A I believe I stated that a couple of the plans
5 didn't sign the acknowledgment that we sent them.
6 Q Okay. I'll show you what was previously marked as
7 Pray Exhibit 6. Do you recall seeing this at any
8 point?
9 A I believe I may have.
10 Q I don't believe you're actually copied on this
11 particular chain. But was Anthem one of the
12 entities that was unable to agree to -- well, the
13 way they characterize it, "unable to agree to this
14 request to remove the coverage for gender
15 reassignment surgery." Do you see that?
16 A Yes.
17 Q So is Anthem one of the plans that you were aware
18 of that objected or that refused to sign?
19 A Yes.
20 Q Did those plans -- What other plans, to your
21 knowledge, refused to sign?
22 A WEA Trust. I can't remember if they refused to
23 sign or if they provided some sort of explanation
24 of what they were willing to sign. And then there
25 was one other plan that I don't recall.

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1 Q Did any of them ultimately sign the addendum?
2 A Did any of the health plans?
3 Q Of those three, WEA Trust, Anthem, and whatever
4 the third one was that had initially refused to
5 sign it.
6 A Well, like I said, I think WEA Trust may have been
7 the one that signed something, and I don't know
8 the status, if the other two ultimately ended up
9 signing. Anthem is no longer a participating
10 health plan.
11 Q Are they no longer a participating health plan
12 because of this for any reason?
13 A No.
14 Q Do you know, are any of the plans actually
15 providing coverage for gender confirmation surgery
16 or hormones associated with gender confirmation
17 surgery?
18 MR. ROTH: Objection. Vague.
19 A I don't know.
20 MR. DUPUIS: Can we just take a
21 couple of minutes?
22 MR. ROTH: Sure.
23 (Recess)
24 MR. DUPUIS: Back on.
25 Q So earlier today you testified that Mr. Wieske had

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1 at some point during one of the board meetings
2 expressed a desire to reconsider the removal of
3 the exclusion and gave basically three reasons:
4 one was cost, which I think we talked about; the
5 other was the DOJ memo; and the third was the
6 efficacy and nature of the services, or something
7 along those lines. Do you recall that testimony?
8 A Yes.
9 Q What did you mean by the efficacy and nature of
10 the services?
11 MR. ROTH: Objection. Misstates
12 the testimony. That wasn't his words.
13 A I don't know what J.P. meant by that concept. He
14 didn't provide further explanation.
15 Q Okay. Did you have an understanding of what he
16 was referring to?
17 A I assumed he meant something along the lines of
18 why I understood the exclusion to be there in the
19 first place, the experimental nature or the
20 newness or the safety, perhaps, of the procedures,
21 the surgical procedures.
22 Q And when you say that's the reason the exclusion
23 was there, that's the reason it was there
24 initially?
25 A That's my understanding, yes.

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1 Q Okay. Do you view these services as experimental
2 or novel?
3 MR. ROTH: Objection. Lacks
4 foundation.
5 A I've never talked to a medical expert on it. My
6 reading is that the procedures are becoming more
7 common and are recommended in many cases by
8 medical professionals. I think more health plans
9 are covering them. So my layman's conclusion on
10 that is they're not considered experimental.
11 Q And do you have any reason to believe that they
12 are unusually risky?
13 MR. ROTH: Objection. Vague.
14 Lacks foundation.
15 A I've not read anything on that. Personally, I
16 don't like surgery generally and I don't know
17 enough about the specifics of these surgeries to
18 render an opinion on that.
19 Q Okay. So in discussing -- I believe you
20 testified earlier that I believe it was after the
21 December 13th meeting you had a discussion with I
22 believe it was Mr. Wieske, but it may have been
23 Mr. Farrell, in which you suggested using the
24 budget process rather than bringing this issue
25 back to the board repeatedly. Do you recall that?

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1 A Yes.
2 Q Who was that conversation with?
3 A Mr. Wieske.
4 Q Wieske, okay. And could you describe how that
5 budget process would work to achieve the same
6 objective that Mr. Wieske apparently had of
7 reinstating the exclusion?
8 A So the biennial budget often includes changes to
9 the law. My point to him was stop bothering us
10 with this. If you want a policy change to take
11 the -- put the exclusion back in, do it at the
12 statutory level.
13 Q Are there particular benefits in the uniform
14 benefit package that are required by statute?
15 A I believe so, yes.
16 Q Can you think of any examples off the top of your
17 head?
18 A There is -- specific examples, no, but I know in
19 Chapter 40 there are a bunch of references to the
20 Chapter 600 health insurance statutes that say
21 these things have to be covered. I can't --
22 Q So it's by cross-reference to the insurance
23 statutes?
24 A Correct.
25 MR. DUPUIS: Okay. That's all the

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1 questions I have.
2 MR. ROTH: That was more than two.
3 I have a few questions. I'm not going to
4 limit it to two, but just a few.
5
6 EXAMINATION
7 By Mr. Roth:
8 Q So the same rules apply. I'm going to ask you
9 questions; you're going to answer them. Tell me
10 if you don't understand.
11 I'd like to refer back to Farrell Exhibit 6,
12 the December 29th memo to the board with a couple
13 attachments. Could you please turn to
14 Attachment B. And is this the August 11th
15 memorandum from David Nispel and Diana Felsmann to
16 the board about uniform benefits provisions
17 related to sex discrimination?
18 A Yes.
19 Q I believe you testified earlier that your position
20 on whether the board should consider reinstating
21 the exclusion is reflected in this memorandum; is
22 that correct?
23 A Yes.
24 Q And I think earlier counsel for the plaintiffs
25 asked you a question about whether you had

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1 personally taken any action to persuade the Group
2 Insurance Board not to reinstate the exclusion.
3 And I believe you may have answered no. Do you
4 remember that testimony?
5 A Yes.
6 Q Would it be fair to say that this represents one
7 of your efforts to persuade the Group Insurance
8 Board not to reinstate the exclusion?
9 A Of course.
10 MR. ROTH: No further questions.
11 MR. DUPUIS: Just a quick follow-up.
12
13 RE-EXAMINATION
14 By Mr. Dupuis:
15 Q You're not listed as an author of Attachment B; is
16 that correct?
17 A Correct.
18 Q Did you express to the Group Insurance Board that
19 this correspondence memorandum represented your
20 view of what they should do with respect to the
21 exclusion?
22 A It was ETF's view, which was my view.
23 Q But did you say, "This is my view" to board
24 members?
25 A Did I say, "Oh, by the way, this is also my view"?

1 Q Yes.

2 A I did not say that.

3 MR. DUPUIS: Okay.

4 (Adjourning at 4:21 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 ROBERT J. CONLIN was taken before me on
8 April 18, 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 25th day of April 2018.

20
21
22
23 Notary Public, State of Wisconsin
My Commission Expires August 7, 2020

24
25

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