

In The Matter Of:

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

*Deposition of Lisa M. Ellinger
April 4, 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 LISA M. ELLINGER,

taken at the instance of the Plaintiffs, under and
 pursuant to Section 804.05 of the Wisconsin Statutes,
 before Rowan L. Bright, 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 4, 2018, commencing at 9:10 a.m. and ending at
 2:57 p.m.

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11		(The original exhibits were attached to the original transcript, and copies were provided to counsel)	
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21			
22			
23			
24			
25		(The original deposition transcript was filed with Attorney Nicholas E. Fairweather)	

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A P P E A R A N C E S

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

5 STATE OF WISCONSIN DEPARTMENT OF JUSTICE by
 6 MR. COLIN T. ROTH and JODY J. SCHMELZER,
 7 17 West Main Street,
 Madison, Wisconsin 53707,
 appeared on behalf of the Defendants.

8 Also Present: John A. Knight and David Nispel

I N D E X

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1 LISA M. ELLINGER, called as a
 2 witness, being first duly sworn,
 3 testified on oath as follows:

4 EXAMINATION

5 By Mr. Fairweather:

6 Q Good morning, Ms. Ellinger. Can you state your
 7 full name and spell it, unless you just did that.

8 A I did just do that.

9 Q Never mind. We'll cut right to it.

10 Have you ever given testimony before?

11 A No.

12 Q Do you realize you're under oath today? You were
 13 just given the oath.

14 A Yes.

15 Q I'm going to ask you a series of questions today.
 16 If I ask you a yes-or-no question, make sure to
 17 say "yes" or "no." Don't shake your head or nod
 18 your head because Rowan will have a hard time
 19 getting that down and will probably remind you to
 20 make an audible, oral answer. Is that okay?

21 A Okay.

22 Q If you need a break at any point, just let me know
 23 and we'll take a break. The only thing I ask is
 24 if I've asked you a question, I'd like you to
 25 answer it before we take the break. Is that fair?

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1 A Okay. Yes.
2 Q The questions that I do ask you, let me know if
3 you don't understand the question.
4 A Okay.
5 Q If you don't let me know, I will assume that
6 you've understood the question and answered it.
7 Is that okay?
8 A Sure.
9 Q Your attorney may object at some point to one of
10 my questions. Maybe one. If he does that and
11 instructs you not to answer, then just take a
12 break and we'll work that out. Otherwise, you
13 could probably go ahead and answer. He'll let you
14 know what to do in that situation. Is that okay?
15 A Sure.
16 Q What did you do to prepare for today's deposition?
17 A I had a prep session with Colin last Friday.
18 Q That's Mr. Roth right next to you?
19 A Yes.
20 Q Anything else?
21 A No.
22 Q Did you review any documents?
23 A I have not.
24 Q Have you spoken --
25 A Well, to be clear, with the exception of that prep

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1 session with Mr. Roth.
2 Q You reviewed documents in the prep session?
3 A Yes.
4 Q Did you meet with anyone else to prepare for
5 today's deposition --
6 A No.
7 Q -- besides Mr. Roth?
8 A No.
9 Q Have you spoken with anyone about the deposition
10 today?
11 A No.
12 Q Can you tell me where you attended college?
13 A Sure. UW-Madison.
14 Q Did you receive a degree from UW-Madison?
15 A I did. I have both an undergrad and a graduate
16 degree.
17 Q What is your undergrad degree in?
18 A Polysci.
19 Q When did you receive that?
20 A 1993.
21 Q Did you receive an MPA at some point after that?
22 A Master of Public Affairs, yes.
23 Q When did you receive that degree?
24 A 2003.
25 Q Did you work at some point between 1993 and 2003?

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1 A Yes.
2 Q Where did you work in that ten-year period, if you
3 can remember?
4 A Sure. I've had a lot of jobs. So in 1993, I
5 would have been working in the office of the
6 privacy advocate; and then in '94, I believe, I
7 moved to a company called the Lunar Corporation.
8 In 1998, I moved to work in the state assembly.
9 In 2000, I moved to the state senate. In 2003, I
10 moved to the office of Governor Doyle.
11 Q What is the office of the privacy advocate?
12 A Yeah, it was an office within the
13 Department of Administration. If you think about
14 the timing of 1993, the internet was new and the
15 idea of the office -- it was a legislatively
16 created office that was looking at whether we
17 needed additional privacy laws, largely due to the
18 advent of the internet.
19 Q What was your position in that office, at DOA?
20 A Program assistant or a similar title. Basically,
21 the assistant to the director of the office. It
22 was a two-person office.
23 Q Was that the first job that you had right out of
24 college?
25 A Yes.

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1 Q How long did you work in that position?
2 A Approximately two years.
3 Q Is that when you moved to Lunar?
4 A Yes.
5 Q What is Lunar?
6 A Lunar was a company that created bone densitometry
7 equipment. So, basically, it was a way to look at
8 whether women had osteoporosis, that sort of
9 thing.
10 Q What did you do at that company?
11 A I was a communications assistant. So both, kind
12 of, a technical writer and a graphic designer.
13 Q How long did you work for the company?
14 A Between three and four years.
15 Q Then you left to go work for the state assembly;
16 is that right?
17 A That's correct.
18 Q What did you do at the state assembly in 1998?
19 A Yes. I was the legislative staffer for an
20 assemblyman.
21 Q Which assemblyman?
22 A Tom Springer.
23 Q Did you work for Assemblyman Springer until 2000?
24 A I -- no. He lost his election. And so in 1999, I
25 went to the office of Representative Mark Miller.

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1 Q Monona?
2 A Yes.
3 Q You worked for Representative Miller until 2000;
4 is that right?
5 A Yes. In 2000, I went to Senator Hansen's office.
6 Q Did you work for Senator Hansen until 2003?
7 A Until -- I'm trying to think when the transition
8 occurred. I guess it would probably be late
9 2000 -- it was either late 2002 or 2003. I'm
10 trying to think of the exact transition to the
11 governor's office. But it was -- I do believe it
12 was January of 2003.
13 Q At any point, did you work for the Doyle campaign?
14 A I did not.
15 Q You worked on his transition team?
16 A I did not.
17 Q So after the transition, you then moved into the
18 governor's office; is that accurate?
19 A Yes, yes.
20 Q What did you do in the governor's office?
21 A I was a policy advisor, so I focused on issues
22 primarily related to Health and Human Services
23 sorts of issues like health insurance.
24 Q How long did you work in Governor Doyle's office?
25 A Until May of 2004.

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1 Q Do you recall what part of 2003 you started in
2 Governor Doyle's office?
3 A Like I said, I think it was January.
4 Q So you worked there for just over a year; is that
5 right?
6 A Yes.
7 Q Where did you go after leaving the governor's
8 office in 2004?
9 A So I moved to Milwaukee; and in the fall of 2004,
10 I want to say September, I began work at a small
11 new non-profit called the Wisconsin Health Project.
12 Q That was located in Milwaukee?
13 A Uh-huh.
14 Q Is that a yes?
15 A Yes. Sorry. I'm surprised I made it that long
16 without --
17 Q You worked for the Wisconsin Health Project as an
18 assistant director; is that right?
19 A That's correct.
20 Q How long did you work in that position?
21 A Until the fall of 2007.
22 Q Is that when you joined ETF?
23 A I joined ETF January of 2008.
24 Q Any employment in that short period of time, the
25 fall?

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1 A No.
2 Q When you joined ETF in January of 2008, what
3 position did you begin?
4 A Sure. I was the deputy administrator for the
5 Division of Insurance Services.
6 Q What did you do in that position?
7 A So the position was largely created with an eye
8 toward the administrator likely to be retiring in
9 the next few years. And so, essentially, my main
10 job was to learn the role of the division
11 administrator.
12 Q How long did you work in that deputy administrator
13 position?
14 A Yes. I moved from the deputy to the administrator
15 role, I believe, in April of 2011.
16 Q How long did you work as the administrator for the
17 Office of Insurance?
18 A So it was the Division of Insurance Services. I
19 was in that role until I left ETF in February of
20 this year. But I will say there was a
21 restructuring at ETF. I believe it was in
22 February of 2015. So that -- my division was
23 restructured, and my new title became the director
24 of the Office of Strategic Health Policy.
25 Q And you worked as the director of the Office of

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1 Strategic Health Policy from February of 2015
2 until February of 2018; is that right?
3 A That's correct.
4 Q Did your job duties change around the time of that
5 restructuring that you testified about?
6 A Only in that a couple of bureaus that had been
7 under my purview were moved to a different area of
8 the department.
9 Q When did that happen?
10 A In February of 2015.
11 Q Other than the bureaus that moved in
12 February of 2015, did your job duties change at
13 any point between April of 2011 and
14 February of 2018?
15 A No. It just -- again, just the oversight of those
16 areas.
17 Q Which bureaus moved?
18 A So it was the Bureau of Disability Programs and
19 the Insurance Administrator Bureau.
20 Q Do you know where those landed, those two bureaus?
21 A Yes. They both moved under the Division of
22 Retirement Services.
23 Q So is it fair to say that from April of 2011 to
24 the time that you left ETF earlier in 2018, your
25 job duties largely stayed the same?

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1 A Yes, with the exception of oversight of those
 2 areas.
 3 Q Right.
 4 And that's the only exception?
 5 A I believe so.
 6 Q Can you describe for me what your job duties were
 7 during that almost seven-year period?
 8 A Sure. Probably the most public and time-consuming
 9 piece of the job is overseeing the health
 10 insurance program, which -- it might be easiest to
 11 talk about it kind of on a regular annual cycle
 12 basis.
 13 So at the end of a typical calendar year, our
 14 staff is compiling ideas about benefit changes
 15 that come from our members or the board or our
 16 health plans. And we are putting those together
 17 to start to think about what benefit changes we
 18 want to make for the following year.
 19 And then, over the course of the spring, we
 20 are analyzing those potential changes. It could
 21 be just researching what the changes entail, or it
 22 may be so far as to getting actuarial cost
 23 estimates on changes.
 24 And then the benefit -- the final benefit
 25 package is presented to the Group Insurance Board,

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1 which is the board that has the oversight of the
 2 health insurance program. Those changes are
 3 presented to the board at their May board meeting.
 4 The reason that that is important is because
 5 after that board meeting, we kick off the annual
 6 negotiation process where we're working with all
 7 of the health plans to determine what their
 8 premiums will be for the following year and
 9 whether they'll be in our program. So it's
 10 important to nail down what the benefit package is
 11 so that the health plans can put together an
 12 accurate bid based on the benefit package they'll
 13 be administering.
 14 So in June, we are collecting aggregated data
 15 from the health plans to -- with our actuaries to
 16 analyze the risk of the members that they cover.
 17 And then, in July, in a typical year, the health
 18 plans are submitting their bids.
 19 And then we tier the health plans. And what
 20 that means is, based on the risk of their
 21 population and their premium bid as it compares to
 22 their competitors, we either put them in a Tier 1
 23 category, which means it's the lowest employee
 24 contribution, or Tier 2, which is a higher
 25 employee contribution, or Tier 3, which is the

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1 highest.
 2 And then, in late July, we give the plans an
 3 opportunity to negotiate with us after we've told
 4 them how much they need to lower their premium to
 5 be in a different tiering category. Again, in a
 6 typical year, the best and final bids are due in
 7 early August. We are pulling that information
 8 together to present to the board in mid to late
 9 August.
 10 On a parallel track, staff are also working
 11 on fall enrollment materials and communications.
 12 Those are finalized after the board meeting when
 13 we know the final benefits and premiums. And
 14 then, during the fall enrollment, our -- my team
 15 was often called on to answer questions about
 16 benefit changes for the following years. We may,
 17 as we did in 2017 when there was quite a bit of
 18 changes with the health plans, actually go on the
 19 road to talk to different employer groups about
 20 the changes to help their employees understand the
 21 changes.
 22 So that's a typical health insurance process.
 23 I will say that there were a number of atypical
 24 responsibilities over the past couple of years.
 25 But let me pause to see if you want me to go into

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1 detail about any of that.
 2 Q Well, you just testified about what a typical year
 3 looks like. Outside of the atypical issues that
 4 you just referenced, were there any years during
 5 your seven years at OSHP --
 6 A OSHP.
 7 Q -- thank you -- that were unusual or not typical?
 8 A So -- yes. I think chronologically it would make
 9 sense to start in probably late 2013. We
 10 conducted, the first in my time at ETF, an
 11 internal, more formalized strategic planning
 12 process. That came about because the past few
 13 legislative cycles, there were significant cost
 14 savings required of our health insurance program
 15 by the governor and legislature.
 16 So to put ourselves in a more proactive
 17 versus reactive mode, we went through a strategic
 18 planning process to establish priorities, and that
 19 was a public document. And one key decision that
 20 came out of that process was that, since we were a
 21 small staff and a lot of healthcare was changing
 22 with the ACA, Affordable Care Act, and some of
 23 these legislative changes, that we would benefit
 24 from hiring a benefit consultant to assist with
 25 our work and help us understand best-practice

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1 models in other states.
 2 So in the spring of 2014, we developed -- and
 3 I had a lead role in developing this -- an RFP, so
 4 a typical competitive state procurement process to
 5 bring on a benefit consultant. Segal Consulting
 6 was awarded that bid in the fall of 2014 and began
 7 working with us in late 2014.
 8 And the two key projects required in that
 9 contract were, first, a shorter-term analysis of
 10 benefit changes we could implement to reach the
 11 targeted savings that were passed in the last
 12 biannual budget at that time. The second project
 13 was a longer-term analysis of changes we could
 14 make in our program to make it more cost-effective
 15 and high quality.
 16 And so that first report was delivered to the
 17 board in the -- in March of 2015. And the second
 18 report was delivered to the board in the -- in
 19 November of 2015. And the reason those are
 20 important is several of the consultant's
 21 recommendations eventually became additional
 22 procurements that were a focus for my staff the
 23 past couple of years, and there were four of them.
 24 So after the Segal report in
 25 November of 2015, we went back to the board in

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1 early 2016 to recommend moving forward on
 2 procurements for a new wellness vendor, to carve
 3 the wellness benefit out of the health insurance
 4 program; a data warehousing business intelligence
 5 vendor to enhance our data analytics capabilities;
 6 an RFP to evaluate self-insuring the state
 7 employee program; and then, finally, our pharmacy
 8 benefit manager, that contract had exhausted all
 9 available extensions. So we were revamping that
 10 RFP to rebid those services.
 11 Q So out of the two reports that Segal provided to
 12 the ETF in 2015, the four developments that you
 13 just testified about were the results that went to
 14 the GIB for a vote; is that accurate?
 15 A They are some of the results that went to the
 16 board. I highlighted those that we moved forward
 17 on immediately in 2016. There were other
 18 recommendations, such as investigating a
 19 Medicare Advantage vendor for our retiree
 20 population that we did, actually, just take a
 21 recommendation to the board in March of this year.
 22 But the reason we only moved forward on the
 23 four RFPs that I mentioned was staff capacity.
 24 And so as part of that recommendation to the
 25 board, we recommended moving forward on those but

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1 then also provided a timeline for when we would
 2 have the capacity to move forward on other
 3 recommendations from the Segal report.
 4 Q Were those RFPs and then the timeline you just
 5 referenced presented to the board in
 6 February of 2016?
 7 A Yes.
 8 Q We heard testimony on Monday from Herschel Day,
 9 who's a member of the board --
 10 A Yes.
 11 Q -- who talked about four quarterly meetings the
 12 board has. Does that comport with your
 13 recollection?
 14 A In a typical year, we have meetings in February,
 15 May, August, and November.
 16 Q Is OSHP also responsible for life and long-term
 17 care insurance?
 18 A Yes.
 19 Q Is that a minor part of your job at OSHP?
 20 A Yes.
 21 Q How much of your job, if you could estimate, is
 22 consumed by the group health insurance plan job
 23 functions?
 24 A I would say probably 80 to 90 percent.
 25 Q As director of OSHP for the seven years that you

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1 were there, how many ETF employees did you
 2 supervise?
 3 A So are you asking how big the division was or how
 4 big the Office of Strategic Health Policy was or
 5 are you including the turn of staff?
 6 Q Well, let's start with the division. Which
 7 division housed OSHP?
 8 A Yes. So the Division of Insurance Services. This
 9 is a guesstimate, but I think we were about
 10 three dozen staff, fairly evenly divided up
 11 amongst three bureaus.
 12 Q What are the three bureaus?
 13 A So the Disability Programs Bureau, the Insurance
 14 Administration Bureau, and then -- I'm trying to
 15 think of the name. I think it's Health Plans and
 16 Insurance Benefits. And that third bureau,
 17 essentially, became OSHP in the restructuring.
 18 Q So it transformed from a bureau into an office?
 19 A Uh-huh.
 20 Q Is that right?
 21 A Essentially, yes.
 22 Q Sorry. You were drinking when I asked that
 23 question.
 24 So within OSHP, how many employees did you
 25 supervise?

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1 A So supervision was, when I departed a couple
 2 months ago, pretty much divvied between myself and
 3 my deputy. I think our total staff count,
 4 including she and myself, was fifteen. I think I
 5 had seven direct reports and she had six.
 6 Q At the time you left OSHP, who was your deputy?
 7 A Eileen Mallow.
 8 Q How long was Ms. Mallow the deputy, if you know?
 9 A I believe she moved into that role in the fall of
 10 2015.
 11 Q Who preceded her?
 12 A Mike Bormett.
 13 Q How long was he the deputy, if you know?
 14 A Mike was only in that role for six months. I want
 15 to say from March of that year until October.
 16 Q Do you recall who was before Mr. Bormett?
 17 A I do. It was Bill Kox, who was a long-time
 18 employee of ETF.
 19 Q Was he the deputy during your entire first part of
 20 directorship at OSHP?
 21 A Yes. We -- after I moved -- well, when it was
 22 still the Division of Insurance Services, after I
 23 moved into the administrator role, we did the
 24 recruitment for the deputy. And Bill was hired
 25 out of that recruitment.

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1 Q Can you just give me, over the last three years of
 2 your employment at OSHP, what your job duties
 3 were? I know you supervised employees, but tell
 4 me what your responsibilities were first.
 5 A So 2015, '16, '17?
 6 Q Yes.
 7 A So I think I've covered a lot of it with the
 8 Segal -- one thing I didn't mention that was also
 9 big in late 2014 was -- so I mentioned Segal as
 10 the benefit consultant, but I didn't mention that
 11 our actuarial services contract had also gone out
 12 to bid in the spring of 2014. And our long-time
 13 actuary had been a team from Deloitte Consulting.
 14 But in that competitive bid, Segal was actually
 15 awarded the actuarial services contract as well.
 16 And so they had, kind of, a bifurcated role
 17 for us as both consultant short-term and actuary
 18 long-term. And the reason I think that's
 19 important is transitioning from a long-time
 20 actuarial team to a new was also a time-consuming
 21 process.
 22 I will also say, more from an enterprise
 23 standpoint at ETF, we also had initiated, during
 24 this time frame, a benefit administration system
 25 project. And that was to replace our siloed

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1 legacy systems with one member-facing,
 2 member-focused system. And as the leader of a key
 3 business unit, that also -- as that program
 4 launched, that also became part of my
 5 responsibilities, was helping to make sure the
 6 right staff are involved in key decisions in the
 7 development of that software launch as well.
 8 Q When was the software launch for the new benefit
 9 administration system?
 10 A It's still a work-in-progress.
 11 Q When did it begin?
 12 A I believe -- I believe 2013 was when we initiated
 13 this as a department. And I -- I have to say, I'm
 14 a little fuzzy on exactly when the vendor was
 15 hired and, kind of, the follow-up steps after
 16 that. But I believe 2013 was the beginning.
 17 Q So you testified earlier that about 80 percent of
 18 your job duties related to the group health
 19 insurance plan; is that accurate?
 20 A Yes, I think so.
 21 Q What is the role -- well, first of all -- strike
 22 that.
 23 What is the Group Insurance Board?
 24 A Sure. So the Group Insurance Board is an
 25 eleven-member board that has the statutory

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1 authority over the health insurance program. So,
 2 as such, they are the final authority on the
 3 recommendations that were presented by the OSHP
 4 team. And that includes benefit changes and
 5 premiums.
 6 Q Does the Group Insurance Board deal with other
 7 kinds of insurance beyond health insurance?
 8 A Yes. They also are the authority over the life
 9 insurance program, as well as -- you mentioned,
 10 what are called, the optional or supplemental
 11 plans. Those are employee-pay-all programs, such
 12 as supplemental vision and dental. And they also
 13 approve those vendor contracts as well.
 14 Q Is the long-term care insurance one of the --
 15 A Part of the supplemental optional plans, yes.
 16 Q Would you say that the majority of the work done
 17 by the GIB relates to the group health insurance
 18 plan?
 19 A Yes.
 20 Q About 80 percent? Or more?
 21 A I think 80 percent -- 80 to 90 percent would be
 22 fair. I think it's important to define what we
 23 mean by the health insurance program because you
 24 could perceive that as including all the
 25 interrelated programs like the wellness benefit

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1 and the pharmacy benefit and even the data
2 warehousing vendor. So I -- in my mind, I kind of
3 package all of those together because they are all
4 components or supports for the health insurance
5 program. So if you're defining it that way, I
6 would say, yes, 80 to 90 percent is fair.
7 Q Now, backing up a little bit, you were describing
8 the work of the Group Insurance Board and you
9 testified that part of their job is to exercise
10 final authority on recommendations on benefits
11 changes; is that accurate?
12 A Yes.
13 Q The recommendations that you referenced, those
14 came from OSHP; is that right?
15 A That's correct.
16 Q You were the supervisor of those recommendations
17 as they went to GIB; is that right?
18 A Yes.
19 Q Who actually composed the recommendations that
20 went to GIB, generally?
21 A Generally -- so OSHP staff -- to talk about a
22 typical board memo process, a lead staff -- so in
23 this case, it would be the staff that is the
24 primary liaison with our health insurance plan,
25 would likely be the one leading this memo

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1 development, tapping other staff as necessary.
2 For example, if there was a change in the pharmacy
3 piece of the benefit that would have been worked
4 on by a different staff, they would have pulled
5 that information together. And then we had an
6 internal routing process for memos and
7 recommendations that went to the board that would
8 include myself and my deputy but also the
9 secretary and deputy secretary of the department.
10 Q You referenced a primary liaison from OSHP to the
11 GIB?
12 A Yes.
13 Q Is that one specific person that you're
14 referencing?
15 A It's one specific position. Different people held
16 that position in my time there, so I'm not sure
17 what you're asking about. But, yes, it's -- I
18 believe the title would have been the alternate
19 health plans manager.
20 Q Did Ms. Pray hold that title?
21 A She did.
22 Q Do you recall the time period during which she
23 held that position?
24 A I don't for certain. I will tell you that when
25 Tara started in our area, which was in OSHP or

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1 DIS, I think it was five or six years ago. And
2 initially, her role was focused on our health
3 savings accounts program. I apologize. I don't
4 recall exactly when she made the transition to the
5 alternate plans manager role. But she did, just
6 this last fall, move -- advance into a more
7 communication-focused role within OSHP. So
8 roughly between 2013 and 2017.
9 Q The position she held was alternative health plans
10 manager?
11 A I believe so.
12 Q Was it that position even before Ms. Pray took it
13 that acted as the primary liaison from OSHP to the
14 GIB?
15 A Correct.
16 Q When you say "primary liaison," what does that
17 mean?
18 A So this staff person would have been the lead in
19 developing memos that would eventually go to the
20 Group Insurance Board.
21 Q But, ultimately, those memos would be approved by
22 you; is that right?
23 A Correct.
24 Q And then, consistent with the internal routing
25 process you testified about earlier, also the

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1 secretary and deputy secretary of the agency; is
2 that right?
3 A Correct, correct.
4 Q Is that the case for all memos that went to the
5 board?
6 A Yes.
7 Q At all points during your employment at ETF?
8 A Well, let me clarify because I was -- not during
9 my entire tenure at ETF. But I want to jump back
10 to the question about all memos that go to the
11 board.
12 All relating to OSHP went through that
13 process, or DIS. But there would be some memos
14 from other areas of the department that would go
15 through a slightly different process based on the
16 supervisory chain of command. The one that comes
17 to mind is our legislative liaison would get
18 approval from her supervisor for memos.
19 So I would say for the vast majority of GIB
20 memos, it did go through that process. But
21 there's some odds and ends that would go through a
22 slightly different process.
23 Q Outside of the process you just testified about
24 regarding the legislative liaison, can you think
25 of any alternative processes for memos to get to

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1 the board?
 2 A I'm trying to think. I don't recall for certain.
 3 Q What was the typical process for a memo to go to
 4 the board? What would happen? Do you understand
 5 my question?
 6 A I believe so.
 7 Q Okay.
 8 A I'll give a shot.
 9 Q Thank you.
 10 A Oftentimes, with my direct reports, I would review
 11 an early draft before a memo went through the
 12 formal routing process, just to make sure, both
 13 stylistically and content-wise, the memo was
 14 drafted the way we had discussed.
 15 Likewise, my deputy would often do the same
 16 with her direct reports, just to provide guidance
 17 and make sure the memo was developing in a
 18 professional way.
 19 Q You testified earlier that your deputy had about
 20 six or seven direct reports?
 21 A Yes, about that many.
 22 Q And you had around that number?
 23 A Yes.
 24 Q Did OSHP have weekly meetings?
 25 A We do -- we did. They do, yes.

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1 Q For the record, you left OSHP at the end of
 2 January of 2018; is that right?
 3 A No. February 16th was my last day.
 4 Q So if you testify today about the way things
 5 currently are, we'll understand that you're
 6 referencing your time at OSHP; is that fair?
 7 A Correct, yes.
 8 Q So the weekly meetings that you had, that was you
 9 and your direct reports as well as your deputy and
 10 her direct reports; is that right?
 11 A That's correct. It was the entire office.
 12 Q What happened at the weekly meetings of the entire
 13 office?
 14 A It was contingent on the issues we were dealing
 15 with. But the main purpose was an opportunity to
 16 make sure staff were on the same page about
 17 anything occurring at a leadership level or from
 18 the different program areas; because, as you can
 19 imagine, a lot of the responsibilities were
 20 somewhat intertwined, much like I was mentioning
 21 earlier with the pharmacy benefit manager and the
 22 others. So it, generally, was just an opportunity
 23 to share information that was important for our
 24 colleagues to be aware of.
 25 We also used those meetings immediately prior

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1 to Group Insurance Board meetings to, essentially,
 2 conduct a dry run of memos that would be presented
 3 to the board so that staff could provide feedback
 4 on the presentation as well as PowerPoint slides
 5 and that sort of thing.
 6 Q So at a typical GIB meeting, would you attend?
 7 A Yes.
 8 Q And would others in your office attend?
 9 A Yes. If their program area was on the agenda and
 10 they were required to present or if they felt that
 11 they could learn something pertinent to their
 12 program area by being present.
 13 Q When you reference "program area," what do you
 14 mean by that?
 15 A I mean the pharmacy benefit, the wellness benefit,
 16 the health savings account program.
 17 Q So after a memo has been approved to be submitted
 18 to the board, would someone from your office go to
 19 the board meeting and be available for questions
 20 regarding that memo?
 21 A Yes, typically.
 22 Q You testified that your last day at OSHP was
 23 February 16th of 2018; is that right?
 24 A That's correct.
 25 Q Why did you leave OSHP?

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1 A I was offered a very attractive job elsewhere.
 2 Q What's your current position?
 3 A I am the vice president of public policy for the
 4 Wisconsin Hospital Association.
 5 Q What do you do in that role?
 6 A I analyze state and federal legislation and
 7 programs that impact the hospitals in Wisconsin
 8 and work to evaluate and potentially develop a
 9 Wisconsin Hospital Association stance.
 10 Q Now, you testified, in your current role, you do
 11 some analysis of state and federal legislation; is
 12 that accurate?
 13 A Correct.
 14 Q Is that something that you did during your time at
 15 OSHP?
 16 A Absolutely.
 17 Q Tell me about your job function as it related to
 18 analyzing state and federal legislation at OSHP.
 19 A Sure. So I think an obvious one to start with is
 20 the Affordable Care Act, which was signed into law
 21 March 23rd of 2010. Different provisions came out
 22 of that legislation that did impact the state
 23 employee program.
 24 Likewise, from time to time, we see
 25 legislation introduced at the state level that

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1 relates to the program that we evaluate. We're
2 often called upon to do fiscal estimates at the
3 state level, if there's going to be a cost
4 associated with a program change. So I would say
5 our analysis was focused on legislative changes
6 that would impact the state employee or other
7 programs that we administer.
8 Q Now, when you say that part of your
9 responsibilities was, in certain situations, to
10 complete fiscal estimates, was that relating to
11 state legislation that would impact your programs
12 or state and federal?
13 A That would be state.
14 Q Segal was in charge of handling that on the
15 federal level; is that right?
16 A Not necessarily. Do you have an example?
17 Q Can you tell me an example where Segal -- I mean,
18 they came in in 2015; is that right?
19 A Late 2014, in both capacities that we talked about
20 earlier.
21 Q Was it an exception that Segal would do some
22 analysis of federal legislation and how it would
23 impact the state programs?
24 A I wouldn't say it was daily or weekly. I'm trying
25 to think of a specific example where we would have

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1 had them look at a federal level.
2 Q Did you, on behalf of OSHP, engage Segal to do any
3 kind of analysis as it related to the ACA and how
4 it impacted the state programs?
5 A Yes. We would have because there were different
6 fees and taxes associated. And so Segal did give
7 us access to expertise on federal legislation that
8 we could tap in the event that we had a question
9 or needed to confirm something.
10 MR. FAIRWEATHER: I want to take
11 just a couple-minute break, if that's okay.
12 MR. ROTH: Sure.
13 (Recess)
14 Q Ms. Ellinger, before we took a break, you were
15 telling us about some of the analysis that your
16 office did regarding state and federal legislation
17 and its impact on the state health insurance
18 program.
19 Do you recall that testimony --
20 A Yes.
21 Q -- from a few minutes ago?
22 A Yes.
23 Q You gave an example from the Affordable Care Act,
24 which was, as you mentioned, passed in 2010. As
25 part of the Affordable Care Act, did -- is there

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1 an anti-discrimination provision as part of that
2 legislation?
3 A Yes.
4 Q Can you tell me what your understanding is of that
5 anti-discrimination provision of the ACA?
6 MR. ROTH: Objection to the extent
7 it calls for a legal conclusion.
8 Q You can answer.
9 MR. ROTH: You can answer, yes.
10 A Could you be -- could you provide more specifics
11 about what you're asking about?
12 Q Sure.
13 In conjunction with the ACA, did the HHS,
14 which is the Department of Health and
15 Human Services, issue an anti-discrimination rule?
16 A Yes.
17 Q Do you recall when that was issued?
18 A I do not. Could you define "issued"?
19 Q Sure.
20 So are you familiar with the federal
21 rulemaking process?
22 A I am.
23 Q That's the process that I'm referencing. Was
24 there an HHS anti-discrimination rule that
25 emanated from that rulemaking process?

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1 A That's the part I'm looking for clarification,
2 because rules are put out for comment and then
3 they're finalized. I'm not sure what step in the
4 process you're referring to.
5 Q I'm referencing the finalized rule.
6 A Yes. So, yes, it would have been, to my
7 recollection, finalized in 2016.
8 Q Are you familiar with the transgender coverage
9 exclusion as part of the group health insurance
10 plan?
11 MR. ROTH: Objection; vague.
12 Q Do you know what I'm referencing?
13 A I believe so.
14 Q So you're familiar with it?
15 A Yes.
16 Q What's your understanding of that exclusion as of
17 2016? Let's start with that.
18 A Yeah. So what I'd like to point you to is, our
19 legal counsel provided an analysis for the board
20 in the summer of 2016. And that reflects my
21 understanding.
22 Q Do you recall when in the summer of 2016 they
23 provided that?
24 A I believe July.
25 Q Did the Group Insurance Board take any action on

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1 the transgender coverage exclusion during the
2 summer of 2016?
3 A Yes.
4 Q Do you recall what that action was?
5 A The board approved removing the exclusion in our
6 benefits.
7 Q Do you recall when the board made that approval?
8 A I believe July 12th of 2016.
9 Q Prior to the July 12th, 2016, action, what was the
10 status of coverage of the group health insurance
11 plan for transgender benefits?
12 MR. ROTH: I'm going to object.
13 What I prefer is that we get the term of the
14 exclusion on the record and then make clear
15 that we're using a shorthand for the actual
16 words in the exclusion rather than just the
17 two words that aren't part of it that you've
18 been using.
19 MR. FAIRWEATHER: Okay.
20 Q By "gender confirmation treatment exclusion," I'm
21 referencing the exclusion of procedures, services,
22 and supplies related to surgery and sex hormones
23 associated with gender reassignment.
24 Do you recall -- are you familiar with that,
25 first of all?

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1 A Yes. That sounds accurate.
2 Q Was it prior to July 12th, 2016, that those
3 services and procedures were not covered by the
4 group health insurance plan?
5 A That's correct.
6 Q Do you recall at any point when they were covered
7 prior to July 12th, 2016?
8 A I do not.
9 Q What are the uniform benefits for state employees?
10 A The uniform benefits are the benefit package that
11 is administered by all of our fully insured health
12 plans.
13 Q What are the fully insured health plans? What do
14 you mean by that?
15 A We had, I believe, 17 different insurers
16 participating in our program. And uniform
17 benefits was instituted to ensure that all those
18 health plans were administering the same benefits
19 package.
20 Q Is it that prior to 2016, the uniform benefits
21 included this gender confirmation treatment
22 exclusion? Is that your understanding?
23 A Correct.
24 Q Do you recall, at any point, coverage for those
25 procedures or services being proposed to be

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1 incorporated as part of the group health insurance
2 plan?
3 A Yes.
4 Q Prior to July of 2016?
5 A Yes.
6 Q What's your recollection about those proposals?
7 A We would have members contact ETF to request
8 additional benefits be added, and this would have
9 been one that we did hear from members.
10 Q When you would hear from a member, what would the
11 normal process be after hearing about that from a
12 member?
13 A We would have -- we keep a running list of benefit
14 changes that are requested from different groups,
15 and that becomes part of the process for
16 considering benefit changes.
17 Q I'm going to back up a bit.
18 Do you understand what I'm talking about when
19 I reference Act 10?
20 A Yes.
21 Q What's your understanding of Act 10 and how it
22 impacts the group health insurance plan, if at
23 all?
24 A So Act 10 removed collective bargaining rights.
25 Q And do you recall when that was effective, that

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1 legislation?
2 A I do not for certain.
3 Q Does 2011 sound familiar?
4 A That was going to be my guess.
5 Q So prior to 2011, did any of the labor
6 organizations that represented state employees
7 propose coverage for gender confirmation
8 treatment, to your knowledge?
9 A I don't know if that was the exact language used.
10 But, yes, part of our process would have been
11 reviewing collective bargaining requests.
12 Q Did those requests or proposals ever become part
13 of any collective bargaining agreements that you
14 know of? Again, I'm talking about pre Act 10
15 because there are no Collective Bargaining
16 Agreements post.
17 A I'm not sure I understand your question.
18 Q Sure.
19 You testified that some labor organizations
20 had proposed including coverage for gender
21 confirmation treatment; is that accurate?
22 A As I said before, I don't know what the exact
23 language would be. But, yes.
24 Q What do you mean "the exact language"?
25 A I don't know if you're asking verbatim if that was

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1 part of a collecting bargaining request.
2 (Exhibit No. 1 marked
3 for identification)
4 Q I'm not going to spend a lot of time on this, but
5 Deposition Exhibit No. 1 is in front of you.
6 Do you recognize that document? It's also
7 marked as ETF 14 in the lower right-hand corner.
8 A I'm not sure I recognize this.
9 Q Could I have you turn to page 19?
10 A Yes.
11 Q At the very bottom, there's Item 18.
12 Do you see that?
13 A I do.
14 Q What is the Teaching Assistants Association, if
15 you know?
16 A It's a group that represents the teaching
17 assistants.
18 Q Would that be UW-system-wide, if you know?
19 A I don't know for certain.
20 Q Do you recall anything about the item that's
21 listed here under 18 beyond what's included in
22 that section that is page 19 to 20, that says,
23 "Provide coverage for transgender and transsexual
24 individuals"? Do you see that?
25 A Yes.

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1 Q "To get surgery and follow-up hormone therapy."
2 Did I read that correctly?
3 A Yes.
4 Q Is it your understanding that that would have been
5 a proposal submitted by the TAA as indicated just
6 below that?
7 A That seems logical.
8 Q Would this have been a proposal to have been
9 included in a collective bargaining agreement as
10 of the date that the proposal was made?
11 MR. ROTH: Objection; calls for
12 speculation.
13 Q You worked at ETF as of --
14 A 2008.
15 Q So are you familiar with the format of this
16 document, or is this something you haven't seen
17 before today?
18 A The format is not ringing a bell with me, but it
19 would have been ten years ago that I was looking
20 at this. So --
21 Q There's a reference in the discussion of Item 18
22 going onto page 20, ETF's response, the board's
23 actuary prior to Segal was Deloitte; is that
24 correct?
25 A Correct.

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1 Q They've estimated cost of \$110,800.
2 Do you see that?
3 A Okay.
4 Q Do you have any understanding of what that means,
5 what the significance of that is?
6 MR. ROTH: Objection; vague.
7 A Could you repeat your question?
8 Q Sure.
9 The board's actuary prior to Segal was
10 Deloitte, and they estimated that two procedures
11 as it relates to the proposal made by TAA would
12 cost about \$55,400 each.
13 Do you see that?
14 A Yes.
15 Q Do you have any familiarity with the bargaining
16 proposal process as it related to changes to the
17 group insurance plan?
18 A I have some familiarity.
19 Q Prior to July 12th of 2016 when the board voted to
20 remove the exclusion that you referenced earlier,
21 do you recall the issue of the exclusion coming up
22 for board discussion at any point prior to them
23 taking action?
24 A I don't recall for certain.
25

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1 (Exhibit No. 2 marked
2 for identification)
3 Q I'm showing you what's been marked as
4 Deposition Exhibit 2. I'll give you a minute to
5 look at that. There's a lot of handwriting on
6 there.
7 Have you seen that document before today?
8 A I don't know if I saw, kind of, a document with
9 chicken scratches on it. The format looks like
10 something we would have used in OSHP.
11 Q Do you recognize the format as something that you
12 did use at OSHP?
13 A How is your question different than my response?
14 Q You responded that it looks like something that
15 you would have used at OSHP. Do you recognize
16 this as a format that you actually used at OSHP?
17 MR. ROTH: Objection; vague.
18 A I just don't understand the difference.
19 Q This is a format you do recognize; is that
20 accurate?
21 A Yes.
22 Q You recognize that from your time as director of
23 OSHP; is that right?
24 A Yes.
25 Q You see a date at the top. Is it 4/13/15?

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1 A Oh, yes.
2 Q Do you recognize the handwriting here?
3 A I'm not sure.
4 Q Next to the 4/13/15 it says, "Call with Segal."
5 Do you agree that that's what that says?
6 A That looks right.
7 Q If you look under the -- so the format that you're
8 familiar with here, how is it that you're familiar
9 with it? Do you recall using it at some point?
10 A Yes. This -- as I said, part of our annual
11 process was reviewing potential changes and
12 analyzing.
13 Q Analyzing those proposals; is that right?
14 A Right.
15 Q So if you look in the lower left-hand corner,
16 there's a date there of 4/13/2015; is that right?
17 A Yes.
18 Q So these were proposed changes to the group health
19 insurance plan discussed on that date. Is that
20 your belief as to what this document is?
21 MR. ROTH: Objection; lacks
22 foundation, calls for speculation.
23 A Can you repeat your question?
24 Q Sure.
25 The lower left-hand corner has a date,

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1 4/13/2015.
2 A Correct.
3 Q You testified you're familiar with this format; is
4 that right?
5 A Yes.
6 Q What would the date indicate, the one that I just
7 identified for you?
8 MR. ROTH: Objection; calls for
9 speculation.
10 A It's likely the date the document was created.
11 Q That's all I'm asking.
12 A Yes.
13 Q Did you create the document?
14 A I don't think so.
15 Q Do you know who would have created the document?
16 MR. ROTH: Objection; lacks
17 foundation.
18 A Yes, I assume you don't want me to guess.
19 Q If you have a guess, I would like to hear it.
20 A This is highly likely someone on the OSHP team.
21 Q This document is one of thousands of documents
22 that were produced as part of this case. We have
23 no idea who drafted it, so I'm asking you if you
24 know who drafted it. You think that it's someone
25 on the OSHP team; is that right?

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1 A Yes. And I don't know for certain who.
2 Q So this document is dated 4/13/15, which is after
3 the effective date of Act 10; is that right?
4 A Correct.
5 Q There's a column here of proposed changes. Do you
6 see that? It's the first column there.
7 A Yes.
8 Q Where did these proposed changes come from post
9 Act 10, if you know?
10 A As indicated earlier, we would have compiled
11 changes from members, health plan, our board
12 members.
13 Q Aside from those three groups, members, the plan,
14 and the board members, where else would proposed
15 changes come from as of April 2015?
16 A Internal, ETF staff.
17 Q Any other sources you can think of?
18 A Yes. Segal.
19 Q So Segal could have proposed changes to the group
20 health insurance plan on its own?
21 A Yes. So as I stated earlier, their role for us in
22 early 2015 was a shorter-term analysis of benefit
23 changes we could implement for 2016.
24 Q That was the benefits consultant role that they
25 took on?

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1 A Correct.
2 Q As opposed to the actuarial --
3 A Correct.
4 Q -- role they took on? Okay.
5 Now, you testified earlier that as it relates
6 to the gender reassignment exclusion -- I'm going
7 to use that term because that's what's referenced
8 in Deposition Exhibit 2 --
9 A Okay.
10 Q -- that members had proposed that change to the
11 plan; is that accurate?
12 A Yes.
13 Q Do you recall which OSHP staff member was tasked
14 with responding to those requests from members as
15 of 2015?
16 A I believe Arlene Larson on our staff.
17 Q Why is it that you believe it was Ms. Larson?
18 A Because I would have likely assigned a response.
19 Q Do you recall assigning a response to the gender
20 reassignment exclusion proposals from members to
21 Ms. Larson?
22 A I don't with certainty.
23 Q Who else could you have assigned that
24 responsibility to?
25 A Sure. I would say Tara Pray.

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1 Q Any other potential staff members at OSHP?
2 A I don't believe so.
3 Q So either Ms. Larson or Ms. Pray was responsible
4 as of 2015 for responding to the member proposals'
5 removal of the gender reassignment exclusion; is
6 that accurate?
7 A That's my understanding.
8 Q Do you recognize the handwriting on this document
9 as belonging to either Ms. Larson or Ms. Pray?
10 A I can't say.
11 Q Do you recognize it at all?
12 A I honestly am not sure.
13 Q Do you recall specifically where the four parts of
14 the gender reassignment proposal came from as of
15 April of 2015? Do you see that? It's in the
16 middle of the page.
17 A Yes, let me just read.
18 Q Sure.
19 A I don't recall for all of these. I will say that
20 I do recall a member contacting ETF about this
21 timeframe to add the coverage.
22 Q Was that member Pamela Oliver?
23 A That name is very familiar.
24 Q Is she a faculty member at the
25 University of Wisconsin?

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1 A That's my recollection.
2 Q Is it familiar because you believe that's the
3 person who contacted ETF with that request?
4 A Yes.
5 Q So is it your understanding that the proposed
6 change originated from Ms. Oliver's request?
7 MR. ROTH: I'm really sorry for
8 interrupting the question. I just want to
9 interpose an objection to the extent that
10 Pam Oliver's request embodies any sort of
11 protective health information that needs to
12 be preserved as confidential. I just want to
13 put that on the record. I apologize for
14 interrupting your question.
15 MR. FAIRWEATHER: That's fine.
16 Can you read it back?
17 (Question read)
18 Q Subject to the objection, can you answer that
19 question?
20 A So I think it's fair to respond affirmatively
21 because my recollection is not that Ms. Oliver was
22 asking for the coverage for herself.
23 Q But your recollection is that Ms. Oliver's request
24 developed into the proposed change to the plan,
25 Deposition Exhibit 2? Is that accurate?

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1 A I think that's logical.
2 Q Is that a typical procedure, where a member would
3 request a change to the plan and that would
4 ultimately end up being discussed by OSHP and
5 included in a formal document like this?
6 A Yes.
7 Q Every member request kind of followed that same
8 track?
9 A Yes.
10 Q Do you recall if the, kind of, four-part request
11 under gender reassignment was how it was provided
12 to the office by Ms. Oliver?
13 A I do not, nor did I say earlier that all the
14 components necessarily came from her request.
15 Q Do you know where the components may have come
16 from?
17 A I do not for certain.
18 Q Do you recall what the result of this proposal
19 was, how it proceeded through the process in your
20 office?
21 A The benefit was not added for 2016.
22 Q Did it go to the GIB for a vote, if you recall?
23 A The recommendations at this time to the GIB would
24 have been focused on cost reduction strategies.
25 Q Is that because of the legislative mandate that

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1 you described earlier this morning?
2 A Yes, the biannual budget requirements.
3 Q So because the focus of proposals for changes to
4 the 2016 year was on cost reduction, the gender
5 reassignment proposal did not go to the board for
6 its consideration; is that accurate?
7 A It would not have been recommended to the board.
8 Q Are you certain that it was not recommended to the
9 board?
10 A I don't recall for certain.
11 (Exhibit No. 3 marked
12 for identification)
13 Q Ms. Ellinger, there's a document in front of you
14 that's been marked as Deposition Exhibit 3.
15 There's a note at the bottom, Boyden PROD 6_00011.
16 Do you see that?
17 A Yes.
18 Q I'll give you a minute to take a look at that.
19 A Okay.
20 Q Do you recognize the document?
21 A Yes.
22 Q What is it?
23 A It's a response to Ms. Oliver.
24 Q Prior to today, do you recall reviewing that
25 document at some point after drafting it?

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1 A Yes. This would have been drafted by Arlene for
 2 me to review and approve.
 3 Q That's Arlene Larson; is that right?
 4 A Yes.
 5 Q She's referenced in the final paragraph of page 2;
 6 is that right?
 7 A Yes.
 8 Q Would that indicate that Ms. Larson was charged
 9 with responding to Ms. Oliver's request for the
 10 change to the plan?
 11 A She would have been charged with drafting this
 12 letter.
 13 Q Earlier, you testified that it would be either
 14 Ms. Larson or Ms. Pray that was responsible for
 15 responding to the request, generally; is that
 16 accurate?
 17 A Correct, correct.
 18 Q Does Deposition Exhibit 3 indicate that it was, in
 19 fact, Ms. Larson who was tasked with that?
 20 A Yes.
 21 Q Part of her responsibilities was to draft the
 22 letter that's Deposition Exhibit 3; is that
 23 accurate?
 24 A Yes.
 25 Q You ultimately signed the letter; is that right?

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1 A Yes.
 2 Q We don't have a signed copy here, but you recall
 3 signing this?
 4 A Yes.
 5 Q This predates Deposition Exhibit 2, which was
 6 dated April 13th, 2015; is that right?
 7 A Correct.
 8 Q So is it fair to say that the proposal for
 9 Ms. Oliver in mid 2014 developed into the proposed
 10 change listed on Deposition Exhibit 2?
 11 MR. ROTH: Objection; lacks
 12 foundation.
 13 A Again, that seems logical. And I would point to
 14 this second about removing the exclusion. That
 15 was the point I made earlier. That does seem
 16 logically tied to this letter from us to
 17 Ms. Oliver.
 18 Q If I could have you look at the first page of
 19 Deposition Exhibit 3, paragraph 3 begins, "We want
 20 to let you know."
 21 Do you see that?
 22 A Yes.
 23 Q Here you describe to Ms. Oliver -- or inform her
 24 that the process of changing the contract
 25 effective 2016 would begin toward the end of 2014,

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1 concluding in May 2015. Did I summarize that --
 2 A Correct, yes.
 3 Q Is that process -- strike that.
 4 Does that process include the analysis that's
 5 memorialized in Deposition Exhibit 2?
 6 A Yes.
 7 Q Ultimately, as you testified earlier, the proposed
 8 change under the gender reassignment title here,
 9 none of those took effect for 2016; is that right?
 10 A Correct.
 11 Q Was there any follow-up with Ms. Oliver that you
 12 recall regarding the no change made for 2016?
 13 A I do not recall.
 14 Q Do you recall any other discussion within OSHP as
 15 it relates to the gender reassignment issue
 16 outside of what we've talked about in
 17 Deposition Exhibits 2 and 3 here this morning as
 18 of 2015?
 19 A Could you be more specific?
 20 Q Sure.
 21 So I've given you a copy of a letter that you
 22 signed to Ms. Oliver, and you've testified that
 23 your recollection was that Ms. Oliver contacted
 24 ETF and proposed at least one of the gender
 25 reassignment changes; is that accurate?

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1 A Yes.
 2 Q You testified that ultimately no change was made
 3 for the 2016 contract year; is that right?
 4 A Correct.
 5 Q Outside of the communication with Ms. Oliver and
 6 the proposal listed and discussed as part of
 7 Deposition Exhibit 2, do you recall any other
 8 discussion within OSHP regarding this gender
 9 reassignment issue in 2015?
 10 A And by "this gender reassignment issue," you're
 11 talking about removing the exclusion?
 12 Q Correct.
 13 A I don't recall for certain.
 14 Q Do you recall speaking with anyone from Segal
 15 during 2015 about removing the gender reassignment
 16 exclusion?
 17 A Not for certain.
 18 (Exhibit No. 4 marked
 19 for identification)
 20 Q Ms. Ellinger, there's a document marked
 21 Deposition Exhibit 4, and I'll represent these are
 22 two pages from a multipage document that's been
 23 marked as ETF 00618. I'll give you a minute to
 24 take a look at it.
 25 A Okay. So are we focusing on 2/12/15?

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1 Q We are.
2 Do you recognize the document, first of all?
3 A This does look like notes I would keep on Segal
4 meetings.
5 Q So under the 2/12/15 heading, which begins on
6 page 1 of the document, does that go onto page 2
7 of the document?
8 A Yes.
9 Q Describe why you took these notes, the context of
10 them.
11 A Yes. I would just track our conversations with
12 Segal so that I had reference to what we had
13 discussed and if follow-up was necessary.
14 Q As of 2015, Segal was acting in that dual capacity
15 that you referenced earlier today; is that right?
16 A Correct.
17 Q Do you know whether -- well, strike that.
18 Were you consulting with Segal as of
19 February 2015 in both of those capacities?
20 A Yes.
21 Q I'll have you take a look at page 2 of
22 Deposition Exhibit 4. There's a section toward
23 the top that begins "2016 negotiation process."
24 Do you see that?
25 A Yes.

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1 Q It goes on to say, "ETF 2/12 kickoff meeting."
2 Do you know what that is?
3 A 2/12? I'm not sure what that refers to.
4 Q Let me back up to page 1. Under the heading of
5 2/12/15, you've got a list of eight people there
6 with first names.
7 A Yes.
8 Q Out of those eight people, who are affiliated with
9 Segal, if you know?
10 A Yes. The top line would be Segal staff, and the
11 second line would be OSHP staff.
12 Q Then you also attended the meeting; is that right?
13 A Yes.
14 Q Was this an in-person meeting or phone call, if
15 you know?
16 A I'm not sure.
17 Q Is "Bill" Bill Kox?
18 A Correct.
19 Q Who's Mary?
20 A Statz, S-t-a-t-z.
21 Q What position did she hold as of this date?
22 A Yes, Mary was the bureau director over the
23 Health Benefits and Insurance Plans Bureau.
24 Q I'll have you turn back to page 2.
25 A Okay.

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1 Q So you're not sure what the 2/12 kickoff meeting
2 references; is that accurate?
3 A I'm not sure what "kickoff" refers to.
4 Q These are the notes that you wrote from that
5 meeting; is that right?
6 A Yes.
7 Q You wrote, "Kirsten is up to speed to adden gender
8 assignment."
9 A No. I think those are two different consents.
10 "Adden" would refer to Addendum 1, which is a key
11 document or piece of negotiation process. And she
12 would have been the lead compiling that for us
13 from Segal.
14 Q Did Addendum 1, in any way, relate to the gender
15 reassignment exclusion?
16 A No.
17 Q So that's a separate issue from the next, which
18 begins "Gender assignment." Is that right?
19 A Yes.
20 Q Is it your understanding that Segal informed OSHP
21 at this 2/12/15 meeting that they had helped
22 another state develop benefits and service?
23 A Yes.
24 Q Do you recall that state being Maryland?
25 A Yes.

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1 Q Did Segal inform you and the rest of the OSHP
2 representatives, Mr. Kox and Ms. Statz, that
3 Maryland found it was cheaper and easier? Do you
4 see that at the bottom of that entry?
5 A I can't confirm that that's Maryland they're
6 referring to, just since other states are
7 mentioned there.
8 Q Do you recall anything about why you took that
9 specific note, "Found it was cheaper and easier"?
10 A So when we're gathering information from Segal on
11 benefit changes, I would have just captured notes
12 for my own recollection.
13 Q But today you don't recall why you wrote that
14 note; is that right?
15 A I don't.
16 Q The portion that states, "Could also lay out
17 criteria for switch, paren, psychotherapy, closed
18 paren," do you recall why you took that note?
19 A I don't for certain.
20 Q So Deposition Exhibit 4, which is dated
21 February 12th, 2015, predates
22 Deposition Exhibit 2, which we talked about
23 earlier; is that right?
24 A Yes.
25 Q Outside of Segal reaching out to Maryland, which I

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1 think is noted in your notes there, do you recall
 2 any other work that Segal did in its role as
 3 either benefits consulting or actuarial services
 4 relating to the gender assignment issue as you've
 5 noted here?
 6 A I do not for certain.
 7 Q As you indicated earlier, this did not take effect
 8 for the 2016 contract year; is that right?
 9 A Correct. "This" being removing the exclusion.
 10 Q Thank you.
 11 A Sure.
 12 (Exhibit No. 5 marked
 13 for identification)
 14 Q Ms. Ellinger, Deposition Exhibit 5 is in front of
 15 you. It is a document on which you're cc'd. I'll
 16 give you a minute to read that.
 17 A Okay.
 18 Q Do you recall receiving this e-mail in
 19 March of 2016?
 20 A I don't, but I recall conceptually.
 21 Q So you recall being informed at some point in 2016
 22 of a complaint that had been filed against ETF?
 23 A Yes, an EEOC complaint.
 24 Q What else do you recall about that EEOC complaint?
 25 MR. ROTH: I'm just going to object

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1 and instruct the witness not to answer to the
 2 extent the answer relates to any
 3 attorney/client communication you may have
 4 had on this topic.
 5 THE WITNESS: Okay.
 6 MR. FAIRWEATHER: Is that the sole
 7 basis of the objection?
 8 MR. ROTH: Yes.
 9 MR. FAIRWEATHER: Okay. Thank you.
 10 Q So my question was: Subject to the objection of
 11 counsel, what do you recall about that EEOC
 12 complaint?
 13 A I would say I would have been discussing this with
 14 our Office of Legal Services.
 15 Q At ETF?
 16 A Yes.
 17 Q That would have been with Mr. Nispel; is that
 18 right?
 19 A Yes.
 20 Q Anyone else you recall discussing it with at ETF's
 21 Office of Legal Services, without disclosing the
 22 substance of those --
 23 A Not for certain.
 24 Q -- conversations?
 25 Not for certain? Was that your answer?

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1 A Correct.
 2 Q Outside of conversations with the Office of
 3 Legal Services, do you recall any other aspect of
 4 the EEOC complaint that was filed in 2016, the
 5 subject "Transgender," as noted in the e-mail there?
 6 A Could you be more specific?
 7 Q Sure.
 8 So do you recall whether receiving the e-mail
 9 that's Deposition Exhibit 5 was the first time you
 10 heard about the EEOC complaint filed against ETF
 11 regarding the transgender issue? And I say that
 12 because that's the subject of the e-mail.
 13 A I can't say for certain.
 14 Q Do you recall speaking to anyone else about the
 15 EEOC complaint referenced in this exhibit outside
 16 of legal counsel?
 17 A Yes. My recollection is that our office -- what's
 18 OPPC stand for? Office of Policy, Privacy &
 19 Compliance? Is that right? My recollection is
 20 they were also involved in this discussion.
 21 Q Is the OPPC part of ETF?
 22 A It is.
 23 Q What's their function in this?
 24 A Well, privacy and compliance. On the policy
 25 front, they often will take on special analyses

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1 for issues that have more of an enterprise-wide
 2 impact. And what I mean by that is it's a change
 3 to our policy that just doesn't impact health
 4 insurance or retirement. So if it spans across
 5 different areas of the department, they might come
 6 in as a special projects team.
 7 Q You do recall specifically speaking with someone
 8 from OPPC regarding the EEOC complaint?
 9 A I don't know if I spoke with someone verbally.
 10 Q Do you recall having some communication with OPPC
 11 regarding the EEOC complaint?
 12 A My recollection is that they were involved with
 13 this complaint.
 14 Q Do you recall who from that office was involved?
 15 A I would say Mary Alice McGreevy, our privacy
 16 officer.
 17 Q Can you describe for me what Mary Alice McGreevy
 18 from OPPC did with respect to the EEOC complaint
 19 that you know about?
 20 A I don't for certain.
 21 Q Can you describe what your communications were
 22 with that office regarding the EEOC complaint?
 23 A My recollection is that she would have kept us
 24 informed on the status.
 25 Q Anything else you recall about that communication

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1 with the office of PPC?
 2 A No.
 3 Q So your recollection was Ms. McGreevy kept your
 4 office, OSHP, informed about the status of the
 5 EEOC complaint; is that right?
 6 A That's my recollection.
 7 Q Do you recall whether that office provided any
 8 analysis of the complaint or the merits of it?
 9 A No.
 10 Q Do you recall how the status of that complaint
 11 changed over the course of 2016?
 12 A I do not.
 13 Q Do you recall being informed about how it was
 14 resolved, if at all?
 15 A I do not.
 16 Q Outside of communications with legal counsel, do
 17 you recall talking with anyone else -- and outside
 18 of OPPC -- regarding this complaint?
 19 A I do not.
 20 Q What's your recollection of the allegations in the
 21 complaint, if you recall that?
 22 A I don't with certainty.
 23 Q Deposition Exhibit 5, the subject is,
 24 "Transgender." Do you recall what was going on as
 25 of March 21st, 2016, with the group on this e-mail

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1 here as it relates to "transgender"?
 2 A So the focus of this e-mail is the EEOC complaint.
 3 Q Right.
 4 There's a subject line that's pretty vague.
 5 Would you agree with that characterization?
 6 A I don't think "transgender" is vague.
 7 Q Earlier today, we've been distinguishing between
 8 various proposals as it relates to, one, the
 9 removal of the exclusion; is that right? Do you
 10 recall that?
 11 A Yes.
 12 Q There are other parts of the proposal in
 13 Deposition Exhibit 2 as it relates to gender
 14 reassignment.
 15 A Yes.
 16 Q But you don't think the one word "transgender" is
 17 vague as indicated on Deposition Exhibit 5?
 18 A You mean what aspect of transgender benefits it
 19 refers to?
 20 Q Right, right.
 21 A I'm not -- I'm not sure I'm following your line of
 22 questioning.
 23 Q The e-mail that Ms. Larson sent to this group of
 24 ETF employees as well as you just simply states
 25 "Transgender" in the subject; is that right?

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1 A It does.
 2 Q She writes, Alina Boyden, UW grad assist, went to
 3 the EEOC and filed a complaint against ETF on
 4 this."
 5 Is it your understanding that "this" is
 6 referencing transgender?
 7 A Yes.
 8 Q But it's your belief that that's not vague; is
 9 that right?
 10 MR. ROTH: Objection; asked and
 11 answered.
 12 Q I'm trying to clarify your testimony.
 13 You knew what she was referring to when she
 14 said "this" and "transgender"?
 15 A Well, since this is why we're here today, I would
 16 assume it's transgender benefit coverage.
 17 Q We're here today, in part, because Ms. Boyden,
 18 referenced in the e-mail, has filed a lawsuit
 19 against the State of Wisconsin related to that
 20 issue. Is that your understanding?
 21 A Yes.
 22 Q Based on that lawsuit, you're assuming that the
 23 e-mail, Deposition Exhibit 5, references the
 24 transgender coverage issue; is that right?
 25 A Yes.

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1 (Exhibit No. 6 marked
 2 for identification)
 3 Q I'm going to give you a minute to take a look at
 4 what we've marked at as Deposition Exhibit 6.
 5 It's also marked as ETF 01939.
 6 Have you reviewed Deposition Exhibit 6?
 7 A Uh-huh.
 8 Q Is that a yes?
 9 A Yes.
 10 Q I'll have you turn to the fifth page.
 11 Do you recall receiving an e-mail in mid May
 12 of 2016 regarding HHS releasing a final
 13 Section 1557 non-discrimination rule?
 14 A Yes.
 15 Q Is this a professional organization of which
 16 you're a member?
 17 A Yes, or was.
 18 Q Was?
 19 A Yes.
 20 Q Did you, then, set the non-discrimination rule as
 21 an agenda item for an OSHP meeting?
 22 A I don't know that I would have made a formal
 23 agenda item, but it clearly seems that we
 24 discussed it.
 25 Q I'll have you take a look at page 4.

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1 A Yes.
2 Q There's an e-mail from you to Diana Felsmann?
3 A Yes.
4 Q Who's Ms. Felsmann?
5 A She works at ETF's Office of Legal Services.
6 Q What was the reason for you sending this e-mail to
7 Ms. Felsmann on Monday, May 23rd?
8 A Seeking early analysis on the applicability of the
9 rule to ETF's programs.
10 Q Were you asking Ms. Felsmann for any kind of legal
11 analysis?
12 A Can you define "legal analysis"?
13 Q Well, were you asking her to determine whether the
14 rule somehow applied to ETF?
15 A Yes.
16 Q How did she respond to that specific question?
17 A It's right here on page 3.
18 Q That's your recollection of how she responded?
19 It's consistent with what's on page 3 of the
20 document?
21 A Yes.
22 Q Did you have any other discussions with her
23 related to the analysis she was doing as to
24 whether the non-discrimination rule applied to ETF?
25 MR. ROTH: I'll object. I instruct

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1 the witness not to answer to the extent it
2 goes beyond what's addressed in the
3 four corners of this document.
4 MR. FAIRWEATHER: Okay.
5 MR. KNIGHT: We said before, you
6 waived the issue as to all conversations
7 related to this subject matter. I think the
8 law is awfully clear about that.
9 MR. ROTH: So what does that mean?
10 "This subject matter" being the entire case
11 or just this e-mail?
12 MR. KNIGHT: This particular legal
13 issue of the coverage of the ACA for the ETF
14 programs.
15 MR. ROTH: So the sole issue of
16 whether ETF is a covered entity for purposes
17 of the ACA --
18 MR. KNIGHT: And any analysis
19 related to that. Well, that's one of many
20 issues that I think has been waived.
21 MR. ROTH: Well, let's talk about
22 this one. That's the only one at issue right
23 now with that question.
24 MR. KNIGHT: I just don't think you
25 can object to her other conversations about

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1 this analysis. I mean, you can object. We
2 can take it to the judge, and we probably
3 will. But I'm just pointing out that I think
4 the law is very clear on this.
5 MR. ROTH: So I'll say, if the
6 question is limited to -- just one second.
7 So the witness can answer to the extent
8 the conversations relate solely to whether
9 ETF is a covered entity as is addressed in
10 this e-mail. To the extent the conversations
11 relate to any other topic, I would instruct
12 the witness not to answer.
13 Q We got a little ahead of ourselves here. I asked
14 you a yes-or-no question, whether you had any
15 conversations with Ms. Felsmann relating to the
16 issue of whether ETF was a covered entity for
17 purposes of this rule.
18 Do you recall any of those conversations?
19 A I would say yes.
20 Q Did they follow the e-mail exchange of
21 May 24th, 2016, if you recall?
22 A Do you mean come after?
23 Q Correct.
24 A Yes. We would have discussed this after.
25 Q Did Ms. Felsmann attend the next OSHP meeting on

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1 May 25th, 2016, if you recall?
2 A I don't recall.
3 Q When do you recall speaking with her at a time
4 after the e-mail exchange of May 24th, 2016?
5 A So I don't -- I don't have specific recollection;
6 but it would be logical, as we tried to sort
7 through this issue, that we would have had
8 follow-up discussions.
9 Q What do you recall about the follow-up
10 discussions?
11 A That Diana continued to share information as her
12 analysis proceeded. Again, I think the key
13 document for you is what they -- the opinion that
14 our legal services team eventually developed.
15 Q When did they develop that?
16 A You asked me that before. And I said it was the
17 summer; and my recollection is July, but I don't
18 know if that's accurate.
19 Q Why do you characterize it as key for me?
20 A Because that -- that was the end product of the
21 discussions I think you're interested in.
22 Q So Ms. Felsmann shares the analysis that's in her
23 e-mail of Tuesday, May 24th, 2016. You've
24 referenced that in Deposition Exhibit 6 here; is
25 that right?

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1 A Yes.
 2 Q It's your recollection that the analysis, as far
 3 as ETF's Office of Legal Services goes, resulted
 4 in a memo that was issued to whom?
 5 A The Group Insurance Board.
 6 Q You also asked Segal to provide some analysis of
 7 the rule as it applies to ETF; is that right?
 8 A Yes.
 9 Q Outside of what's listed in the document, in the
 10 e-mail from Mr. Vieira and, it looks like,
 11 Ms. Bakich, Wednesday, May 25th, 2016, do you
 12 recall anything regarding their analysis on that
 13 question? That is, Segal's.
 14 A Not beyond what's here.
 15 Q Do you recall the discussion that you had with
 16 OSHP staff in late May of 2016 regarding this
 17 issue?
 18 A I -- not in detail.
 19 Q Do you recall anything generally about it?
 20 A I don't have much more than what's listed in the
 21 e-mail on page 4 of the exhibit. It seems that I
 22 just wanted the team to be aware that this rule
 23 had been issued.
 24 Q So outside of giving notice to your staff at OSHP,
 25 you don't recall any other information you shared

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1 with them beyond that the rule existed; is that
 2 right?
 3 A I don't.
 4 Q Now, after the exchange that happened in late
 5 May 2016, reflected in Deposition Exhibit 6, did
 6 ETF staff produce some kind of memo to the GIB
 7 regarding the non-discrimination rule?
 8 A Yes.
 9 Q Do you recall when that was issued?
 10 A We would have shared it with the board at their
 11 July 12th meeting.
 12 Q Was the July 12th, 2016, meeting a regularly
 13 scheduled quarterly meeting?
 14 A It was not.
 15 Q Do you recall what the purpose of the meeting was?
 16 A The primary purpose was selection of a wellness
 17 vendor.
 18 Q Was the non-discrimination rule, as set forth in
 19 Deposition Exhibit 6, related to the wellness
 20 vendor issue somehow?
 21 A It was not.
 22 Q Was there another meeting scheduled in
 23 August of 2016?
 24 A There was.
 25 Q Was that a regularly scheduled quarterly meeting?

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1 A Yes.
 2 Q What was the urgency as it relates to the wellness
 3 vendor issue that required a July meeting, if
 4 there was one?
 5 A Yes, there was. Because we wanted to communicate
 6 to our members during the fall enrollment period
 7 that we had added this wellness vendor and that
 8 their wellness benefit would be administered
 9 differently for 2017. And we wanted to ensure
 10 that we had a contract in place with this vendor
 11 in advance of communicating that to our members.
 12 (Exhibit No. 7 marked
 13 for identification)
 14 Q You have Deposition Exhibit 7 in front of you.
 15 A Okay.
 16 Q I'll give you some time to review that.
 17 MR. FAIRWEATHER: Let's take a few
 18 minutes.
 19 (Recess)
 20 Q Ms. Ellinger, I want to actually refer you back to
 21 Deposition Exhibit 6, which is the e-mail chain we
 22 were talking about earlier. Specifically, if you
 23 turn to page 3, the e-mail from Ms. Felsmann to
 24 you, the fourth paragraph of her e-mail begins,
 25 "The application."

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1 Do you see that?
 2 A Yes.
 3 Q The second sentence begins, "It seems reasonable
 4 to me that ETF would not be a covered entity with
 5 respect to the health plans that provide coverage
 6 to participants."
 7 What are the health plans that provide
 8 coverage to participants? Can you define that for
 9 me?
 10 A Yes. They're the insurers that we talked about
 11 earlier.
 12 Q The 17 insurers?
 13 A Yes.
 14 Q Attorney Felsmann goes on to state that those
 15 health plans received, quote, federal financial
 16 assistance through HHS, end quote, by accepting
 17 Medicare and Medicaid payments.
 18 Did I read that correctly?
 19 A Correct.
 20 Q Can you explain for us the process by which those
 21 health plans received federal financial assistance
 22 through HHS by accepting Medicare and Medicaid
 23 payments?
 24 A So I would say the easier one is on the Medicaid
 25 front. A significant portion of Medicaid payment

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1 is a federal matching fund. So health plans
 2 administering benefits for Medicaid patients would
 3 be receiving those funds.
 4 Q How about with Medicare?
 5 A For the health plans, I am not the expert to ask
 6 about that.
 7 Q Do you have an understanding as to how the health
 8 plans accept Medicare payments?
 9 A I don't feel I have the expertise to thoughtfully
 10 answer that.
 11 Q Who would have that expertise, if you know, at
 12 ETF, let's start with?
 13 A I would say Arlene Larson. And -- she tends to be
 14 the policy program lead in OSHP. Also,
 15 Jeff Bogardus because this is relevant to our
 16 pharmacy benefit program.
 17 Q The receipt of Medicare funds is relevant to the
 18 pharmacy benefit program?
 19 A It is.
 20 Q Is that Medicare Part D?
 21 A Correct.
 22 Q So Ms. Larson and Mr. Bogardus would be able to
 23 explain the mechanism by which health plans
 24 receive Medicare funds through HHS; is that
 25 accurate?

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1 A I believe so.
 2 Q Do you have any understanding as to how that
 3 works?
 4 A I do know -- again, it's the health plan piece of
 5 it that I'm a bit at a loss for.
 6 Q What is the health plan piece of it?
 7 A I don't know. That's why I'm having trouble
 8 answering your question.
 9 Q You don't know the mechanism by which the health
 10 plans receive these funds; is that accurate?
 11 A Correct.
 12 Q When we're referencing the health plans, those are
 13 the 17 plans that you described earlier today?
 14 A 17 fully insured plans.
 15 Q Those are plans that provide coverage for state
 16 employees through the GHIP; is that right?
 17 A State and some local government employees as well.
 18 Q Tell me about the local government employees that
 19 participate in the GHIP. How does that work?
 20 A So all state employees are eligible for coverage
 21 in our program. But for local government -- and
 22 that includes counties, school boards, cities --
 23 they choose to participate in our program. And I
 24 believe when I left ETF, there were about 370 or
 25 so local employers in the program.

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1 Q Those are counties, municipalities, and school
 2 districts; is that right?
 3 A Yes. And that's not all-inclusive, but those are
 4 some of the groups.
 5 Q I'm going to jump over to the minutes that we
 6 talked very briefly about, Deposition Exhibit 7,
 7 which is right there.
 8 A Yes.
 9 Q What is that document, generally?
 10 A Yes. So it's the recorded minutes from the
 11 July 12th GIB meeting.
 12 Q As of July 12th, 2016, who was composing the
 13 minutes of those meetings?
 14 A I believe -- let me confirm, because we've gone
 15 through -- yes, Sara Brockman, the board liaison.
 16 Q You described Ms. Brockman as the board liaison.
 17 I believe earlier you described Tara Pray as the
 18 primary liaison to the board. Are those two
 19 separate roles?
 20 A Let me clarify. So Sara's title actually was the
 21 Group Insurance Board board liaison, so that's a
 22 formal title. Referencing Tara earlier was an
 23 informal version to say she would have been the
 24 lead presenter to the board on issues relating to
 25 the health insurance program.

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1 Q So Ms. Brockman was responsible for putting
 2 together the minutes, such as
 3 Deposition Exhibit 7; is that right?
 4 A Correct.
 5 Q Did you typically attend all of the board's
 6 meetings?
 7 A Yes.
 8 Q You testified earlier that the July 12th, 2016,
 9 meeting was not one of the quarterly meetings; is
 10 that right?
 11 A Correct.
 12 Q What's your understanding of how the board is made
 13 up? That is, the eleven members, where do they
 14 come from, generally?
 15 A Sure. So five of the eleven are ex-officio
 16 positions, such as the governor or a designee, the
 17 DOA secretary or a designee. And then the
 18 other -- excuse me. And one of those includes the
 19 attorney general or a designee. And then the
 20 other six positions are appointees of the governor
 21 that have certain criteria that they have to meet
 22 for appointment.
 23 Q Where do those criteria come from?
 24 A I believe they're statutorily defined.
 25 Q So six are appointed by the governor; is that

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1 right?
 2 A Correct.
 3 Q You described the remaining five as ex-officio
 4 positions; is that right?
 5 A Yes.
 6 Q Those come from the governor's office, the
 7 Department of Administration, the attorney
 8 general's office?
 9 A Uh-huh. The office of the Insurance Commissioner
 10 and then the director of -- now it's the Division
 11 of Personnel Management within DOA.
 12 Q Is that what used to be OSER?
 13 A Yes.
 14 Q That's the office that administers and handles,
 15 kind of, the personnel functions for state
 16 employees; is that right?
 17 A Yes, that's fair.
 18 Q Thanks.
 19 DPM, the Division of Personnel Management, is
 20 a subset or an office within DOA now; is that
 21 right?
 22 A Correct.
 23 Q I'll have you turn to page 3, the minutes. The
 24 section, "Guidelines and uniform benefit changes
 25 for 2017," do you see that?

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1 A Yes.
 2 Q I believe you had testified earlier that the
 3 normal process or typical process was that uniform
 4 benefit changes for the following calendar year
 5 would be presented to the board at its
 6 May meeting; is that right?
 7 A Correct.
 8 Q Why is it that some of these proposed changes were
 9 being presented at a special July 12th, 2016,
 10 meeting of that year?
 11 A Because the final federal regulations came through
 12 too late to be taken up at the May board meeting.
 13 Q The minutes note in the second paragraph that
 14 those final regulations were issued on
 15 May 18th, 2016; is that right?
 16 A Correct.
 17 Q That was following the typical quarterly
 18 May meeting of the board; is that right?
 19 A That's my recollection.
 20 Q Do you recall who presented this issue, the
 21 guidelines and uniform benefit changes for 2017,
 22 to the board at this meeting?
 23 A It would be Tara Pray.
 24 Q That's because she held this informal position of
 25 primary board liaison; is that right?

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1 A No. It was because her role was the manager of
 2 the alternate health plans or the health plans
 3 that we've mentioned throughout the discussion
 4 here.
 5 Q What are alternate health plans?
 6 A Alternate is a technical term that was initially
 7 developed to differentiate our fully insured
 8 health plans from our one self-insured health
 9 insurer.
 10 Q Who is the one self-insured health insurer?
 11 A It was WPS.
 12 Q Did you have a chance today to read through the
 13 minutes?
 14 A Yes.
 15 Q And the text under the guidelines in uniform
 16 benefit changes for 2017?
 17 A Yes.
 18 Q Is there anything in that section that you feel is
 19 inaccurate and does not represent what actually
 20 happened at the meeting on July 12th, 2016?
 21 A No.
 22 Q Do you recall what the result of the presentation
 23 on this guidelines and uniform benefit changes
 24 issue was? Was there some action taken at the
 25 July 12th, 2016, meeting?

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1 A Yes. As you can see on page 4, the board moved to
 2 remove the exclusion.
 3 Q When you reference what I can see on page 4, is
 4 that the bolded indented section, "Motion,
 5 Ms. Carlson"?
 6 A Yes.
 7 Q It's your understanding that "Move to approve the
 8 changes to the guideline's contract and uniform
 9 benefits" refers to the removal of the exclusion?
 10 A It refers to everything described in the section
 11 under "Guidelines and uniform benefit changes."
 12 Q Attachment A, which is identified in the motion
 13 portion, do you see that?
 14 A Yes.
 15 Q Is that an attachment to the guidelines contract
 16 and uniform benefits?
 17 A That would have been -- yes. That would have been
 18 showing the board current language versus the
 19 altered language based on approving these changes.
 20 Q So Attachment A shows what the uniform benefits
 21 would look like if the proposals were accepted; is
 22 that right?
 23 A It would show the current contract language and
 24 the revised contract language.
 25 Q Revised in what respect?

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1 A Revised as recommended by staff.
2 Q So it was staff's recommendation that the board
3 remove the exclusion as of July 12th, 2016, for
4 the following contract year; is that right?
5 A Correct.
6 Q Do you recall how staff developed that
7 recommendation?
8 A Working with our Office of Legal Services --
9 Q Was it based --
10 A -- and our actuary.
11 Q So it was based on ETF's Office of Legal Services
12 and Segal Consulting as of July 2016; is that
13 right?
14 A Correct.
15 Q So both of those entities recommended the removal
16 of the extension for the 2017 contract year; is
17 that right?
18 A That is true of our Office of Legal Services. I
19 do not recall if Segal provided an official
20 recommendation as you just described.
21 Q Did they provide an actuarial cost estimate, if
22 you recall?
23 A They -- they provided an estimate, yes.
24 Q So it was based on the analysis of the Office of
25 Legal Services at ETF and Segal's estimate that

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1 you just referenced that ETF staff recommended the
2 changes; is that right?
3 A I would say it a little differently.
4 Q How would you say it?
5 A I would say yes on Office of Legal Services
6 analysis but also Segal's analysis, as we viewed
7 in Item 6, in addition to the cost estimate that
8 you just mentioned.
9 Q Page 4 of the document, there's a paragraph right
10 in the middle of the page that begins, "If the
11 changes are not adopted."
12 Do you see that?
13 A Yes.
14 Q It goes on to state, "ETF anticipates issues
15 contracting with health plans which are covered
16 entities and, as such, are prohibited from
17 contracting away non-discrimination obligations."
18 Did I read that correctly?
19 A Yes.
20 Q What were the issues that ETF anticipated with
21 contracting with health plans as of July 2016?
22 A The concern was that our health plans would say,
23 "You are requiring us to administer a benefit that
24 is not in compliance with federal law."
25 Q Anything else that is part of that concern,

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1 besides what you just testified to?
2 A I don't think so.
3 Q You go on to state that, "HHS Office of Civil
4 Rights indicated its intent to refer
5 discrimination complaints to the EEOC."
6 Where did you get that information, if you
7 remember?
8 A I don't recall.
9 Q The next paragraph, the minutes state that no
10 further substantial changes to the 2017 contract
11 are anticipated; is that accurate?
12 A Yes.
13 Q And that final change recommendations will be
14 presented at the November 15th, 2016, board
15 meeting; is that right?
16 A Yes.
17 Q I know that we're not talking about a typical
18 process here because this is a July meeting. But
19 typically, would the board vote at its
20 November meeting for final changes that would take
21 effect the following calendar year?
22 A No.
23 Q Tell me why you answered "no."
24 A Sure. Let me point you to the bolded motion
25 language. You'll see that the board grants ETF

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1 staff the authority to make additional technical
2 changes as necessary. That is standard language
3 we use with the board because inevitably, as we're
4 finalizing our contracts, we may find anything
5 from typos to other minor technical issues, that
6 we don't want it to hold up the contracting
7 process for something small and not significant.
8 And so we ask the board for those minor
9 changes, that we can go ahead and make them with a
10 commitment to bringing those back to the board for
11 their reference at the November board meeting.
12 Q So the typical process, ETF staff would make the
13 changes that you just described and would
14 incorporate those for submission to the board at
15 its November meeting; is that right?
16 A We don't ask the board to vote on those final
17 changes. We just bring them back so that they are
18 aware of any other technical changes that were
19 made.
20 Q So is it your understanding that as of the
21 July 12th, 2016, meeting, the Group Insurance
22 Board had voted to remove the exclusion that we've
23 been talking about here today --
24 A Correct.
25 Q -- with respect to transgender services and

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1 procedures?
2 A Correct.
3 Q And that there was no further action the board
4 needed to do to effectuate that removal; is that
5 right?
6 A Correct.
7 MR. FAIRWEATHER: Let's go off the
8 record for one second.
9 (Recess)
10 Q Ms. Ellinger, do you know who Herschel Day is?
11 A Yes.
12 Q Who is he?
13 A He is a member of the Group Insurance Board.
14 Q Do you recall when he joined the board?
15 A I don't, off the top of my head.
16 Q Do you know which year?
17 A I know it was several years ago. I'm sorry. I
18 honestly don't. We've had a lot of turn on the
19 board.
20 Q Deposition Exhibit 7 reflects that Mr. Day was a
21 member of the board as of the July 12th, 2016,
22 meeting; is that right?
23 A Correct.
24 Q The vote to remove the exclusion, as indicated on
25 page 4, was unanimous; is that right?

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1 A Correct.
2 Q Do you recall any discussion following the motion
3 that was made by Ms. Carlson prior to a vote?
4 A I do not.
5 Q Did you have a practice of taking your own
6 personal notes during the Group Insurance Board
7 meetings?
8 A Not extensively. I tended to just note any
9 follow-up items that were assigned to me.
10 Q Is it fair to assume that after you completed
11 those follow-up items, you destroyed the notes?
12 Or did you keep them somewhere?
13 A Yeah, I probably would have just deleted it
14 because they were just cryptic.
15 Q You took the notes on your computer; is that
16 right?
17 A Correct.
18 Q I want to show you a document that we marked
19 during the deposition of Mr. Day.
20 A Okay.
21 MR. FAIRWEATHER: Do you have a
22 copy?
23 MR. ROTH: Which one?
24 MR. FAIRWEATHER: Exhibit 2. I
25 think I might have extra copies. It's

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1 GIB 1557.
2 MR. ROTH: I've got it.
3 (Exhibit No. 8 marked
4 for identification)
5 Q You have Deposition Exhibit 8 in front of you, and
6 I'll give you a minute or two to review that.
7 A Okay.
8 Q Do you recall having the exchange with Mr. Day
9 that's memorialized here in Deposition Exhibit 8?
10 A Yes.
11 Q Generally, what was the conversation about, as it
12 related to removal of the exclusion?
13 A So Herschel, I think, being an actuary himself,
14 wanted to understand why a cost estimate wasn't
15 provided in the board materials.
16 Q The reason it wasn't provided is what's laid out
17 in the e-mail exchange; is that right?
18 A Correct.
19 Q Generally, the estimated cost impact was
20 negligible; is that right?
21 A Yes.
22 Q Is it your understanding that -- strike that.
23 Did Segal provide that estimate?
24 A Yes, yes.
25 Q Is it your understanding that Segal provided that

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1 estimate by simply looking at other states'
2 experiences with such a removal, or such coverage,
3 I guess?
4 A That's my understanding.
5 Q If you look at page 1 of Deposition Exhibit 8,
6 which is your July 14th e-mail, you wrote, "There
7 are so many unknowns regarding the full scope of
8 this coverage change, which is why our only
9 uniform benefit change for 2017 is removal of the
10 exclusion."
11 Did I read that correctly?
12 A Yes.
13 Q Do you recall what the unknowns were that you were
14 referencing as of July 14th, 2016?
15 A Sure. After the federal rule was finalized, as
16 I've indicated here, we started to work with our
17 health plans to determine what should the contract
18 language look like, the uniform benefit contract
19 language. And -- because initially, we weren't
20 thinking about just removing the exclusion. We
21 were planning to also add language to say what
22 services were covered. But as we worked with our
23 health plans, it was clear there was not a
24 standard best practice that was easy to insert as
25 language.

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1 And so we were concerned that by
 2 prescriptively putting some language in uniform
 3 benefits, we would unintentionally not include
 4 some appropriate services.
 5 So in the end, we just removed the exclusion
 6 so that we could learn more about the benefit and
 7 potentially revisit in future years if we should
 8 have a more prescriptive benefit language included
 9 in UB.
 10 Q UB is uniform benefits?
 11 A Uniform benefits. Sorry.
 12 Q That's okay.
 13 When you say that you were initially going to
 14 explain what was going to be covered, that is
 15 prescriptive contract language, when did that
 16 initial position kind of take shape, if you
 17 recall?
 18 A The initial position being which one?
 19 Q So you received notice in May of 2016 --
 20 A Right.
 21 Q -- that the final rule had been issued; is that
 22 right?
 23 A Correct.
 24 Q Was it then that you and OSHP decided that
 25 initially you were going to prescriptively provide

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1 for these services?
 2 A Yes.
 3 Q Did that kind of take place in an OSHP meeting?
 4 How did that happen?
 5 A Yeah, probably a formal -- informal OSHP staff
 6 discussion.
 7 Q Was it after consultation with the Office of Legal
 8 Services or Segal that you decided that that would
 9 be not the best way to approach it?
 10 MR. ROTH: Objection. I'll
 11 instruct the witness not to answer to the
 12 extent it implicates privileged
 13 attorney/client communications. This is not
 14 a topic with respect to covered entities.
 15 Q With respect to Segal, is that something you
 16 discussed with them, that is, whether
 17 prescriptively providing for coverage was the
 18 preferred route?
 19 A I don't recall for certain.
 20 Q Was it at some point prior to the July 12th, 2016,
 21 board meeting that OSHP decided that they were
 22 just simply going to remove the exclusion?
 23 A Yes.
 24 Q What do you recall about that process?
 25 A So as I said before, it was primarily based on

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1 health plan feedback.
 2 Q Can you describe for me, generally, what the
 3 feedback was?
 4 A Sure. Our staff reached out to our participating
 5 health plans to say we were taking this benefit
 6 change to the board. We wanted to make sure we
 7 got the contract and uniform benefit language
 8 correct. "We would welcome your feedback on the
 9 best-practice language."
 10 And the results we got back were vague and
 11 mixed. And as I said before, it wasn't -- it
 12 wasn't clear what the right contract language
 13 should be.
 14 Q When you reference in your e-mail "We are working
 15 with our largest insurers to discuss protocols and
 16 best practices," is that what you're referencing
 17 in the e-mail?
 18 A Yes.
 19 Q Do you recall any of those largest insurers saying
 20 the best practice would be just to simply remove
 21 the exclusion?
 22 A I don't recall that. I believe that was an
 23 internal decision.
 24 Q You wrote in your e-mail of Thursday, July 14th,
 25 to Mr. Day that OSHP had asked Segal to provide an

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1 actuarial estimate but that it was not shared with
 2 the board; is that right?
 3 A That's correct.
 4 Q Who made the decision not to share that estimate
 5 with the board, if you remember?
 6 A That probably would have been me.
 7 Q Aside from the negligible costs that you reference
 8 later in the e-mail, what other reasons led to
 9 your decision not to share the cost estimate with
 10 the board, if you remember?
 11 A I think it was primarily that, but also our
 12 thoughts were that the main focus here is
 13 complying with the federal law.
 14 Q Do you recall any questions from board members at
 15 the July 12th, 2016, meeting about the cost
 16 associated with removing the exclusion?
 17 A I don't.
 18 Q Mr. Day did not ask that question at the board
 19 meeting, to your recollection; is that right?
 20 A Correct.
 21 Q He was appearing by phone that day?
 22 A Yes.
 23 Q And had some technical issues; is that right?
 24 A Apparently.
 25 Q Do you recall any questions from board members

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1 relating to the recommended changes to the UB for
2 2017?
3 A I don't recall specific questions.
4 Q As stated in your e-mail, the only recommended
5 change for the UB for 2017 was the removal of this
6 exclusion; is that right?
7 A I don't think that's correct.
8 Q Okay.
9 A I'm going to refer you to Exhibit 7. You'll
10 notice that federal law had multiple parts, and I
11 know where -- I'm sorry. I am on page 3 of
12 Exhibit 7. The topic that brings us all here
13 today is one issue, but then there's also language
14 relating to federally required non-discrimination
15 notification language. So that would have been
16 part of the recommendations to the board as well.
17 Q Would the federally required non-discrimination
18 notification language be incorporated into the UB
19 somehow?
20 A Yes, I think it was.
21 Q Outside of the removal of the exclusion and then
22 the non-discrimination language you just
23 referenced, were there any other changes made to
24 the UB for 2017 at the July 12th, 2016, board
25 meeting?

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1 A Not that I recall.
2 Q Do you recall changes made at any other point
3 during 2016?
4 A You mean after this meeting?
5 Q Correct.
6 A Not that I recall.
7 MR. FAIRWEATHER: Can we go off the
8 record?
9 (Discussion held off the record)
10 (Recess)
11 Q Ms. Ellinger, we were discussing this
12 July 12th, 2016, meeting before we broke for
13 lunch.
14 Do you recall that testimony?
15 A I do.
16 Q Now, following that, there was an exchange that
17 you had with Mr. Day, and we talked about that as
18 well. You have Deposition Exhibit 8 in front of
19 you there.
20 At some point following the July 12th, 2016,
21 board meeting, did the State Department of Justice
22 get involved in assessing whether GIB was required
23 to remove the exclusion?
24 A Yes.
25 Q What's your recollection about that?

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1 A My recollection is that we received, I'll call it,
2 an opinion from the attorney general or from DOJ
3 that had an alternative discussion of the final
4 reg that what was different from what our OLS
5 staff at ETF had produced.
6 Q Do you have any understanding of whether the DOJ
7 memo that you've just described was solicited or
8 was that unilaterally forwarded on to the board?
9 A I do not think that was solicited.
10 Q What's your understanding of how that was
11 delivered to ETF, if you have one?
12 A I do not think it came to me. I don't remember
13 who was the main point of contact at ETF, but
14 perhaps you have an exhibit that will help refresh
15 my memory.
16 Q Let me show you what we marked on Monday as
17 Deposition Exhibit 4 for Mr. Day. This is an
18 August 12th, 2016, correspondence to the board
19 from Ms. Brockman.
20 MR. ROTH: Do we want to mark this
21 one again for Lisa? We did that with the
22 first Herschel Day one we used.
23 MR. FAIRWEATHER: Yes. That would
24 be fine. Let's mark it as -- actually, we
25 can leave it as Day 4, I think.

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1 Q We'll leave it as Day Exhibit 4.
2 A Okay.
3 Q First of all, do you recognize this correspondence?
4 A Yes.
5 Q This was drafted by Ms. Brockman; is that right?
6 A Yes.
7 Q At the very bottom, it says, "Reviewed and
8 approved by John Voelker, deputy secretary," but
9 your signature.
10 A Oh, oops.
11 Q Why is that an oops?
12 A Because typically the board memos would be
13 reviewed and approved by me with my signature. So
14 I'm not sure why we have a typo here, but --
15 Q Well, earlier today you testified that there were
16 some occasions on which memos would be routed
17 through the secretary or deputy secretary?
18 A That's correct.
19 Q Is this one of those, or is this an error?
20 A This is an error. Those memos that I referred to
21 earlier, so the routing would have gone through
22 them. And then, eventually, I get the final draft
23 and that's when I give the green light to put my
24 signature on it.
25 Q So all memos that went to the board were

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1 ultimately approved by you; is that right?
2 A Most. We mentioned some exceptions this morning
3 about a different routing process for a handful of
4 memos. But -- but the vast majority of the time,
5 yes.
6 Q The DOJ opinion that you referenced a few minutes
7 ago, is that what's attached to Day Exhibit 4 as
8 Attachment A?
9 A Yes.
10 Q Had you read Attachment A to Day Exhibit 4 prior
11 to submitting it to the board for its review?
12 A Yes, I would have.
13 Q What was your reaction after reading that?
14 A I guess, surprised that there were different
15 opinions on the applicability of the federal rule.
16 Q Did you feel that, in light of the DOJ memo, GIB
17 would have to reverse course with respect to the
18 exclusion, that is reverse its July 12th decision?
19 MR. ROTH: Objection; calls for
20 speculation or to the extent it calls for a
21 legal conclusion.
22 Q Do you remember having any thoughts with respect
23 to what the board may have to do in light of the
24 August 10th DOJ memo?
25 A I wasn't sure what the board would have to do

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1 because we had two different opinions from
2 credible sources.
3 Q If you could, take a look at the memo, which you
4 are, under the "Executive summary" portion.
5 A Yes.
6 Q That portion begins, "The Department of Justice
7 writes to you regarding proposed revisions to the
8 state current UB policy."
9 Is that accurate?
10 A I think so.
11 Q Why is it that as of August 10th, 2016, they were
12 proposed revisions?
13 A Because they had not been implemented. The
14 implementation date was January 1st of '17.
15 Q As of this point, that is August 10th, 2016, ETF
16 was still recommending that the board would remove
17 the exclusion; is that right?
18 A Correct.
19 Q There's also, attached to the Day Exhibit 4, a
20 correspondence memorandum to the board from
21 David Nispel and Diana Felsmann.
22 Do you see that?
23 A Yes.
24 Q This was drafted or is dated the day after the DOJ
25 memo; is that right?

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1 A Yes.
2 Q Do you have any understanding as to why ETF
3 created yet another memo on August 11th, 2016,
4 relating to the UB provisions related to sex
5 discrimination?
6 MR. ROTH: I'll insert an objection
7 and instruct the witness not to answer to the
8 extent the answer involves communications
9 with ETF counsel. I think we have testimony
10 in the record earlier that the background to
11 this memorandum is in the memorandum. The
12 analysis is in the memorandum. There's other
13 topics of discussion around that between ETF
14 staff and ETF counsel. We maintain --
15 preserve the privilege.
16 MR. FAIRWEATHER: Okay.
17 Q I'll withdraw my question for now.
18 (Exhibit No. 9 marked
19 for identification)
20 Q You have Deposition Exhibit 9 in front of you,
21 which is also marked ETF 05496.
22 Who is Kenneth Vieira?
23 A He is our lead on the Segal actuarial team.
24 Q Why were you sending the AG's memo to him as of
25 August 11th, 2016?

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1 A Likely because the August board meeting is
2 primarily focused on our actuarial team because it
3 talks through the negotiations and the bid
4 process. And I would have wanted them to be aware
5 that this issue was also coming forward so that
6 they weren't caught off guard at a board meeting.
7 Q You write that, "Our response is being drafted."
8 Is that, to your understanding, Attachment B
9 to Day Exhibit 4?
10 A Yes.
11 Q Did you discuss, without getting into the
12 substance of that discussion, with ETF's Office of
13 Legal Services the potential to draft a response
14 to DOJ's memo?
15 A I do not recall.
16 Q Do you recall asking the Office of Legal Services
17 to draft a response?
18 A I also don't recall.
19 Q Do you recall whether OLS, the Office of Legal
20 Services, offered to draft a response?
21 A I apologize. I just don't remember how it was
22 initiated.
23 (Exhibit No. 10 marked
24 for identification)
25 Q Before we move on to 10, do you recall speaking

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1 with OLS at all about drafting a response to the
2 DOJ memo?
3 A I don't recall for certain.
4 Q Who is Mike Farrell?
5 A He is the chair of the Group Insurance Board.
6 Q Deposition Exhibit 10 in front of you looks like
7 an e-mail from you to Mr. Farrell; is that right?
8 A Correct. Well -- yes, from me to Mike. Yes.
9 Q At the bottom, the second e-mail there, there's an
10 e-mail from Delanie Breuer to you. Is Ms. Breuer
11 here at the DOJ?
12 A Yes.
13 Q Is this, to your recollection, a copy of DOJ's
14 opinion dated --
15 A I --
16 MR. ROTH: I'll object. The
17 witness has not been presented with the
18 attachment to the e-mail. All that's in
19 front of the witness is a file name.
20 MR. FAIRWEATHER: I don't -- okay.
21 Q On the exhibit, it doesn't look like there's an
22 attachment from Ms. Breuer. But at the top here,
23 there's an attachment memo, "Re ACA Title IX PDF"?
24 A Yes.
25 Q Do you know whether there was a memo sent by DOJ

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1 in August 2016 different than Attachment A to
2 Day Exhibit 4?
3 A No.
4 Q So is it your understanding that Attachment A is
5 the memo "Re ACA Title IX"?
6 A I believe so.
7 Q Had you been working with Delanie Breuer on this
8 issue at all prior to August 10th, 2016?
9 A I don't recall if this was the first contact or
10 not.
11 Q What was her role with respect to this issue, if
12 you know?
13 MR. ROTH: I'm going to instruct
14 the witness not to answer on the basis of
15 attorney/client-privileged communication.
16 MR. KNIGHT: And as we said, you've
17 waived the privilege by turning over these
18 things --
19 MR. ROTH: She's waived the
20 analysis in the memorandum. You don't get
21 the entire --
22 MR. KNIGHT: That waives all
23 conversations about that subject matter.
24 MR. ROTH: We disagree.
25 MR. KNIGHT: Okay. We'll take it

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1 to court.
2 MR. ROTH: Well, why don't you wait
3 until she answers whether she had any
4 conversations with Delanie about the topic so
5 you know whether there's something to compel,
6 in the first place.
7 MR. FAIRWEATHER: Are you
8 withdrawing your instruction to her not to
9 answer?
10 MR. ROTH: No. I mean, you can ask
11 her if she's had those conversations so you
12 know whether there's actually anything to
13 take to court. But to the extent there were
14 conversations, I will instruct her not to
15 answer.
16 MR. FAIRWEATHER: Okay. The scope
17 of Ms. Breuer's -- I just want to make sure I
18 understand your objection. The scope of her
19 role with respect to communicating with ETF
20 about this exclusion is, in your opinion,
21 privileged? That was my question. I want to
22 know what she did.
23 MR. ROTH: Yes, I understand what
24 you're saying. Just give me one second.
25 She can answer that question.

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1 A So what Delanie's role was?
2 Q Right.
3 A From my perspective, primarily a liaison from DOJ
4 to ETF.
5 Q And you don't recall whether you had had any
6 interactions with, is it, Ms. Breuer?
7 A Sure.
8 Q Prior to -- I don't know if that's a --
9 A Delanie is a female.
10 Q You don't recall if you had any interactions with
11 her prior to receiving this memo?
12 A I don't.
13 Q What about after this? Do you know if there's any
14 follow-up with Ms. Breuer after receipt of this
15 memo?
16 A I don't recall. My interactions with her were
17 minimal.
18 Q She did not author the DOJ memo, did she?
19 A I can't speak to that.
20 Q In any event, she's not the listed drafter or, I
21 guess, sender of the memo, is she?
22 A That's correct.
23 Q Do you recall, as it relates to
24 Deposition Exhibit 10, what your discussion with
25 Mr. Farrell was going to entail the following day,

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1 August 12th, 2016?
2 A Yes. Since he is our board chair, I would want to
3 make him aware of status on anything I knew about
4 expectations for the board meeting we had coming
5 up the next week.
6 Q Do you know whether Ms. Breuer sent a copy of her
7 memo to ETF legal counsel on August 10th, 2016?
8 A I do not know the answer to that.
9 Q Would it be fair to say that at some point on the
10 afternoon of August 10th, 2016, or during the day
11 of August 11th, 2016, you communicated with ETF
12 legal counsel about drafting a response?
13 A I can confirm that the AG or DOJ memo was shared,
14 but I don't recall discussions about drafting a
15 response.
16 Q Well, as of --
17 A I clearly am informing our chair that that's
18 happening, but I don't recall how I was informed
19 of that development.
20 Q You don't recall whether it was ETF, that is, your
21 office, that asked ETF to draft a response?
22 A I don't recall who made the request.
23 Q So what do you recall about the August 12th, 2016,
24 meeting with Mr. Farrell referenced in
25 Deposition Exhibit 10?

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1 A The focus -- as I said earlier, the focus for that
2 board meeting would have been relaying the results
3 of negotiations with the health plans that summer.
4 Q On the very bottom of the footer of Day Exhibit 4,
5 there's a little table down there.
6 A Yes.
7 Q Does that indicate that you were to discuss the
8 correspondence and the memoranda at the
9 August 16th, 2016, meeting of the board?
10 A Yes. This box indicates what board meeting.
11 Q Did the board, in fact, discuss these, I guess,
12 competing memoranda at its August 16th, 2016,
13 meeting?
14 A That is my recollection.
15 Q Do you recall whether that discussion was in open
16 or closed session?
17 A I apologize. I don't.
18 Q What do you recall about the discussion?
19 A I don't recall detail.
20 Q Do you recall whether specific members of the
21 board aligned themselves with either the DOJ's
22 analysis or the ETF's analysis as of the
23 August 16th, 2016, meeting?
24 MR. ROTH: Objection; vague.
25 A I don't recall. What I can definitively say is

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1 the board did not reverse their July decision.
2 Q What did they do at the August 16th, 2016, meeting
3 as it relates to the exclusion?
4 A The board did ask that ETF staff bring this back
5 to them again later in the year.
6 Q So it was tabled; is that accurate?
7 A That's a technical term, so I wouldn't say
8 "tabled." I don't think that's applicable here.
9 They just didn't act.
10 Q So the DOJ's memo dated August 10th, 2016, and the
11 ETF's response to that memo were presented to the
12 board at its August 16th, 2016, meeting but
13 nothing happened as a result of that presentation
14 at that meeting; is that right?
15 A That's my recollection.
16 Q Do you recall whether anything ultimately happened
17 with respect to the two memoranda?
18 A The memos themselves?
19 Q Well, did the board ultimately act on either the
20 DOJ's recommendation or ETF's response to the
21 recommendation?
22 MR. ROTH: Objection; vague.
23 Q Do you understand my question?
24 A I -- the board did meet December 30th to talk
25 about this topic.

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1 Q During your time at ETF, did you use
2 Microsoft OneNote?
3 A A little bit. Not much.
4 (Exhibit No. 11 marked
5 for identification)
6 Q Deposition Exhibit No. 11 is in front of you.
7 Take a minute to look at that.
8 A Okay.
9 Q Do you recognize this document at all?
10 A I don't.
11 Q You don't recall if you were using OneNote as of
12 December 9th, 2016; is that right?
13 A Yeah. I couldn't figure out the software, so I
14 rarely used it. That's why I made the comment --
15 Q You and me both.
16 A -- I did earlier. So --
17 Q Okay.
18 A This isn't ringing a bell, though.
19 Q Is it fair to assume that you are "LE," if this
20 document was produced by ETF?
21 A That seems logical.
22 Q Do you know who Heifetz is?
23 A Yes. Michael Heifetz is also a member of the
24 Group Insurance Board -- or was.
25 Q "Farrell," is that Michael Farrell?

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1 A Mike Farrell, the chair of the Group Insurance
 2 Board.
 3 Q As of December of 2016, was there a member of the
 4 Group Insurance Board named J.P.?
 5 A Yes, J.P. Wieske.
 6 Q He is an OCI designee, or was; is that right?
 7 A That's correct.
 8 Q Is it fair that that's the "J.P." referenced in
 9 Deposition Exhibit 11?
 10 MR. ROTH: Objection; calls for
 11 speculation.
 12 Q Can you answer that question?
 13 A That seems logical.
 14 Q Do you recall J.P. Wieske bringing DOJ to a
 15 meeting to discuss coverage of transgender in
 16 December of 2016?
 17 A This would refer to the board meeting that I
 18 believe was December 13th.
 19 Q So is it your recollection that a representative
 20 of DOJ was present at the December 13th, 2016,
 21 meeting?
 22 A That is my recollection.
 23 Q The second line of that paragraph, there's a
 24 reference to "Bob."
 25 Do you see that?

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1 A Yes.
 2 Q Is that Bob Conlin?
 3 A That does seem logical.
 4 Q Do you recall either Mr. Conlin or Mr. Farrell
 5 asking DOJ to give a legal opinion on personal
 6 risk to fiduciaries for not following federal law
 7 at the December 13th, 2016, meeting?
 8 A Yes, I believe so.
 9 Q Do you recall which of those two, Mr. Farrell or
 10 Mr. Conlin?
 11 A I do not.
 12 Q Had you met with Mr. Conlin prior to
 13 December 9th, 2016, to discuss the need for a
 14 legal opinion on personal risk to fiduciaries for
 15 not following federal law?
 16 A I don't recall meeting with Bob.
 17 Q To discuss that issue; is that right?
 18 A That's correct.
 19 Q Do you recall discussing that issue with
 20 Mr. Farrell prior to the December 13th, 2016,
 21 meeting of the board?
 22 A I don't recall that either.
 23 Q Do you have an understanding as to what's meant by
 24 "personal risk to fiduciaries for not following
 25 federal law" as it relates to the coverage of

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1 transgender issue?
 2 MR. ROTH: Objection; calls for a
 3 legal conclusion and speculation.
 4 MR. FAIRWEATHER: I'm not asking
 5 for a legal conclusion.
 6 Q You're not a lawyer, are you?
 7 A No.
 8 Q Do you have an understanding as to what personal
 9 risk to fiduciaries for not following federal
 10 law --
 11 MR. ROTH: Same objection.
 12 Q -- means?
 13 MR. ROTH: You can answer, if you
 14 can.
 15 THE WITNESS: Okay.
 16 A So my understanding was that our board members
 17 were personally at risk as fiduciaries of the
 18 trust.
 19 Q They were personally liable as members of the
 20 trust as fiduciaries; is that right?
 21 MR. ROTH: Objection; misstates the
 22 testimony.
 23 A So what I said was personally at risk as members
 24 of the Group Insurance Board.
 25 Q How did you come to that understanding?

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1 MR. ROTH: Objection to the extent
 2 it involves communications with ETF legal
 3 counsel. I'll instruct her not to answer
 4 accordingly.
 5 Q Did you communicate with ETF legal counsel about
 6 that issue at any point in late 2016?
 7 A I don't recall if I had a direct conversation with
 8 our legal counsel.
 9 Q Do you recall having any conversation with someone
 10 at DOJ about that issue, without getting into the
 11 substance of it?
 12 A Me, personally?
 13 Q Right.
 14 A I do not believe so.
 15 Q Do you know if someone at OSHP had that
 16 conversation with someone at DOJ about potential
 17 personal risk to members of the board?
 18 A I do not believe so.
 19 Q Do you know whether DOJ provided a legal opinion
 20 on personal risk to fiduciaries for not following
 21 federal law?
 22 A I don't recall.
 23 Q At the bottom of the agenda planning document, it
 24 states, "Result will be issuing letters of
 25 intent."

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1 Do you know what that means?
 2 A I don't know what that means.
 3 Q And you don't know whether this is a document you
 4 created; is that right?
 5 A No, I don't.
 6 Q Prior to December 9th of 2016, had Mr. Wieske been
 7 outspoken about any opinions regarding the
 8 transgender coverage exclusion?
 9 MR. ROTH: Objection; vague.
 10 A Could you say the question again?
 11 Q Sure.
 12 Prior to this date, that is the date on
 13 Deposition Exhibit 11 -- first, you had mentioned
 14 that "J.P." likely refers to J.P. Wieske; is that
 15 right?
 16 A Yes.
 17 Q Had he expressed any position or opinion on
 18 removal of the exclusion for transgender services
 19 prior to that time, to your knowledge?
 20 A I don't remember specific comments that J.P. made
 21 at a board meeting.
 22 Q At any point?
 23 A I don't.
 24 Q You don't recall a comment that he made about
 25 putting toothpaste back into a tube at a board

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1 meeting?
 2 A I don't.
 3 Q Was the December 13th, 2016, meeting of the board
 4 a regularly scheduled quarterly meeting of the
 5 board?
 6 A It was not.
 7 Q Why was it noticed and called for a meeting?
 8 A Because the primary focus of the Group Insurance
 9 Board at this point in time was the evaluation of
 10 an RFP to self-insure the state employee health
 11 insurance program.
 12 Q Did that issue have some urgency as of
 13 December 13th, 2016?
 14 A It did have urgency in terms of if the board
 15 wanted to move forward implementing that for 2018,
 16 we needed decisions in early 2017 to allow for
 17 appropriate transition time.
 18 Q Was it then decided that the transgender exclusion
 19 would be also addressed at the
 20 December 13th, 2016, meeting?
 21 A That is my recollection.
 22 Q Do you recall who added that to the agenda or who
 23 directed that that be added to the agenda?
 24 A I don't recall with certainty.
 25 Q I'm going to show you what we marked with Mr. Day

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1 as his Deposition Exhibit 5. Those are minutes
 2 from the December 13th, 2016, meeting.
 3 A Okay.
 4 Q I'll give you a minute to take a look at those.
 5 I don't know if Mr. Roth just instructed you;
 6 but if you go to the second-to-last page, that's
 7 where I want to draw your attention.
 8 A Okay.
 9 Q Are you under the discussion consideration of 2017
 10 uniform benefits?
 11 A Yes.
 12 Q HHS non-discrimination rule?
 13 A Yes.
 14 Q That first paragraph, there's a sentence that
 15 begins, "The item was added."
 16 A Yes.
 17 Q It goes on to the December 13th meeting agenda at
 18 the request of a board member as the Wisconsin
 19 Department of Justice indicated the intent to send
 20 representation to the board meeting to discuss the
 21 issue.
 22 Did I read that correctly?
 23 A Yes.
 24 Q Do you recall which board member requested that
 25 the Wisconsin DOJ be allowed to address the issue

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1 in front of the board?
 2 A I believe it was J.P. Wieske.
 3 Q Did Mr. Wieske provide any explanation at the
 4 December 13th, 2016, meeting as to why he was
 5 bringing DOJ representation?
 6 MR. ROTH: Objection; misstates the
 7 testimony.
 8 Q Did I misstate your testimony?
 9 THE WITNESS: Were you referring to
 10 my comments or --
 11 MR. ROTH: I was referring to his
 12 question.
 13 Q The section of the minutes states the item was
 14 added to the December 13th meeting agenda at the
 15 request of a board member. You testified that you
 16 believe that board member was J.P. Wieske; is that
 17 correct?
 18 A Correct.
 19 Q Did Mr. Wieske give any explanation as to why he
 20 was making the request?
 21 A To -- in the public presentation?
 22 Q Or to you individually outside of the public
 23 presentation.
 24 A I don't recall.
 25 Q If you could, turn the page to page 9 of those

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1 minutes. The very top states, "Mr. Potter stated
 2 that the August 10th, 2016, memorandum was
 3 authored by the DOJ at the request of the
 4 governor's office for the benefit of the board."
 5 Did I read that correctly?
 6 A Yes.
 7 Q Do you know who within the governor's office
 8 requested that DOJ be present and that they author
 9 the August 10th, 2016, memorandum?
 10 A I do not.
 11 Q Do you recall if there was any discussion about
 12 that specific issue at the December 13th, 2016,
 13 meeting?
 14 A Discussion beyond what's captured here?
 15 Q Right.
 16 A I don't recall there being discussion.
 17 Q Do you recall hearing Mr. Potter's recommendation
 18 that the Group Insurance Board, quote, follow the
 19 law as it currently stands?
 20 A I do.
 21 Q Was there discussion among the board about how it
 22 was to do that at the December 13th, 2016, meeting?
 23 A How it was to follow current law?
 24 Q Right.
 25 A I don't believe so because I think there was

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1 understanding that we would proceed as originally
 2 intended.
 3 Q That was an understanding held by the board?
 4 MR. ROTH: Objection; calls for
 5 speculation.
 6 Q You testified that there was an understanding
 7 about how the board was to proceed; is that right?
 8 A I believe so.
 9 Q What's the basis for your testimony that there was
 10 this understanding?
 11 A The board did not act to change the benefit.
 12 Q So is it your understanding that the board's
 13 opinion as of December 13th, 2016, was that the
 14 law required the removal of the exclusion?
 15 MR. ROTH: Objection; calls for
 16 speculation.
 17 A Can you repeat the question?
 18 (Question read)
 19 MR. ROTH: Same objection.
 20 A I don't think that's what the focus of the board
 21 discussion relayed here on page 9 of this memo.
 22 Q That wasn't my question, though.
 23 Is it your belief that the opinion of the
 24 board as of December 13th, 2016, was that it would
 25 remove the exclusion consistent with ETF's opinion

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1 on that issue?
 2 MR. ROTH: Same objection.
 3 A So let me state this a different way, because I'm
 4 struggling to understand your question.
 5 Q Please.
 6 A At the close of this board meeting, I believe the
 7 board understood that the exclusion was continuing
 8 to be removed for the 2017 plan year.
 9 Q And that was consistent with, quote, the law as it
 10 currently stands as of December 13th, 2016; is
 11 that right?
 12 MR. ROTH: Objection to the extent
 13 it calls for a legal conclusion.
 14 Q Is that your understanding?
 15 A I didn't understand your question.
 16 Q The minutes state, "Mr. Potter stated that the DOJ
 17 recommends the board follow the law as it
 18 currently stands."
 19 Did I read that correctly?
 20 A Yes.
 21 Q As of December 13th, 2016, the law as it currently
 22 stands, was that the exclusion needed to be
 23 removed; right?
 24 MR. ROTH: Objection; calls for a
 25 legal conclusion.

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1 Q And that's based on the opinions of ETF's own
 2 legal staff; right?
 3 A So the status of the federal law was the same as
 4 of December 13th.
 5 Q The same as what?
 6 A As when the board approved the removal in July.
 7 Q But wasn't DOJ, as of December 13th, 2016,
 8 recommending that the exclusion not be removed and
 9 that the board didn't need to remove the
 10 exclusion? Is that a fair summary of what their
 11 August 10th, 2016, memo states?
 12 MR. ROTH: Objection. That memo
 13 speaks for itself and calls for a legal
 14 conclusion.
 15 Q I'm confused about this, and I'm just trying to
 16 get some clarity.
 17 A Okay.
 18 Q Mr. Potter, part of DOJ, is at the
 19 December 13th, 2016, meeting; is that right?
 20 A Correct.
 21 Q And he's there to potentially answer questions
 22 about the August 10th, 2016, opinion from DOJ; is
 23 that right?
 24 A I think his primary purpose was to provide an
 25 update on the lawsuit.

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1 Q Which lawsuit?
 2 A The federal lawsuit in Texas challenging the rule.
 3 Q So the DOJ recommendation referenced on page 9 is
 4 in relation to the Texas lawsuit; is that right?
 5 A The -- I'm sorry. The what referred to on page 9?
 6 Q I'm asking you about the DOJ recommendation as of
 7 December 13th, 2016. They're recommending the
 8 board follow the law as it currently stands.
 9 A What -- I don't see the -- okay. Oh, I was
 10 looking for December 13th and -- okay. So
 11 Mr. Potter stated the DOJ recommend the board
 12 follow the law as it currently stands.
 13 Q Is it your understanding that the law as it stood
 14 as of December 13th, 2016, was that the board
 15 needed to remove the exclusion?
 16 A The law is the law, and there had been no change
 17 to the federal law.
 18 THE WITNESS: Could we take a
 19 break?
 20 MR. FAIRWEATHER: Sure.
 21 (Recess)
 22 Q Ms. Ellinger, you have the Deposition Exhibit 5 in
 23 front of you from Mr. Day's deposition; is that
 24 right?
 25 A Yes.

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1 Q The very last entry before the meeting was
 2 adjourned states that ETF was directed to proceed
 3 with implementation of language previously
 4 adopted. Is that a reference to the
 5 July 12th, 2016, decision to remove the exclusion?
 6 A Yes.
 7 Q Did the board ultimately reassess the language at
 8 a future board meeting?
 9 A Yes.
 10 Q Do you recall when that meeting was?
 11 A December 30th.
 12 (Exhibit No. 12 marked
 13 for identification)
 14 Q Do you have Deposition Exhibit 12 in front of you?
 15 A Yes.
 16 Q At the very bottom of the first page, it states
 17 the meeting date is 2/8/17.
 18 Do you see that?
 19 A Yes.
 20 Q Is that because the minutes were set as Item 1 for
 21 that February 2017 meeting for approval?
 22 A It is a typo.
 23 Q So --
 24 A Because -- oh, I'm sorry. No, you're right. This
 25 would have been -- you are correct. I'm sorry. I

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1 thought we found another typo. This would have
 2 been Agenda Item 1 at the February 8th, 2017,
 3 board meeting.
 4 Q But in any event, these are the minutes of the
 5 December 30th, 2016, meeting of the board; is that
 6 right?
 7 A Correct.
 8 Q Do you recall why the meeting was held on such a
 9 late date in 2016? If you need to review those
 10 minutes, go ahead.
 11 A Yes, I would prefer to take a minute to do that.
 12 Q Sure.
 13 A So my recollection was that there was anticipation
 14 that there would be action on the Texas lawsuit
 15 that might warrant board discussion.
 16 Q Do you know why there was anticipation about
 17 potential action in the Texas lawsuit, where that
 18 came from?
 19 A I do not.
 20 Q But it's your understanding that as of
 21 December 30th, 2016, nothing had happened with
 22 respect to the Texas lawsuit challenging the
 23 legality of the HHS regulations; is that right?
 24 A That is my understanding.
 25 Q Who's Waylon Hurlburt?

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1 A Waylon Hurlburt was the DOA budget director and
 2 was named as the DOA's secretary designee for this
 3 board meeting.
 4 Q So is it accurate that the DOA could change
 5 designees for board meetings from meeting to
 6 meeting?
 7 A Yes, they can.
 8 Q Had Mr. Hurlburt acted as the DOA's designee to
 9 the board at times prior to December 30th, 2016,
 10 to your knowledge?
 11 A He had not.
 12 Q Did you know him prior to this meeting?
 13 A I did.
 14 Q How is it that you knew him?
 15 A ETF staff often can provide guidance to the DOA
 16 budget office.
 17 Q And Mr. Potter from the DOJ also attended the
 18 December 30th meeting; is that right?
 19 A That is my recollection.
 20 Q Do you recall whether, as of the
 21 December 13th, 2016, meeting, the
 22 State of Wisconsin had joined the federal lawsuit
 23 in Texas that we've been talking about here today?
 24 A I believe that was the case.
 25 Q So as of the previous board meeting, the State of

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1 Wisconsin had already been a party to that action?
2 A That is my recollection.
3 Q But the court in Texas had not yet made any
4 decision in the lawsuit; is that right?
5 A Correct.
6 Q Even with respect to a preliminary injunction, if
7 you know?
8 A I don't know.
9 Q If you could, turn to page 3 of the document. The
10 portion after the -- well, I guess it's the
11 announcement of action taken on business. Do you
12 see that towards the top?
13 A Yes.
14 Q Do you recall whether the board was updated on
15 this issue at its January 18th, 2017, meeting?
16 A The board did not reconvene January 18th.
17 Q Was there any January meeting, that you recall?
18 A There was not.
19 Q As it relates to the HHS non-discrimination rule,
20 there's a motion on the second half of the
21 page made by Mr. Hurlburt; is that right?
22 A Yes.
23 Q As you testified earlier, he was the DOA designee
24 to the board meeting of December 30th; is that
25 right?

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1 A Correct.
2 Q He had not attended board meetings, to your
3 recollection, at any point prior to this meeting,
4 had he?
5 A Correct.
6 Q He made a motion to reinstate the current
7 exclusion related to benefits and services related
8 to gender reassignment or sexual transformation
9 contingent on all the following. And I'm reading
10 from the document. Then there's a series of four
11 contingencies.
12 Do you see that?
13 A Yes.
14 Q What do you recall about the discussion about the
15 development of these four contingencies?
16 MR. ROTH: I'll repeat the
17 objection that's been made at prior
18 depositions that I think both of you are
19 aware. To the extent that the origin of
20 those contingencies were discussed in closed
21 session, which is subject to attorney/client
22 privilege, I'll instruct the witness not to
23 answer. I understand you all disagree, but I
24 think we're at an impasse on that.
25 She can answer to the extent any of

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1 those discussions did not relate to
2 conversations with legal counsel, but I'll
3 leave that to her.
4 Q Can you give me an answer as it relates to
5 discussion that did not involve legal counsel?
6 A My response is I was not in the closed session
7 portion of the meeting.
8 Q Was there any discussion of the four contingencies
9 in open session of the December 30th, 2016,
10 meeting?
11 A Not that I recall.
12 Q So is it your recollection that the board came out
13 of closed session, at which you were not present,
14 and immediately Mr. Hurlburt made the motion
15 described on page 3?
16 A So I think I may have misstated, so let me just
17 clarify. When I said I was not part of closed
18 session, the board was in closed session for
19 three hours.
20 Q Right.
21 A Some staff were brought into the tail end of
22 closed session to lay out the contingencies that
23 were -- that we just went through on page 3 of the
24 open session meeting minutes. And then the board
25 went back into open session.

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1 Q Which ETF staff members went in to lay out the
2 four contingencies?
3 A So the staff didn't lay out -- well, the staff,
4 like myself, who had not been part of the bulk of
5 the closed session, we did not lay out the
6 contingencies. I don't recall if it was staff,
7 DOJ, or a board member that laid these out.
8 Q You're referencing, with respect to the laying out
9 of the contingencies, something that did happen in
10 closed session; is that right?
11 A That's my recollection.
12 Q You did not go into that closed session; right?
13 A You will see -- let me point you to the top of
14 page 3, what I'm referring to. The first
15 non-bolded paragraph says, "Other ETF staff were
16 invited into the closed session at 6:15."
17 Q Right.
18 A I would have been one of those staff, just for the
19 nine minutes before they went into open session.
20 Q So just to be clear, you did attend the last
21 nine minutes of the closed session?
22 A Correct.
23 Q Do you recall getting any kind of legal advice or
24 counsel from DOJ or ETF during those nine minutes?
25 A No. The focus was the contingencies that have

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1 been discussed.
 2 Q What happened during the nine minutes?
 3 A These were laid out -- again, "these" being the
 4 contingencies -- and I don't recall by whom.
 5 Q So, if you know, why was ETF staff called in for
 6 the final nine minutes?
 7 A I can't speak to that.
 8 Q Did ETF staff answer questions from the board
 9 during those nine minutes?
 10 A Not that I recall.
 11 Q Do you recall ETF staff making any kind of
 12 contribution or presentation to the board during
 13 those nine minutes?
 14 A Presentation, no.
 15 Q Do you recall whether anyone, not board members,
 16 requested any information from ETF staff during
 17 those nine minutes?
 18 A I don't recall.
 19 Q Outside of your recollection that generally the
 20 four contingencies were laid out during that
 21 nine-minute period, do you recall anything else
 22 about what happened during the nine minutes?
 23 A No.
 24 Q So then the board reconvened in open session.
 25 Mr. Hurlburt made his motion. That's reprinted at

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1 the bottom of page 3.
 2 Was there any discussion about the motion
 3 after it was made, in open session?
 4 A Not that I recall.
 5 Q The minutes state that two members, Herschel Day
 6 and, I believe, Nancy Thompson, voted nay.
 7 Do you see that?
 8 A I do.
 9 Q Do you recall if either Mr. Day or Ms. Thompson
 10 made any statements as to why they were voting
 11 that way?
 12 A I don't recall.
 13 Q Do you recall if any of the other board members
 14 made statements about why they were voting in
 15 favor of the motion?
 16 A Not that I recall.
 17 Q Do you know who -- strike that. Give me one
 18 second.
 19 If you could look back at the
 20 Day Deposition Exhibit 5 here, under the board
 21 members present, do you know which of those board
 22 members was the DOA designee at the December 13th
 23 meeting?
 24 A That would have been Michael Heifetz.
 25 Q Had Mr. Heifetz been a regular DOA designee to the

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1 board meetings?
 2 A Yes.
 3 Q Do you recall any other DOA designees, other than
 4 Mr. Heifetz, during 2016 at all other than
 5 Mr. Heifetz and Mr. Hurlburt?
 6 A Not that I recall.
 7 Q Did you find it odd that Mr. Hurlburt had been
 8 designated as a DOA representative at that
 9 meeting?
 10 MR. ROTH: Objection; vague.
 11 Q Were you surprised?
 12 A No. We have -- from time to time, due to
 13 scheduling conflicts, we have board members that
 14 send a different designee in their stead.
 15 Q At the December 30th, 2016, meeting, was there any
 16 discussion about how the board would determine
 17 whether the four contingencies had been met?
 18 A I don't recall.
 19 Q Was there any discussion that you recall about
 20 which entity would make the determination about
 21 whether the four contingencies had been met?
 22 A I don't recall.
 23 Q Do you know who ultimately made that determination?
 24 MR. ROTH: I don't know what she's
 25 going to answer, but I'll object to the

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1 extent it implicates
 2 attorney/client-privileged communication and
 3 instruct her not to answer if that's the
 4 source of the knowledge.
 5 A So ETF's legal services staff would have been part
 6 of that discussion.
 7 Q Do you know who else was part of that discussion?
 8 A Our secretary's office.
 9 Q So ETF Office of Legal Services and ETF's
 10 secretary were involved in making the
 11 determination of when all of the four
 12 contingencies had been met; is that right?
 13 A Yes.
 14 Q Do you know anyone else who was involved in that
 15 determination?
 16 A I will say we reached out to our board chair to
 17 confirm our thinking on the fact that the
 18 contingencies had been met.
 19 Q Did you have trouble getting any kind of response
 20 from Mr. Farrell?
 21 A No.
 22 Q Do you recall when you reached out to him?
 23 A I do not.
 24 Q So at some point, did ETF make a determination
 25 that the contingencies had been met?

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1 A Yes.
2 (Exhibit No. 13 marked
3 for identification)
4 Q I'll give you a minute to take a look at that.
5 Do you recall receiving the e-mail from
6 Mr. Farrell, Deposition Exhibit 13, the bottom
7 half of the page?
8 A Yes.
9 Q Do you know, as of January 17th, 2017, what final
10 bits of information were needed regarding gender
11 issue, as stated in Mr. Farrell's e-mail?
12 A So I'm not sure which of the contingencies he's
13 referring to definitively.
14 Q The top portion of Deposition Exhibit 13 is an
15 e-mail from the secretary, Bob Conlin, to you and
16 to Mr. Farrell responding to Mr. Farrell's e-mail;
17 is that accurate?
18 A Yes.
19 Q Do you know what AG's opinion ETF received as of
20 January 17th, 2017, referenced in that middle
21 paragraph?
22 A I would assume it is the breach of board members'
23 fiduciary duties contingency.
24 Q And that's the fourth contingency?
25 A Correct.

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1 Q Mr. Conlin goes on to state that, "The next
2 milestone is to negotiate with the plans, which
3 will likely involve providing them notice and an
4 acknowledgement that the benefit is no longer
5 covered. We would expect that to go to the plans
6 in the no-too-distant future."
7 Is that the third contingency?
8 A That's correct.
9 Q Is it your recollection that as of
10 January 17th, 2017, Contingencies 1 and 2 had been
11 met?
12 MR. ROTH: Sorry. I'd just like to
13 ask a clarifying question. When you say
14 "Contingencies 1 and 2," I assume on the
15 bullet points we're assuming it's 1, 2, 3,
16 and 4, in descending order from the top.
17 MR. FAIRWEATHER: Correct. Thank
18 you.
19 A That seems like a logical conclusion.
20 (Exhibit No. 14 marked
21 for identification)
22 Q I'll give you a minute to take a look at
23 Deposition Exhibit 14.
24 A Okay.
25 Q Do you recall sending this e-mail to Mr. Farrell?

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1 A Yes.
2 Q Did you have a chance to read through the e-mail?
3 A Yes.
4 Q Is your recollection consistent with the first
5 paragraph here, that as of January 23rd, 2017, the
6 only contingency left was that of renegotiating
7 contracts?
8 A Yes.
9 Q Is it fair to say that as of January 23rd, 2017,
10 there was some confusion at ETF as to how to
11 proceed once the contingencies had been met?
12 MR. ROTH: Objection; vague.
13 A I wouldn't call it confusion. I would rather say
14 we wanted to make sure that we were proceeding in
15 a fashion that aligned with the board and the
16 board chair's preferences.
17 Q Is that why you wrote, "It is not clear to me
18 whether the board felt they would have another
19 chance to revisit the topic or if the expectation
20 was for ETF staff to determine when the
21 contingencies had been met"?
22 A Correct.
23 Q Was it your understanding that that issue had been
24 specifically addressed in closed session on
25 December 30th?

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1 A I think --
2 MR. ROTH: I'm going to object and
3 instruct her not to answer to the extent it
4 involves a topic that was discussed during
5 closed session. Maybe she learned about it
6 later. But if it was protected by privilege
7 then, it was later.
8 Q Well, I think you wrote in your e-mail you may
9 have a better sense of that based on the 12/30
10 closed session discussion.
11 Did I read that correctly?
12 A That's what's in the e-mail.
13 Q But you didn't have any specific knowledge about
14 whether that issue was discussed in the closed
15 session; is that right?
16 A I think that's why I would have sent this message.
17 Q So that's no?
18 A That's why I think I would have sent this message.
19 Q Do you recall how Mr. Farrell responded to this
20 e-mail, January 23rd, 2017?
21 A I do not.
22 Q You proposed potentially including this as an
23 action item on February 8th; is that right?
24 A Correct.
25 Q Was that a standard quarterly GIB meeting?

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1 A It was not.
2 Q The board does typically meet in February; is that
3 right?
4 A Yes, typically later in the month.
5 Q What was the purpose of that February 8th meeting?
6 A That was to finalize a decision on the
7 self-insuring of the state employee health
8 insurance program.
9 Q As of you sending the e-mail on
10 January 23rd, 2017, did you have a preference
11 about whether to include this as an item on the
12 2/8 meeting or whether ETF would just act without
13 it going back to the board?
14 A In general, my job at ETF was to follow the
15 board's direction.
16 Q So was it your preference that it go back to the
17 board for clarification?
18 A I didn't have a preference. I just wanted to
19 follow what the board wanted to have happen.
20 Q You weren't clear as of January 23rd about how
21 that was to take place, were you?
22 MR. ROTH: Objection; asked and
23 answered.
24 Q You don't have to answer it again.
25 A Okay.

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1 (Exhibit No. 15 marked
2 for identification)
3 Q I'll give you a chance to review
4 Deposition Exhibit 15.
5 A Okay.
6 Q If you look at the first e-mail in this chain,
7 there was one sent by you on January 27th at
8 3:02 p.m., you reference a proposed board memo on
9 the transgender issue. That is attached to the
10 e-mail; right?
11 A Yes.
12 Q What was that memo in reference to?
13 A Do you have a copy?
14 Q You don't recall --
15 A I'm not absolutely sure right now.
16 Q Before we get to that, you also reference two
17 additional items of particular interest, whether
18 you want to publicly share the DOJ memo and the
19 effective date for the reinstatement.
20 Is that a reference to the reinstatement of
21 the exclusion?
22 A Correct.
23 Q What is the DOJ memo referencing that you're
24 referencing there?
25 A I'm not absolutely certain.

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1 Q Well, as of January 27th, 2017, DOJ had produced
2 memos dated August 10th of 2016 and then a memo
3 relating to the fiduciary duties; is that right?
4 A Correct.
5 Q Are you aware of any other DOJ memos that had been
6 produced during 2016 or 2017?
7 A I am not.
8 Q Fair to say it's one of those two memos?
9 A I -- that seems logical.
10 Q Do you recall some kind of request for access to
11 the memo that you were responding to here with
12 respect to the publicly sharing aspect?
13 A I don't believe there was a request.
14 Q Mr. Farrell ultimately said that the memo should
15 be kept confidential; is that right?
16 A That's what it says.
17 Q If he had agreed that it could be shared, how
18 would you have publicly shared the memo?
19 MR. ROTH: Objection; calls for
20 speculation.
21 Q You testified that, to your recollection, there
22 was not a request for the memo; right?
23 A Correct.
24 Q So how would it have been publicly shared?
25 MR. ROTH: Same objection.

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1 A So I assume -- we put all of our board materials
2 online.
3 Q Is that what you were referencing with respect to
4 publicly sharing?
5 A That seems to be what I'm saying here.
6 Q Do you recall receiving a cost estimate from Segal
7 in January of 2017 as it relates to the removal of
8 the exclusion?
9 A Yes.
10 Q Was that something that you requested on behalf of
11 OSHP?
12 A Yes, I believe so.
13 Q Why did you request that?
14 A Because our read on the second of the contingency
15 was that we could not make changes to the program
16 that would increase the cost of the program. So
17 the main purpose of the Segal memo was to confirm
18 that reinstating the exclusion would not add cost
19 to the program.
20 (Exhibit No. 16 marked
21 for identification)
22 Q Is Deposition Exhibit 16 the memo that you're
23 referencing?
24 A Yes.
25 Q The reason that you requested the memo again was

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1 to establish that reinstating the exclusion would
2 not cause the State to incur additional expenses
3 or costs; is that right?
4 A Correct.
5 Q If you could look at page 1, the fourth paragraph,
6 "This brief memo is focused on the calculation of
7 potential cost impact to the State of Wisconsin
8 group health insurance plan for adding transgender
9 dysphoria benefits in 2017."
10 Is that consistent with the request you made
11 to Segal in January for a cost estimate?
12 A Yes.
13 Q So that's the flip side of what you needed to do
14 by statute; is that right?
15 MR. ROTH: Objection; vague.
16 Q This is the opposite of the reason -- strike that.
17 The reason you asked for the memo was to have
18 Segal confirm that putting the exclusion back in
19 place wouldn't cost the State any money; is that
20 right?
21 A Correct.
22 Q Their memo focused on what the cost of adding
23 transgender benefits in 2017 would be?
24 A That's correct.
25 Q You felt that this memo answered the question that

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1 you posed to Segal in asking them to create a memo?
2 A Yes.
3 (Exhibit No. 17 marked
4 for identification)
5 Q I'm going to have you take a look at Exhibit 17.
6 A Okay.
7 Q This is a bit out of order, but why is it that you
8 were having communications with the
9 City of Madison in May of 2017 regarding
10 transgender issues, if you recall?
11 A I do. I don't recall Greg's formal title with the
12 City. That's who Greg Leifer is. But they had
13 received requests. I don't know from whom,
14 whether it was employees or members of the
15 city council. But they were clearly getting
16 requests to see if the City could find a different
17 way to provide the benefits that the State had
18 excluded.
19 Q Your understanding was the City was trying to
20 provide benefits to State employees?
21 A No. I'm sorry. For context, the City of Madison
22 is one of the local employers in our program.
23 (Exhibit No. 18 marked
24 for identification)
25 Q Deposition Exhibit 18 looks like an e-mail from

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1 you to Sara Brockman. I'll give you a minute to
2 take a look at that.
3 A Okay.
4 Q Well, first of all, why were you e-mailing this
5 policy to Sara Brockman, if you remember?
6 A Oh, because Sara, as the board liaison, would send
7 out communications to the board on my behalf.
8 Q Was it your understanding that Ms. Brockman would
9 then send a copy of this GIB communications policy
10 to board members?
11 A Yes.
12 Q Do you recall the nature of the increased
13 traditional and social media attention as it
14 relates to the transgender exclusion as of
15 February 2017?
16 A I do.
17 Q Can you describe that for me?
18 A Yes. What motivated this communication was that
19 our board chair had been mentioned negatively in
20 Facebook posts in a fashion that was concerning.
21 And so we just wanted to let board members know
22 that they were welcome and should forward any
23 contacts to ETF so that we would be aware.
24 Q How was it that the mentions were concerning?
25 What were they?

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1 A My recollection was that there were threats about
2 actually going to Mike Farrell's home.
3 Q So in January of 2017, were health plan contract
4 amendments sent out to the participating plans?
5 A I'm sorry. What was the date?
6 Q In January of 2017, after there was a
7 determination that the contingencies had been met.
8 A I don't remember the exact day. It was the end of
9 January, early February. But I don't recall the
10 exact date that that went out.
11 Q Earlier in the day, you had testified about ETF's
12 Legal Services Office's opinion that these health
13 plans may have concerns about acting contrary to
14 the non-discrimination rule.
15 Do you recall that testimony?
16 MR. ROTH: Objection; misstates
17 testimony.
18 Q Do you recall --
19 A So I recall you sharing an e-mail message where
20 this topic was addressed.
21 Q After notice was sent out to the participating
22 health plans in late January/early February of
23 2017, did you receive any communication from the
24 participating health plans about concerns relating
25 to the reinstatement of the exclusion?

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1 A I know that we did, if I recall, I want to say
 2 maybe from two of our health plans.
 3 Q Do you recall WEA Trust being one of those?
 4 A Yes.
 5 Q Do you recall the other?
 6 A I believe Anthem.
 7 Q How were those handled by ETF?
 8 A So I would have had our primary health plan
 9 contact, who I believe was Tara Pray at the time,
 10 follow up with the health plans.
 11 (Exhibit No. 19 marked
 12 for identification)
 13 Q I'll give you a minute to take a look at
 14 Exhibit 19.
 15 A Okay. All right.
 16 Q Do you recognize this e-mail conversation that's
 17 dated February 14th and then 23rd?
 18 A Yes.
 19 Q Who's Joan Steele?
 20 A So Joan is another member of our -- of the OSHP
 21 team who often assisted with work involving the
 22 health plans because she had been in that role
 23 several years ago.
 24 Q So it indicates that Anthem and HealthPartners
 25 responded to the addenda and WEA Trust signed it

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1 but returned it with some comments; is that right?
 2 A I'm sorry. Where is the HealthPartners reference?
 3 Q Right at the bottom of the first page.
 4 A Oh, sorry. I missed that.
 5 Q That's okay.
 6 A Okay. All right.
 7 Q So two plans, Anthem and HealthPartners, responded
 8 and then WEA Trust signed the addenda but had some
 9 comments to it; is that accurate?
 10 A That -- that does sound accurate.
 11 Q Anthem and HealthPartners did not submit signed
 12 addenda. Did they ultimately do that?
 13 A I believe so.
 14 Q Do you know if the board revisited the transgender
 15 exclusion at any point during 2017, after
 16 February of 2017?
 17 A Yes.
 18 Q When was that?
 19 A I believe it was the May 2017 board meeting.
 20 Q What do you recall about that?
 21 A Again, this is the meeting where the board
 22 finalizes the benefit package for the following
 23 year. And one board member moved to amend the
 24 benefit package to, once again, remove this
 25 exclusion.

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1 Q Was that Mr. Day?
 2 A Yes.
 3 (Exhibit No. 20 marked
 4 for identification)
 5 Q I'll give you a minute to take a look at that.
 6 A All right. Is there --
 7 Q Page 8, I believe.
 8 A Okay.
 9 Q The minutes indicate that you attended the board
 10 meeting on May 24th, 2017; is that right?
 11 A Yes.
 12 Q What do you recall about any discussion relating
 13 to Mr. Day's motion as stated on page 8?
 14 A I think the minutes capture it accurately.
 15 Herschel moved to remove the exclusion. There was
 16 mention that the board was involved with
 17 litigation on this issue. The motion went forward
 18 and failed.
 19 Q The votes break down on page 9 at the very top?
 20 A Yes.
 21 Q So outside of what's in the minutes, do you recall
 22 any additional discussion regarding the motion?
 23 A I do not.
 24 Q Stacey Rolston, board member, is she a designee
 25 or --

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1 A Yes, she is the DPM designee.
 2 Q Division of Personnel Management?
 3 A Yes.
 4 Q So Ms. Rolston, as reflected in the minutes,
 5 stated that legal advice from the DOJ is required
 6 before reconsidering the gender identity benefit
 7 exclusion.
 8 Do you see that?
 9 A Yes.
 10 Q Is that consistent with what your understanding
 11 was as of May 24th, 2017?
 12 A Could you elaborate on the question?
 13 Q Is it your understanding that the board could have
 14 removed the exclusion without seeking legal advice
 15 from DOJ?
 16 MR. ROTH: Object to the extent it
 17 calls for a legal conclusion.
 18 A I think the intent of Ms. Rolston's comments here
 19 aligned with Mr. Neitzke's immediately above in
 20 the minutes, that it would be advisable,
 21 essentially, to consult legal counsel before
 22 making a change at this point in time.
 23 Q That was because of pending litigation; is that
 24 right?
 25 A Correct.

1 MR. FAIRWEATHER: Let's take a
2 break so I can check out my notes.
3 (Recess)
4 MR. FAIRWEATHER: I'm finished. I
5 don't have any more questions for you.
6 THE WITNESS: Thank you.
7 MR. ROTH: None from us. We're
8 done.
9 (Adjourning at 2:57 p.m.)
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1 STATE OF WISCONSIN)
2 COUNTY OF DANE) ss.
3 I, Rowan L. Bright, Registered Professional
4 Reporter and Notary Public in and for the State of
5 Wisconsin, do hereby certify that the foregoing
6 deposition of LISA M. ELLINGER was taken before me on
7 April 4, 2018, and reduced to writing by me, a
8 professional court reporter and disinterested person,
9 approved by all parties in interest and thereafter
10 converted to typewriting using computer-aided
11 transcription.
12 I further certify that I am not related to
13 nor an employee of counsel or any of the parties to
14 the action, nor am I in any way financially
15 interested in the outcome of this case.
16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and affixed my notarial seal of office at
18 Madison, Wisconsin, this 17th day of April 2018.
19
20
21 Notary Public, State of Wisconsin
22 My Commission Expires December 22, 2019
23
24
25

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