

In The Matter Of:

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

*Deposition of Tara S. Pray
April 10, 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 TARA S. PRAY,

taken at the instance of the Plaintiffs, under and
 pursuant to Section 804.05 of the Wisconsin Statutes,
 before Peggy S. Christensen, RPR, CRR, and
 Notary Public in and for the State of Wisconsin, at
 the offices of the State of Wisconsin Department of
 Justice, 17 West Main Street, Madison, Wisconsin, on
 April 10, 2018, commencing at 9:02 a.m. and ending at
 3:08 p.m.

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A P P E A R A N C E S

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

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

9 and

10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION, by
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 Lesbian Gay Bisexual Transgender Project,
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14 STATE OF WISCONSIN DEPARTMENT OF JUSTICE, by
 15 COLIN T. ROTH and STEVEN C. KILPATRICK,
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 Madison, Wisconsin 53707,
 17 appeared on behalf of the Defendants.

18 Also Present: Diana Felsmann

19

20

21

22

23

24

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15
 16
 17 (The original exhibits were attached to the original
 18 transcript and pdfs were provided to counsel)

19
 20
 21
 22
 23
 24 (The original deposition transcript was filed with
 25 Attorney Nicholas E. Fairweather)

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1 TARA S. PRAY, called as a witness,
 2 being first duly sworn, testified on oath as
 3 follows:
 4
 5 EXAMINATION
 6 By Mr. Dupuis:
 7 Q Good morning, Ms. Pray.
 8 A Good morning.
 9 Q My name is Larry Dupuis. I'm a lawyer with the
 10 ACLU of Wisconsin, and we represent the plaintiffs
 11 in the case of Boyden versus Wisconsin Department
 12 of Employee Trust Funds and a bunch of other
 13 defendants.
 14 Could you please state and spell your full
 15 name for the record.
 16 A Sure. Tara, T-a-r-a, Pray, P-r-a-y.
 17 Q Okay. And have you ever been through -- had the
 18 good fortune to be through a deposition before?
 19 A Once before.
 20 Q Okay. When was that?
 21 A About ten years ago.
 22 Q Okay. And what kind of case was that?
 23 A It was an employment discrimination case.
 24 Q Okay. And were you actually a party to that case
 25 or a witness?

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1 A Witness.
 2 Q Okay. Was it an employment discrimination case by
 3 a coworker of yours?
 4 A Yes.
 5 Q Okay.
 6 A Or an ex-coworker.
 7 Q Right. Were you at ETF at the time?
 8 A No.
 9 Q No, okay. Were you at Social Development
 10 Commission at the time?
 11 A Yes.
 12 Q Okay. Did you end up actually testifying in court
 13 in that case?
 14 A No.
 15 Q So I'm going to go over the ground rules for a
 16 deposition again. Even though you've been through
 17 one before, it's been ten years. Many people just
 18 want to put that kind of experience behind them
 19 and never remember -- don't want to remember it,
 20 so I'll remind you again.
 21 So the basic rules are all related to making
 22 sure we make a clean record, and so Peggy, the
 23 court reporter, is taking down everything we say.
 24 So, you know, one thing is to make sure that all
 25 of your answers are verbal rather than nods or

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1 shakes of the head which can't be transcribed, and
 2 uh-huhs and huh-uhs don't work real well on
 3 transcripts either. They're ambiguous. So if
 4 there is a yes or no answer that you want to give,
 5 make sure you actually say yes or no. Okay?
 6 A Okay.
 7 Q The other sort of related thing is we'll try to
 8 avoid cross-talk. So if you can wait until I've
 9 finished my question before you start answering,
 10 even though in a normal conversation, of course,
 11 you anticipate where I'm headed, just make sure
 12 you wait until I finish, and then I'll try to
 13 extend the same consideration to you when you're
 14 giving your answer. But, you know, we
 15 occasionally make mistakes.
 16 If at any point you don't understand a
 17 question that I ask, just let me know, and I can
 18 repeat it. Or if you don't understand even after
 19 I've repeated it, you can ask me to rephrase it.
 20 Okay?
 21 A Okay.
 22 Q If you answer a question, I will assume that you
 23 understood it. Is that fair?
 24 A Yes.
 25 Q Okay. And are you represented by the Attorney

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1 General's office today in this case?
 2 A I don't know. Yes.
 3 Q So in the course of the deposition, Mr. Roth
 4 probably, who is sitting next to you, may raise
 5 objections. In general, if you understand the
 6 question, you can answer it even though there is
 7 an objection. The only exception is if he
 8 actually directs you not to answer a question.
 9 Okay?
 10 A Okay.
 11 Q Is there any reason you can think of today why you
 12 would not be able to give truthful and accurate
 13 answers?
 14 A No.
 15 Q Okay. And you understand that you're under oath?
 16 A Yes.
 17 Q And that you need to tell the truth?
 18 A Yes.
 19 Q Okay. Did you meet with your attorneys in
 20 preparing for this deposition?
 21 A Yes.
 22 Q When was that?
 23 A Yesterday. Yesterday.
 24 Q Yesterday. Is that the only time you met with
 25 them?

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1 A Yes.
 2 Q Did you talk with them on the phone ever?
 3 A No.
 4 Q Okay. How long did you meet with them yesterday?
 5 A About two and a half hours.
 6 Q Okay. In the course of that prep -- Who was there
 7 for the preparation?
 8 A The people in this room.
 9 Q The same three?
 10 A These three, yep.
 11 Q Okay. So that would be Mr. Roth, Mr. Kilpatrick,
 12 and Ms. Felsmann?
 13 A Correct.
 14 Q Okay. Did you review any documents in the course
 15 of that preparation?
 16 A Yes.
 17 Q Do you know what documents you reviewed?
 18 A Some documents that may be talked about today,
 19 emails that I was -- either from me or that I was
 20 copied on.
 21 Q Did you review any other documents besides emails?
 22 A Group Insurance Board emails and minutes.
 23 Q So minutes of Group Insurance Board meetings?
 24 A Correct.
 25 Q Okay. So did you have any role in searching for

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1 documents in response to discovery requests? Did
 2 the attorneys ask you to look for documents
 3 several months ago to respond?
 4 A No.
 5 Q Okay. Were you ever asked to search through your
 6 paper files for documents that might be relevant
 7 to this case?
 8 A No.
 9 Q Were you asked to search your computer directories
 10 for documents that might be relevant to this case?
 11 A No.
 12 Q Okay. Do you know if someone else searched your
 13 directories?
 14 A I believe they did.
 15 Q Okay.
 16 A I was asked to keep my computer on, or, like,
 17 connected to the network.
 18 Q Okay. And when was that about?
 19 A December.
 20 Q Okay. So we'll be looking at a number of
 21 documents that were produced in discovery in this
 22 case, and in some of them there will be a number
 23 in the lower right-hand corner that will be a
 24 number that was assigned when they were produced
 25 to us by the Department of Justice. But mostly

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1 when I'm referring to them, I'll just be referring
 2 to them by an exhibit number that the court
 3 reporter will put on them. Okay?
 4 A Okay.
 5 Q And some of them have page numbers and some of
 6 them don't have clear page numbers. I'll try to
 7 get you to the right place as efficiently as
 8 possible, but bear with me because occasionally it
 9 might be harder to find them with longer
 10 documents. Okay?
 11 A Okay.
 12 Q So where do you live, just the city? What city do
 13 you live in?
 14 A Sun Prairie, Wisconsin.
 15 Q Okay. And I'd like to ask you a few questions
 16 about your educational background. Where did you
 17 go to high school?
 18 A Appleton East.
 19 Q Appleton East. And did you graduate?
 20 A Yes.
 21 Q When did you graduate?
 22 A '96.
 23 Q '96. The year I graduated from law school. And
 24 did you then go to college?
 25 A Yes.

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1 Q Where did you go?
 2 A UW-Milwaukee.
 3 Q And what did you study at UWM?
 4 A Lots of things. But my degree was in accounting.
 5 Q Accounting. So in the school of business?
 6 A Yes.
 7 Q Okay. And did you get a bachelor's of business
 8 administration?
 9 A Yes.
 10 Q And what year was that?
 11 A 2005.
 12 Q Okay. Have you received any other academic
 13 degrees since then?
 14 A I have a graduate certificate.
 15 Q In what?
 16 A In nonprofit governance and management.
 17 Q Okay. And is that also from UWM?
 18 A Yes.
 19 Q And when did you get that?
 20 A 2009.
 21 Q Any other graduate degrees?
 22 A Not credit graduate, no.
 23 Q Okay. Have you taken some graduate coursework in
 24 some other format?
 25 A Not graduate. I just did a certified public

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1 manager program.
 2 Q Okay. Who was that through?
 3 A Through the UW-Madison continuing studies program.
 4 Q Okay. Have you had any training specifically in
 5 healthcare policy or healthcare management?
 6 A Yes.
 7 Q Do you want to describe it in general terms?
 8 A Well, I've had different -- attended different
 9 training conferences and things. I have part of a
 10 certificate in, it's called -- oh, what's it stand
 11 for? It's an acronym.
 12 Q If you know the acronym, maybe we can work back
 13 from there.
 14 A It's CAPPP, C-A-P-P-P. It's the certification
 15 of -- oh, my gosh, I'm blanking. Well, it's
 16 through the International Foundation of Employee
 17 Benefit Plans.
 18 Q Okay. And then you've done conferences, you said?
 19 A Yep. Uh-huh.
 20 Q Where you got continuing education credits of some
 21 sort?
 22 A Correct. Yep.
 23 Q Okay. You're working at the Department of
 24 Employee Trust Funds now; is that right?
 25 A Correct.

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1 Q Okay. And what is your current position with the
 2 Department of Employee Trust Funds?
 3 A I'm a member engagement and communication lead for
 4 the Office of Strategic Health Policy.
 5 Q Okay. Member engagement and what lead?
 6 A Communication.
 7 Q Okay. And how long have you been in that
 8 position?
 9 A Since November of '17.
 10 Q How long have you been -- I'll sometimes refer to
 11 ETF meaning the Department of Employee Trust
 12 Funds. Is that okay?
 13 A Yep. Yes.
 14 Q And the Office of Strategic Health Policy,
 15 sometimes I'll refer to it as OSHP or OSHP. Is
 16 that fair?
 17 A Yes.
 18 Q How long have you worked for ETF?
 19 A Since 2013.
 20 Q So why don't we go through the positions you've
 21 had at ETF and just sort of approximate years,
 22 whichever is easier for you where you started in
 23 2013 through 2017 or if you want to go backwards
 24 from that. Just tell me what you did in the
 25 various positions.

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1 A Sure. So from 2013 to '14 I managed the life
 2 insurance program and the employee reimbursement
 3 accounts programs, which is like flex spending.
 4 And then after that I became the alternate health
 5 plan manager, which the position title kind of
 6 changed to just health program manager. The
 7 position was the same. Until last November.
 8 Q Okay. So November '17?
 9 A Uh-huh. Correct.
 10 Q So basically the alternate health plan manager and
 11 health program manager -- or health plan manager,
 12 is that what you said?
 13 A I think it's health program manager.
 14 Q Okay. That's essentially the same position;
 15 correct?
 16 A Correct.
 17 Q Why don't you tell me what you did in that job,
 18 the alternate health plan manager/health program
 19 manager.
 20 A So my primary role was to be the main point of
 21 contact for 18 health plans, or you could call
 22 them insurers or carriers that the state contracts
 23 with to cover health insurance for state and local
 24 employees and retirees.
 25 I also helped to develop and interpret policy

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1 and worked on the contract with the health plans
 2 and communications related to benefit policies.
 3 Q Okay. Who was your supervisor in that position?
 4 A I had several. Do you want me to list them?
 5 Q Sure.
 6 A Okay. So my first supervisor was Mary Statz.
 7 Q S-t-a-t-z?
 8 A Correct.
 9 Q Okay.
 10 A Then it was Michael Bormett, B-o-r-m-e-t-t, I
 11 believe. Then it was Eileen Mallow.
 12 Q And did all of those people have the same job
 13 title?
 14 A No.
 15 Q Okay. So do you know what the job title of Eileen
 16 Mallow was at the time?
 17 A Deputy director.
 18 Q Of OSHP?
 19 A Of OSHP.
 20 Q Okay. And the director of OSHP at that time would
 21 have been --
 22 A Lisa Ellinger.
 23 Q So there was a layer between you and Lisa
 24 Ellinger?
 25 A Correct.

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1 Q Was that through the whole time that each of these
 2 people reported -- Mary Statz, Michael Bormett,
 3 and Eileen Mallow reported to Lisa Ellinger?
 4 A Correct. Well, when Mary -- so she was the first
 5 person. There was two layers between her and Lisa.
 6 Q Okay.
 7 A But then there was a reorg.
 8 Q Okay.
 9 A So then one layer was no longer.
 10 Q Okay. So that was when Michael Bormett came in
 11 basically or was the reorg even before that?
 12 A I think the reorg was right around when Michael
 13 Bormett came in.
 14 Q Okay. So was his position the same as Eileen's?
 15 Was it deputy director of OSHP?
 16 A I can't remember exactly. It was either bureau
 17 director of -- I don't know. It was around the
 18 same time.
 19 Q Okay. Did people report to you in that position?
 20 A No.
 21 Q And what is your role right now as member
 22 engagement and communication lead? What do you do
 23 in that position?
 24 A So I lead the effort for the annual open
 25 enrollment materials and any educational or, like,

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1 training materials related to the benefit
 2 programs. I also work on presentations to various
 3 stakeholder groups. That's basically the gist of
 4 it.
 5 Q Okay. So fair to say before you were working
 6 largely on policy issues and working with the
 7 plans, as well as other folks in OSHP to develop
 8 policy with GIB; is that fair?
 9 A Yes.
 10 Q And now you're more sort of focused on members and
 11 their interface with the health plans?
 12 A Correct.
 13 Q Okay.
 14 A Their interface with the benefits, I would say.
 15 Q The benefits?
 16 A Yep.
 17 Q More generally. Are you working on more than the
 18 health-related plans now?
 19 A A little, but primarily the health-related plans.
 20 Q Okay. So dental, which is --
 21 A Dental, medical.
 22 Q Pharmacy?
 23 A Pharmacy, flex spending, and life insurance is
 24 under our umbrella too.
 25 Q Life insurance is under OSHP or --

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1 A Yes.
 2 Q Okay. So we're going to focus mostly, I think, on
 3 the time that you were the health program manager
 4 and alternate health plan manager. I'd like to
 5 ask you a few questions about that.
 6 Actually one question. Were you ever an
 7 employee benefit plan policy advisor? Is that a
 8 term that you're familiar with?
 9 A Yes. That's the classification of my role. I
 10 mean, even now, that's the classification of my
 11 role.
 12 Q Can you tell me a little bit about how that
 13 differs from the job title? It sounds like
 14 classification is a broader category, possibly
 15 cuts across departments or whatever?
 16 A Yes. So that's the broad classification. So all
 17 of my coworkers on my team -- have that
 18 classification, but we all focus on different
 19 program areas.
 20 Q Okay. Is there anything that sort of ties those
 21 positions together in terms of the substance that
 22 they work on or is it really just sort of a pay
 23 rate classification? How does it work?
 24 A Well, so in OSHP we all -- I mean, we all -- so
 25 there is kind of this set of benefits and we all

Page 21

1 kind of specialize in different areas, but they're
 2 all part of a package that goes to the employees
 3 and some retirees.
 4 Q Okay.
 5 A So we have to, I mean, somewhat know each other's
 6 stuff, but we're kind of like the point people on
 7 each set of benefits, whatever our role is.
 8 Q Okay. So we deposed Jeff Bogardus, and his role,
 9 at least for some length of time, has been
 10 pharmacy benefits; correct?
 11 A Correct.
 12 Q Okay. And your focus has sort of shifted a
 13 little, but it's been more the other healthcare
 14 benefits and earlier on life insurance, it sounds
 15 like; correct?
 16 A Correct.
 17 Q Okay. So is Jeff Bogardus also classified as an
 18 employee benefit plan policy advisor?
 19 A Yes.
 20 Q Or employee benefit policy advisor, whatever the
 21 term is?
 22 A Yes.
 23 Q Okay. Do you know how many people are in that
 24 classification in OSHP, roughly?
 25 A I think it's about ten.

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1 Q Is there anybody else who had the role of
 2 alternate health plan manager or health program
 3 manager at the same time that you did?
 4 A I sort of informally have been transitioning into
 5 this more communications role. So Joan Steele was
 6 kind of not on paper but transitioning into that
 7 role probably starting in 2016 and then into 2017.
 8 I think in 2017 earlier in the year she officially
 9 became -- took on that role.
 10 Q Okay. So for a while both of you were in that job
 11 title?
 12 A Technically, yes.
 13 Q Okay. In sort of early 2017 to November 2017?
 14 A Correct.
 15 Q So you have the good fortune of having been on a
 16 very high proportion of the emails involving the
 17 gender confirmation/gender transition benefit in
 18 2016 and moving into 2017. Do you know why that is?
 19 A Because I was responsible for the uniform
 20 benefits, so I was, like, the primary person for
 21 that document itself and then also communicating
 22 about benefits to our members.
 23 Q And the gender confirmation or gender transition
 24 benefit issue arose in the context of the uniform
 25 benefits package; correct?

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1 A Correct.
 2 Q And the uniform benefits package is basically the
 3 set of healthcare benefits to which state
 4 employees, some state retirees, and some local
 5 employees, for which they're eligible as a benefit
 6 of their employment; correct?
 7 A Correct.
 8 Q Okay. So in that role who were the people within
 9 ETF that you worked with most closely?
 10 A Well, my supervisor, Eileen Mallow. So for the
 11 longest time in that role she was my supervisor.
 12 Q And she was the supervisor pretty much throughout
 13 the 2016 period; right?
 14 A Correct.
 15 Q Okay. So we can focus on that.
 16 A Sure.
 17 Q I mean, I think we can sort of start with -- there
 18 are some questions I'll have that go earlier than
 19 that, but mostly when we're talking, we'll be
 20 talking about 2016 and early 2017.
 21 A Okay. Also Arlene Larson.
 22 Q And what's her role?
 23 A So her title is federal -- like federal policy
 24 program manager or something like that. But,
 25 again, she has the same classification. And, I

Page 24

1 mean, she doesn't just deal with federal policy,
 2 but she's been probably on the team one of the
 3 longest so she's got a good history so I work
 4 closely with her, and then also Joan Steele.
 5 Q Who at the time for -- you said her role was --
 6 what was her role at the time?
 7 A So she was kind of transitioning into my role or
 8 with me, so I worked with her. She was
 9 technically hired -- or she was like a data
 10 person, so like a healthcare data person.
 11 Q But still within OSHP?
 12 A Correct.
 13 Q Okay. And what about GIB members? Did you
 14 interact with GIB members outside of -- let's
 15 start with outside the context of board meetings?
 16 A No.
 17 Q Okay. So only at board meetings?
 18 A Correct.
 19 Q You didn't have direct communication by email or
 20 phone with board members?
 21 A No.
 22 Q Okay. And did you attend -- As part of your job
 23 duties, was one of them to attend GIB meetings?
 24 A Yes.
 25 Q Did you attend pretty much all GIB meetings?

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1 A Yes.
 2 Q Okay.
 3 A All except one.
 4 Q December 30, 2016?
 5 A Yes. Correct.
 6 Q And how about -- and again let's focus on 2016,
 7 nonETF/GIB entities, who did you work with most?
 8 A Say that again.
 9 Q So it sounds like you had some communication on a
 10 regular basis with health plans, for example.
 11 A Oh, yes.
 12 Q So health plan members, did you communicate with
 13 members frequently during 2016?
 14 A I primarily have communicated with health plans.
 15 I don't communicate directly with members very
 16 often, but once in awhile I do.
 17 Q Okay.
 18 A I have not communicated with any members directly
 19 on this topic, though.
 20 Q Okay.
 21 A And then also sometimes employers.
 22 Q Okay. And when you say employers, these are
 23 government employers?
 24 A Correct.
 25 Q So UW system is one of those; correct?

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1 A Correct. Yes.
 2 Q State employer?
 3 A Correct.
 4 Q So who from ETF typically attends GIB meetings?
 5 A Who from ETF. Well, usually almost all members of
 6 OSHP. Sometimes they don't attend if they don't
 7 have something on the agenda that's related to
 8 their program area. And members of the
 9 secretary's office, legal services, office of
 10 communications.
 11 Q And from the --
 12 A IT people.
 13 Q Oh, go ahead. IT people?
 14 A IT people.
 15 Q And from the secretary's office, does Mr. Conlin
 16 himself usually attend?
 17 A Yes.
 18 Q And what about the deputy secretary?
 19 A Yes.
 20 Q And is that still currently --
 21 A John Voelker.
 22 Q John Voelker. And he was deputy secretary during
 23 all of 2016 as well; correct?
 24 A Yes.
 25 Q And what was your role in general terms at GIB

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1 meetings?
 2 A So if there was something being either recommended
 3 to the Group Insurance Board or sometimes just
 4 information for the Group Insurance Board related
 5 to the group health insurance program, I was
 6 generally the person presenting that information
 7 to the Group Insurance Board.
 8 Q So that would have been -- would you have also
 9 been the primary person -- well, I'd like to sort
 10 of clarify a little bit.
 11 So when you say group health insurance
 12 program, are you including within that the
 13 pharmacy benefit?
 14 A Sometimes.
 15 Q Okay. And so did you sometimes give presentations
 16 about pharmacy benefits to group health -- to the
 17 GIB?
 18 A Not exclusively. If there was something that was
 19 just related to pharmacy benefits, that would be
 20 handled by Jeff Bogardus. But if it was kind of
 21 part of a benefit package type situation, then I
 22 might have presented it.
 23 Q Okay. And what about -- like if there was a
 24 benefit program that involved some sort of federal
 25 funding, would you have been involved in

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1 presenting that?
 2 A Well, maybe indirectly. I mean, I think our only
 3 direct federal funds for the program are related
 4 to Medicare Part D, which is the drug benefit,
 5 which would primarily be Jeff.
 6 Q In your role with -- sort of you say you're all in
 7 the same classification, you kind of learn one
 8 other's jobs. Do you have some understanding of
 9 how the Medicare Part D funding works within ETF?
 10 A I have some understanding.
 11 Q Okay. And my understanding is there are some
 12 other Medicare, like Medicare Advantage and
 13 Medicare Plus?
 14 A Sure.
 15 Q What are those?
 16 A So the Medicare Plus, it's a program option that's
 17 a supplemental Medicare plan. So people who have
 18 that benefit, Medicare pays first and then the
 19 benefit pays secondary.
 20 Q And when you say the benefit, that's the state-
 21 provided benefit?
 22 A The state-provided benefit pays secondary.
 23 Q Okay.
 24 A Medicare Advantage works a little differently,
 25 where the health plan that the state contracts

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1 with would pay the whole benefit and then that
2 health plan would get compensated from Medicare
3 directly.
4 Q So there is a subsidy of some sort from the
5 federal government?
6 A It's a subsidy, correct. Yep.
7 Q And those are sort of I used to think of them as
8 Medicare HMO plans. Is that sort of the --
9 A Technically, neither of those are HMO plans. But
10 then we also have a Medicare option with all the
11 other, like, 17 health plans, that we call it like
12 a Medicare wraparound.
13 Q Okay.
14 A That is a Medicare HMO plan. And that's similar
15 where Medicare pays first and the health plan pays
16 second but the benefits are a little different.
17 Q Okay.
18 A It covers some extra things that the supplement
19 doesn't cover.
20 Q Okay. And those Medicare supplemental plans, I
21 mean, is it fair to describe all three of those as
22 essentially Medicare supplement -- supplemental
23 Medicare health insurance? So it's Medigap
24 basically, is that a fair way of characterizing it?
25 MR. ROTH: Objection. Vague. I

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1 don't know what Medigap is.
2 Q Do you know what Medigap is?
3 A I do. I think technically they're considered
4 Medicare coordinated plans and they're not all
5 technically Medigap or supplemental.
6 Q What is the difference between a Medicare
7 coordinated plan and a Medigap or supplemental
8 plan?
9 A It's my understanding that, like a Medicare
10 supplement, it covers only what Medicare covers
11 but it just makes up the difference in the cost up
12 to a certain level. Our plans are a little, for
13 the most part, richer than that and they cover
14 other benefits, so it's like a technical insurance
15 thing, but technically they're not supplements.
16 Q So, for example, Medicare doesn't typically cover
17 outpatient services; right? Like regular office
18 visits, for example, Medicare itself doesn't cover
19 doctors office visits?
20 A They do.
21 Q They do?
22 A They do. So an example might be like hearing
23 aids. Medicare doesn't cover hearing aids but our
24 programs --
25 Q Do cover hearing aids?

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1 A Do, except for the supplement which doesn't.
2 Q Okay. I'll probably have some more questions
3 about that later, but I'll pass on to something
4 else.
5 So we're going to be talking about issues
6 involving transgender people at this deposition,
7 so I want to get your sense of what some terms
8 are. So are you familiar with the term
9 transgender?
10 A Yes.
11 Q What is your understanding of what that term
12 means? How would you define transgender?
13 A Oh, let's see. So I guess I would consider a
14 transgender person someone who identifies with a
15 gender different than the gender they were born
16 with.
17 Q And how did you come to that understanding?
18 A I don't know. I think I've had that understanding
19 for -- I mean, just from -- I mean, I understood
20 that before I started working at ETF.
21 Q Do you know people who are transgender?
22 A I do.
23 Q Friends?
24 A I do have a friend who is transgender.
25 Q Relatives?

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1 A No.
2 Q That you know of, anyway?
3 A No.
4 Q Any trans coworkers over the years?
5 A Yes.
6 Q Okay. Is that the person who is also a friend or
7 is that --
8 A Yes.
9 Q Okay. Is that someone at ETF or was it before
10 that?
11 A Before.
12 Q Are you familiar with the term gender dysphoria?
13 A Yes.
14 Q And what do you understand that to mean?
15 A I understand it to mean like the sort of side
16 effects of being a person who identifies with a
17 gender other than what they were born with. So it
18 can mean like some of the things they might --
19 like mental anguish or those types of things.
20 Q Okay. And, again, how did you come to that
21 understanding?
22 A I believe just from kind of reading up on the
23 issue.
24 Q And was it reading up on the issue in connection
25 with your work at ETF?

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1 A Yes.
 2 Q Okay. Are you familiar with the term gender
 3 confirmation surgery?
 4 A Yes. Vaguely.
 5 Q Okay. Is there another term that you're more
 6 familiar with for the same concept?
 7 A Gender reassignment.
 8 Q Okay. And what is your understanding of gender
 9 reassignment or gender confirmation surgery?
 10 A It's when someone has an actual surgical procedure
 11 to -- I mean, it can be in various areas to change
 12 their gender physically.
 13 Q Okay. And are you familiar with the term hormone
 14 therapy in connection with the treatment of gender
 15 dysphoria?
 16 A Yes.
 17 Q And what is your understanding of the meaning of
 18 that term?
 19 A So someone might be prescribed hormones to help
 20 with the physical transition to the gender they
 21 identify with.
 22 Q And do you understand that some people take
 23 hormones without ever -- hormone therapy without
 24 ever going on to gender confirmation surgery?
 25 A Yes.

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1 Q Okay. And the hormones, you understand, would be,
 2 for a male to female transgender person, a person
 3 who is female gender identity would be taking
 4 feminizing hormones; correct?
 5 A Yes.
 6 Q Like estrogen?
 7 A Correct.
 8 Q Okay. And conversely, for transgender men, they
 9 would be taking androgen; correct? Or other --
 10 A Sure.
 11 Q -- possibly other masculinizing hormones?
 12 A Yes.
 13 Q Okay. And, again, how did you come to your
 14 understanding of how hormone therapy works?
 15 A From my friend.
 16 Q Okay. And was taking hormones helpful to your
 17 friend?
 18 A Yes.
 19 Q Did it reduce his symptoms of distress?
 20 MR. ROTH: Objection. Lacks
 21 foundation.
 22 Q To the extent you know?
 23 A I don't know for sure. I would assume so.
 24 Q Okay. Is your friend a woman or a man,
 25 transgender woman or transgender man?

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1 A Man.
 2 MR. DUPUIS: Okay. I think this
 3 has been marked before. But I might as well
 4 just mark it again since we don't have the
 5 exhibit number on it.
 6 (Exhibit No. 1 marked for
 7 identification)
 8 Q So showing you what's been marked as Pray
 9 Exhibit 1, do you recognize that?
 10 A Yes.
 11 Q What is that?
 12 A An org chart from ETF.
 13 Q Okay. Does that look like it's fairly current to
 14 you?
 15 A I think so. Yes.
 16 Q Okay. And -- go ahead.
 17 A Well, there is one thing that's not current.
 18 Q Okay. And what is that?
 19 A Lisa Ellinger is not the director.
 20 Q Okay. And who is the director now?
 21 A It's an open vacancy.
 22 Q Okay. Is there someone in an acting position
 23 right now?
 24 A I think Eileen Mallow, but I don't know if it's
 25 official.

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1 Q Okay. At least from your --
 2 A Yes. Functionally, yes.
 3 Q -- what you need to do?
 4 A Yes.
 5 Q Who is Tarna Hunter?
 6 A She is the strategic engagement and government
 7 relations director.
 8 Q Is she the person who is sort of the main contact
 9 with the legislature?
 10 A Correct.
 11 Q And the governor's administration, would that be
 12 also --
 13 A I believe so.
 14 Q Okay. Presumably Mr. Conlin and Mr. Voelker would
 15 also be in contact with the governor and --
 16 governor's office and the legislature?
 17 MR. ROTH: Objection. Lacks
 18 foundation.
 19 Q To the extent you know?
 20 A I believe so.
 21 Q Okay. So could you just sort of tell me how often
 22 you interact directly with the secretary, Mr. Conlin.
 23 A Sometimes when preparing for a presentation is
 24 primarily when I interact with him, besides seeing
 25 him, you know, like passing by.

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1 Q Right. So your presentations, for example, to the
 2 Group Insurance Board, would you typically meet
 3 with him before doing those presentations?
 4 A No. Usually more of a public presentation. Like
 5 an example would be to the UW Retirement
 6 Association.
 7 Q Okay. So you co-facilitate these presentations to
 8 the public sort of?
 9 A Usually I'm just kind of running it by him before
 10 I go out and do that, with maybe a couple
 11 colleagues.
 12 Q Would you interact with him at all about things
 13 that you were going to be telling the GIB before
 14 GIB meetings?
 15 A No.
 16 Q Would that communication be through your
 17 supervisors?
 18 A Correct.
 19 Q Do you have an understanding of what the
 20 secretary's responsibilities are?
 21 A Yes.
 22 Q What are they?
 23 A Well, he leads ETF. He's the primary -- I mean
 24 the top decision maker for ETF. He's responsible
 25 for the programs that ETF administers.

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1 Q And --
 2 A And --
 3 Q Go ahead.
 4 A I mean, he reports to several boards.
 5 Q When you say his responsibility is for the
 6 programs ETF administers, that would include the
 7 group health insurance plan?
 8 A Correct.
 9 Q And who from OSHP reports -- Does anybody from
 10 OSHP report directly to the office of the
 11 secretary -- or to the secretary? I'm sorry.
 12 A Not directly to the secretary.
 13 Q So who does the director of OSHP report to
 14 directly?
 15 A The deputy secretary.
 16 Q So that would be currently Mr. Voelker?
 17 A Correct.
 18 Q Okay. And that was Mr. Voelker also throughout
 19 2016?
 20 A Correct.
 21 Q And then Mr. Voelker reports to Mr. Conlin?
 22 A Correct.
 23 Q Okay. So what is the chain of command from
 24 Mr. Conlin to you? Actually, what was the chain
 25 of command from Mr. Conlin to you during 2016?

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1 A So it would go Conlin to Voelker to Ellinger to
 2 Mallow to me.
 3 Q Okay. And nobody reported to you then either; is
 4 that correct?
 5 A Correct.
 6 Q Can you describe what ETF does in general terms?
 7 What is ETF's mission?
 8 A So ETF administers the trust for the Wisconsin
 9 Retirement System and also administers the group
 10 health insurance program and some other programs,
 11 health related, and then also disability benefits
 12 and deferred compensation.
 13 Q And these are all benefits of state employment or
 14 benefits that state retirees have or local
 15 municipal employees that participate in the ETF
 16 plan; is that correct?
 17 A Right, and local retirees.
 18 Q Local retirees.
 19 A Yes.
 20 Q And then OSHP, can you tell me what OSHP does
 21 within ETF?
 22 A Sure. So OSHP is the policy office for -- sets
 23 the policy with the Group Insurance Board for the
 24 group health insurance program and the other
 25 programs I mentioned before.

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1 Q Okay. When you say before, you don't include the
 2 trust for retirement. Just the group health
 3 insurance, disability -- no, not disability?
 4 A Not disability. The life insurance and the
 5 employee reimbursement accounts, and there is
 6 supplemental health benefits like vision, dental,
 7 long-term care.
 8 Q Right. Okay. And what does GIB do?
 9 A So GIB governs the program. So they are the final
 10 decision makers related to the program.
 11 Q And, again, when you say the program, the same
 12 programs, group health insurance --
 13 A Correct.
 14 Q -- life insurance?
 15 A Correct.
 16 Q Ancillary health services, pharmacy?
 17 A Correct.
 18 Q Okay. And what is the relationship between OSHP
 19 and GIB?
 20 MR. ROTH: Objection to the extent
 21 it calls for a legal conclusion. You can
 22 answer.
 23 A What do you mean by the relationship?
 24 Q What does OSHP do in relation to what GIB does?
 25 A So when the Group Insurance -- I mean, the Group

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1 Insurance Board will often direct OSHP staff to do
 2 certain things. They might want a report on data,
 3 they might want us to do like a procurement for a
 4 vendor. We manage the vendors, we manage the
 5 benefits that they approve and set, and the
 6 director of OSHP reports to -- well, kind of
 7 reports to the board. I mean, he reports to the
 8 deputy secretary, but we work for the board kind of.
 9 Q Do OSHP staff essentially staff GIB meetings?
 10 MR. ROTH: Objection. Vague.
 11 Q So do they draft agendas for the board?
 12 A Yes.
 13 Q Do they take minutes?
 14 A Yes.
 15 Q Do they --
 16 A Sort of.
 17 Q Yeah, right. So somebody is -- Does the secretary
 18 actually sit at board meetings and type notes of
 19 what's transpiring?
 20 A No.
 21 Q Okay. Who does?
 22 A There is like a board liaison, which the role has
 23 kind of been back and forth between the
 24 secretary's office and OSHP.
 25 Q Okay.

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1 A So during 2016 I think that person might have been
 2 technically part of the secretary's office.
 3 Q Okay. Do you know who that was?
 4 A Either Cheryl Etes or Sara Brockman.
 5 Q How do you spell Etes?
 6 A E-t-e-s.
 7 Q So group health insurance is a benefit for state
 8 employees and retirees; correct?
 9 A Correct.
 10 Q Are there certain categories of state employees
 11 and retirees who are eligible for group health
 12 insurance?
 13 A In general, anyone who is eligible to participate
 14 in the Wisconsin Retirement System is eligible for
 15 benefits, for group health insurance benefits.
 16 There are a few caveats.
 17 Q Okay. Are graduate teaching assistants eligible
 18 for group health insurance benefits?
 19 A I believe most are.
 20 Q Okay. And what about research assistants,
 21 graduate research assistants?
 22 A I believe so. The employers really determine the
 23 eligibility.
 24 Q Okay. So UW would be determining whether certain
 25 graduate students who are doing work for the

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1 university qualify for group health insurance?
 2 A Correct.
 3 Q Okay. So who in OSHP prepares the agendas for
 4 board meetings, GIB meetings?
 5 A Well, so it's the person who takes the minutes.
 6 So I'm not sure if during 2016 they were part of
 7 OSHP. But, I mean, Lisa Ellinger would be the
 8 primary person kind of working with that person to
 9 set the agenda. And she would work with the board
 10 to do that.
 11 Q The board or the board chair?
 12 A The board chair I think usually.
 13 Q Okay. Did anyone else in ETF have a role in
 14 either setting or approving the agendas for the
 15 GIB meetings? Did the secretary, for example?
 16 A Yes. I'm sure the secretary, maybe the deputy
 17 secretary, and maybe the deputy director. But I'm
 18 not really involved in those discussions.
 19 Q Okay. And you said that OSHP -- or GIB sometimes
 20 directs OSHP staff to do things like reports or
 21 vendor procurement, that kind of thing. Did you
 22 ever respond to GIB questions of that sort or
 23 directives of that sort?
 24 A Yes. Indirectly.
 25 Q Okay. So you got it through your superiors

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1 usually?
 2 A Correct.
 3 Q But if you heard it at a board meeting, you might
 4 know in advance it's coming your way?
 5 A Sure.
 6 Q Okay. Did you ever have individual conversations
 7 with GIB members at board meetings?
 8 A Small talk type things, yes.
 9 Q Okay. These were long meetings sometimes; correct?
 10 A Yes.
 11 Q They would be all day?
 12 A Correct.
 13 Q You would have lunch?
 14 A Correct.
 15 Q Did you ever talk about substance with the board
 16 members --
 17 A No.
 18 Q -- outside of the meeting proper?
 19 A No.
 20 Q Including talking with them about what we're going
 21 to call the exclusion of treatment for gender
 22 dysphoria?
 23 A Correct.
 24 Q Okay.
 25 MR. ROTH: Objection. I guess I

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1 just want to interpose that. Do you mind if
2 we get sort of a definition sort of on the
3 record again of what the exclusion is just so
4 we are clear on what it says?
5 MR. DUPUIS: Sure. Why don't we do
6 that right away.
7 MR. ROTH: Thanks. I appreciate
8 that.
9 Q So when we talk about the exclusion in the course
10 of this deposition, we'll be talking about the
11 exclusion of coverage in the group health
12 insurance program for procedures -- and I'm
13 quoting, "Procedures, services, and supplies
14 related to surgery and sex hormones associated
15 with gender reassignment." Okay?
16 A Okay.
17 Q So you didn't have any conversations with
18 individual GIB board members about the exclusion
19 outside of the context of the meeting itself?
20 A Correct.
21 Q Okay. So does OSHP do policy analysis for the
22 Group Insurance Board?
23 A Yes.
24 Q How does that work? What does the policy analysis
25 process look like?

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1 A Well, it kind of depends on where the policy is
2 coming from. If it's a federal law or a state
3 law, then our staff's primary role is to kind of
4 figure out how -- what policy language we would
5 set around that and kind of how we would implement
6 that policy. Sometimes we take recommendations
7 for policy or things just kind of arise in the
8 natural course of business that we might -- staff
9 might work on recommending a policy change or
10 clarification.
11 Q Okay. And would you also get recommendations for
12 policy changes from other stakeholders, like
13 employers?
14 A Correct.
15 Q Okay. And then the analysis process, does it vary
16 depending on the source of where the policy idea
17 is generated?
18 A Well, only to the extent if it's a mandate or if
19 it's something that we would be considering. So
20 not so much -- if it would be something we would
21 be considering, we wouldn't really treat it
22 differently depending on where it came from, but
23 it kind of may vary depending on just what the
24 topic is and how much we already know about it or
25 if we've researched it before type of thing.

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1 Q Okay. So the OSHP staff are sort of -- they have
2 expertise in health insurance programs?
3 A Correct.
4 Q What about GIB members, is there a requirement
5 that they have experience in health insurance
6 programs?
7 A I don't believe so.
8 Q Do some of them, in fact, have some expertise in
9 health insurance programs?
10 A Yes.
11 Q Okay. Do you know who those people are, or were
12 in 2016, if that's easier?
13 A I don't know in detail. I know that Mike Farrell
14 is or was -- is, I believe, an insurance broker.
15 Q So he sells insurance basically?
16 A I think so.
17 Q Okay.
18 A I know that Herschel Day is or was an actuary. As
19 far as the -- I mean, I know that there is two
20 representatives from the Office of the
21 Commissioner of Insurance.
22 Q Who are they?
23 A So at the time J.P. Wieske and I believe Terri
24 Carlson. The representative from the Division of
25 Personnel Management would have some understanding

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1 of employee benefits, but I don't know that
2 they're really insurance experts. And then I'm
3 not -- I don't really know the others' backgrounds
4 professionally.
5 Q And so the policy analysis that you do, then, sort
6 of filters back up to the board through either
7 presentations you give or other OSHP staff give at
8 these board meetings; is that correct?
9 A Correct.
10 Q And Secretary Conlin is at least involved in the
11 process of running those meetings or being
12 involved in those meetings and conveying those
13 policy recommendations?
14 A He's usually not actively speaking at the meeting.
15 Q Okay.
16 A It's more the director of OSHP that's really
17 leading that.
18 Q So during 2016 that would have been Lisa Ellinger?
19 A Correct.
20 Q Okay. But he's ultimately responsible for making
21 sure that the GIB's decisions are carried out by
22 OSHP staff, Secretary Conlin is?
23 A Correct.
24 Q Okay. So based on some other information we've
25 gotten in prior depositions, it seems that ETF

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1 reviews possible changes to state employee
2 benefit -- the uniform benefits package every
3 year; is that right?
4 A Correct.
5 Q And that package is referred to as the uniform
6 benefits package?
7 A Correct.
8 Q And when does that usually start, that process?
9 A Usually it begins in late winter/early spring.
10 Q Okay. And how does that start?
11 A Well, there is kind of the before Segal as a
12 benefits consultant and after and how the process
13 changed.
14 So before the Group Insurance Board hired
15 Segal Consulting as a benefits consultant, they
16 conducted -- ETF conducted this study group
17 process.
18 Q And did that happen in 2016 as well?
19 A No.
20 Q Okay.
21 A Well, I don't think so.
22 Q Okay. So why don't you tell me how the study
23 group process worked, and then why don't we talk
24 about what happened after Segal was hired as a
25 benefits consultant. So there was a study group

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1 process. When did the study group form typically?
2 A It typically would form in the beginning of a
3 year -- a calendar year.
4 Q Okay.
5 A And I believe typically the first meeting would
6 be -- there was typically two or three meetings,
7 and I believe the first one would usually occur
8 around February.
9 Q And who participated in those study group
10 meetings?
11 A So there was various staff from ETF and then some
12 employers and then also representatives from
13 different associations that represented the health
14 plans and a representative from OCI, maybe DOA. I
15 can't remember. I guess they would be considered
16 an employer. I think that's the makeup. I might
17 be missing someone.
18 Q Actually, I'm going to have you mark this.
19 (Exhibit No. 2 marked for
20 identification)
21 Q I'll show you what's been marked as Exhibit 2. If
22 you can take a look at that. I'm going to just
23 let you know that the format in which we were
24 given emails in this process was they came in
25 their native email format and so we had to look at

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1 them in an email program and then when we printed
2 them it printed off the person who printed out the
3 document.
4 A Sure.
5 Q So basically ignore the header in general. But
6 other than that header, do you recognize this
7 document?
8 A Yes.
9 Q What is that?
10 A So this is an email I sent to -- this is an email
11 I sent to health plans to solicit feedback on the
12 2016 program considerations, changes to the
13 program that would go to the study group.
14 Q Okay. So this would have been for 2016 benefits;
15 is that correct?
16 A Yes.
17 Q Okay. And this was sent in April of 2015; is that
18 right?
19 A Correct.
20 Q Okay. And there was an attachment, the study
21 group memo?
22 A Correct.
23 Q And that's actually attached to this document as
24 well; correct?
25 A Correct.

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1 Q Okay. And then I'd like you to also take a look
2 at what was marked in a previous deposition as
3 Bogardus Exhibit 2. This doesn't actually have
4 your name on it, but it appears that it includes a
5 memorandum that you put together for the Group
6 Insurance Board in May of 2015. Do you see that?
7 A Yes.
8 Q So the attachment is a correspondence memo that
9 you wrote; is that right?
10 A Correct.
11 Q Okay. So in the May -- What's Bogardus Exhibit 2,
12 the May 14, 2015, memo to the Group Insurance
13 Board, in the background area it talks about a
14 process sort of that led up to the recommendations
15 in this memo; is that correct?
16 A Correct.
17 Q And that process involved Segal Consulting
18 presenting initial recommendations for benefit
19 changes, is that right, in March?
20 A Yes.
21 Q Then "ETF staff" collected -- this is in the
22 second paragraph of background -- "collected
23 benefit change suggestions from its usual sources
24 over the past year: health plans, members,
25 employers, and ETF Ombudsperson Services staff,"

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1 et cetera. Do you see that?
 2 A Yes.
 3 Q And then, "These suggestions have been discussed
 4 with Segal and those that are supported by both
 5 Segal and ETF staff are recommended in the options
 6 included in this memo." Do you see that?
 7 A Yes.
 8 Q Okay. And then it says, "Every year, ETF convenes
 9 a 'Study Group' to discuss potential benefit
 10 changes in order to provide the board with
 11 feedback from the member, employer and health plan
 12 perspectives." Is that correct?
 13 A Correct.
 14 Q Okay. And in this case the study group convened
 15 on April 28 to review the 2016 recommendations;
 16 right?
 17 A Correct.
 18 Q Okay. And then there is a list of the people who
 19 were on the study group on the second page; is
 20 that correct?
 21 A Yes.
 22 Q Okay. So then the memo goes on to talk about
 23 biennial budget changes. So is this one of the --
 24 you were talking before about different areas that
 25 policy analysis -- or different sources of ideas

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1 that you would do policy analysis on or that OSHP
 2 would do policy analysis on, and one of them you
 3 said, you know, was state and federal mandates.
 4 Would this be one of the state mandates, the
 5 changes in the biennial budget?
 6 A Yes.
 7 Q Okay. And then there are recommendations from
 8 Segal, is that right, another source of potential
 9 changes that you do policy analysis on?
 10 A Yes.
 11 Q Okay. Then after that there is study group health
 12 plan and public feedback on page 6. Do you see
 13 that?
 14 A Yes.
 15 Q So these are -- oops. I'm sorry. On page 4 there
 16 is benefit recommendations generated from other
 17 sources?
 18 A Yes.
 19 Q Okay. So this would be things from members,
 20 employers, plans, that sort of thing; correct?
 21 A Correct.
 22 Q Okay. And then Segal and ETF staff would review
 23 the recommendations coming from these other
 24 sources; is that right?
 25 A Correct.

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1 Q And in the 2015 year there was a recommendation to
 2 include bariatric surgery; is that right?
 3 A Yes. Correct.
 4 Q And was that covered?
 5 A No.
 6 Q GIB rejected that?
 7 A Correct.
 8 Q And then there is the study group health plan and
 9 public feedback. So is that the feedback in
 10 response to this earlier memo, Bogardus
 11 Exhibit 2 -- I'm sorry. I'm losing track here.
 12 Pray Exhibit 2 where you sent this out to -- you
 13 sent out this study group memo to the health plans?
 14 A So the feedback from the health plans is portrayed
 15 in this, but there would be other feedback that
 16 would have been part of this list --
 17 Q Okay.
 18 A -- from study group members and public.
 19 Q But was this email from April 24 that you sent out
 20 to health plan members, was that one potential
 21 source of the information that went into page 6 of
 22 Bogardus Exhibit 2?
 23 A Yes.
 24 Q Okay. Were you around when one of the sources of
 25 benefit -- ideas for benefit changes came from

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1 employee unions?
 2 A Came from who?
 3 Q Employee unions.
 4 A No.
 5 Q Did ETF staff come up with ideas for benefit
 6 changes themselves?
 7 A Not usually.
 8 Q Okay. So you said that you think in 2016 the
 9 study group process was replaced essentially?
 10 A So the process that happened in 2015 for 2016
 11 benefits was kind of a reduced version of the full
 12 study group process. So I think there was just
 13 one meeting, and it was basically to react to
 14 primarily Segal's recommendations and then also
 15 some of the other recommendations we had gathered
 16 throughout the year.
 17 Q Okay.
 18 A So typically that process was a little more --
 19 Q Robust?
 20 A -- robust than it was in this cycle.
 21 Q Okay. And then what happened in 2016?
 22 A And then I believe in 2016 for 2017 benefits there
 23 was no official study group convened.
 24 Q Okay. So what policy analysis role -- how was
 25 ETF's policy analysis role carried out that year

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1 for benefit changes for 2017?
2 A So -- I mean, we did the same sorts of things
3 where we took the recommendations and considered
4 them, and we still ran things by some of the main
5 groups, such as health plans, major employers,
6 that sort of thing, but it was just a less kind
7 of -- it wasn't the full study group process.
8 Q So was it sort of more staff driven in some ways?
9 A I wouldn't say staff driven. I think it was just
10 more driven by the direction from the GIB to carry
11 out Segal recommendations.
12 Q Okay. Do you have an understanding of what led to
13 that change?
14 A Well, I think the primary thing is that the Group
15 Insurance Board didn't really want to make any
16 benefit changes so they held benefits stable
17 because they were exploring other options, such as
18 self-insurance, and we were doing several
19 procurements, and so they wanted to keep the
20 benefits stable. So they were very -- there
21 weren't really benefit changes except for minor
22 things that were more driven by, like, maybe
23 administrative need or something like that.
24 Q Okay. And the group health -- or the Group
25 Insurance Board ultimately did consider whether or

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1 not to go to a self-funded -- self-insured health
2 insurance for state employees during the 2016
3 calendar year, was it?
4 A 2016 and into 2017.
5 Q Okay. And ultimately decided not to do that; is
6 that correct? Or at least --
7 A The Group Insurance Board decided to do it.
8 Q Okay. And then what happened?
9 A Then it was rejected by the Joint Committee on
10 Finance.
11 Q Okay. Do you know if the study group process has
12 been reinstated subsequently?
13 A Not in the same way that it had been, but there is
14 a new process that's being developed or that we're
15 kind of piloting this year.
16 Q Okay. So when there are proposed changes to
17 benefits, what's entailed in ETF's analysis of
18 those proposals? What factors go into the
19 analysis? Cost obviously seems to be part of it?
20 A So cost, member impact in terms of, like, numbers
21 of participants. We try to get information from
22 the health plans about their experience with
23 whatever the benefit is. Often we ask the plans
24 about what they cover maybe for other employer
25 groups or in their commercial market. Sometimes

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1 we look at what other states do. We look at
2 past -- you know, past experience of the program.
3 Q The actuarial analysis Segal has done and
4 continues to do that; is that correct?
5 A Correct.
6 Q Are there any other outside groups that are
7 contracted to do that sort of analysis?
8 A Not for group health insurance benefits.
9 Q And then the culmination of either the study group
10 process or whatever the current process is, is
11 that ETF recommends some changes be adopted to GIB
12 and recommends that other changes not be adopted;
13 is that right?
14 A Correct.
15 Q Then it's OSHP staff that come up with those
16 recommendations?
17 A Based on the work, yes.
18 Q That others contribute to it?
19 A Correct.
20 Q Okay. Are GIB members required to do any
21 independent analysis of the recommendations that
22 the board -- that the staff present to them?
23 A I don't think so.
24 Q To your knowledge do they sometimes engage in
25 independent analysis?

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1 A I don't know.
2 Q Okay. Do you know, do they hire their own
3 consultants separate from ETF and Segal?
4 A I haven't heard of that happening.
5 Q How often does GIB reject ETF staff's
6 recommendations on benefit changes?
7 A I don't know exactly. I don't have a long history
8 with the program. But in general I would say they
9 have supported ETF's recommendations. Sometimes
10 they reject them or they reject a portion of it.
11 Q So, for example, in the 2015 process for the 2016
12 benefits, one of the things that was rejected was
13 the bariatric surgery coverage; is that right?
14 A Correct. I think so. I don't know the options.
15 Q I think the options --
16 A Oh, here. So at the end of the day ETF --
17 Q And you're looking at Exhibit Bogardus 2?
18 A Bogardus 2, yes. At the end of the day, ETF
19 recommended option 2 which did not include
20 bariatric surgery. So it wasn't an ETF
21 recommendation but it was a recommendation that we
22 were putting forward because we had received it
23 from -- I mean, it was part of the process.
24 Q Okay. And then there are also things that are
25 recommended to be deferred to future plan years.

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1 Do you see that, in this case in Bogardus 2 it was
 2 on page 10?
 3 A Yes.
 4 Q And here it says, "Consideration of these changes
 5 will be deferred as possibly part of a broader
 6 program redesign for 2017 or beyond." Do you see
 7 that?
 8 A Yes.
 9 Q So is this what you were alluding to with sort of
 10 not wanting to make a lot of changes because of
 11 other potentially large changes in the structure
 12 of the system?
 13 A Correct.
 14 Q Okay. And one of those was adding coverage for
 15 gender reassignment benefits with strict
 16 protocols; right? Number 9 --
 17 A Yes.
 18 Q -- on page 10?
 19 A I see it.
 20 Q So it was considered by ETF and Segal during the
 21 2015 process for the 2016 benefit -- contract year
 22 but deferred?
 23 A Correct.
 24 Q And did the board -- The board agreed with that
 25 deferral?

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1 A Correct.
 2 Q Do they often in your experience elect to include
 3 benefits that are not recommended to be added by
 4 ETF staff?
 5 A Not usually.
 6 Q Can you think of any time where they have gone
 7 against a recommendation not to add a benefit?
 8 A Well, I mean, when it hasn't really been on the
 9 table, I know there has been a board member that
 10 has tried to bring this issue back to the board
 11 for consideration.
 12 Q And that was Herschel Day; is that correct?
 13 A Correct. Yep.
 14 Q In March or something of 2017 maybe?
 15 A I don't recall, but yes.
 16 Q Okay. And when a proposed change is adopted as
 17 either part of the study process or whatever has
 18 replaced -- study group process or whatever has
 19 replaced it, it would take effect for covered
 20 employees starting January 1 of the following
 21 year; is that right?
 22 A Correct.
 23 Q Okay. And in your experience do the health plan
 24 benefits normally remain pretty stable throughout
 25 the course of the plan year?

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1 MR. ROTH: Objection. Vague.
 2 Q You can answer if you can.
 3 A Yes.
 4 Q Okay. Are medical benefit changes ever
 5 implemented in the middle of plan years in your
 6 experience?
 7 A Only if there would be a mandate.
 8 Q Okay. And when you say mandate, you mean a legal
 9 mandate?
 10 A Correct.
 11 Q Okay. Can you think of any examples other than
 12 the example here of eliminating benefits in the
 13 middle of a plan year?
 14 A Not eliminating. Sometimes there are changes to,
 15 like, the limits set forth by the IRS for, like,
 16 flexible spending account programs or of the sort.
 17 We just had one that was a mid-year change too,
 18 health savings account rules.
 19 Q How about benefit, like a coverage --
 20 A No.
 21 Q -- change for medical procedures or medical
 22 services?
 23 A No.
 24 Q So then after the board votes on the proposed
 25 benefit changes, what happens next?

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1 A So after they finalize and approve, then what we
 2 do is work to get the language kind of codified in
 3 the contracts with the health plans, we get the
 4 health plans to sign off, we sign off -- or the
 5 board chair signs off, and then we work on
 6 implementation.
 7 MR. ROTH: Larry, I don't want to
 8 derail this line, but I could use a break in
 9 the next five or ten minutes if you're coming
 10 to a good stopping point.
 11 MR. DUPUIS: Yeah. Just a couple
 12 of quick ones.
 13 MR. ROTH: Surely.
 14 Q So those contracts, basically the state pays
 15 private insurance companies to provide the
 16 benefits package that was established by ETF and
 17 GIB through this either study group process or
 18 whatever has replaced it; correct?
 19 A Correct.
 20 Q Who has the risk of costs exceeding premiums in
 21 those contracts?
 22 MR. ROTH: Objection. Vague.
 23 A Primarily -- So in the time period of 2016, it was
 24 the health plans primarily for the medical
 25 benefits. We had one self-insured health plan, so

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1 that would be on ETF for the Group Insurance Board
2 and then the pharmacy benefits are also self-insured.
3 Q So what was the self-insured health plan that ETF
4 had the risk on?
5 A It's called the ACCESS plan or in statute the
6 Standard Plan, and it was administered by WPS
7 Insurance.
8 Q So in that case, that was an actual health plan
9 that was self-insured that was operated by and the
10 risk was taken by ETF?
11 A Correct.
12 Q Okay.
13 A And it had a low enrollment.
14 Q Okay. Is that something that's available to any
15 state employee?
16 A Yes. Anyone who is eligible for the group health
17 insurance program.
18 Q Okay. But you say it's low enrollment?
19 A Yes.
20 Q Why is that?
21 A It's more expensive.
22 Q Okay. The premium is more expensive?
23 A Correct.
24 Q For the employee?
25 A Correct.

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1 Q Okay. Is it the same benefits package as the
2 other plans?
3 A It wasn't at the time. It is now.
4 Q Okay. How was it different? Did the uniform
5 benefits differ?
6 A The benefits differed slightly. The primary
7 reason somebody might choose that plan is because
8 it has an open network nationwide.
9 MR. DUPUIS: Okay. I think we can
10 stop now if that's a good time.
11 (Recess)
12 MR. DUPUIS: Back on.
13 Q Can you describe the process for entering into a
14 contract with the insurance providers, or starting
15 with how the uniform benefits changes get embodied
16 in those contracts?
17 A How the changes get into the contract with the
18 health plans?
19 Q Right. Correct.
20 A So after the board approves them, then someone on
21 our staff in OSHP actually makes the changes to
22 the document, to the contract document, and they
23 go through an approval process internally and then
24 they are sent to the health plans for signature.
25 Q Does GIB look at them again after that?

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1 A Yes.
2 Q And just the chair or does the GIB as a whole look
3 at them?
4 A We send them to -- I'm not -- I'm not really
5 involved with that.
6 Q Okay.
7 A So I think they get sent to the whole board but
8 the chair signs off.
9 Q So you say OSHP staff makes the changes to the
10 contract document. Who is involved in that? Were
11 you actually involved in doing that in 2016 for
12 the 2017 contract?
13 A So I have been involved. I am not sure if Joan or
14 I made the changes for -- one of us did, or maybe
15 both of us.
16 Q Okay. Do insurers bid on the plans or is there --
17 or on the contracts or is there a set contract
18 price?
19 A They bid.
20 Q Okay.
21 A It's kind of a unique process, though. It's not
22 like a bid where, like, one person is the winner.
23 They just have to meet certain requirements and
24 then --
25 Q So there is, like, a floor that would be

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1 acceptable but many contractors could qualify to
2 be providers -- or plans under the group health
3 insurance program?
4 A As long as they meet the requirements of the
5 contract, yes.
6 Q Okay. When are the contracts usually sent out to
7 the plans?
8 A For signature?
9 Q Yes.
10 A Any time between -- usually September, but it
11 could be even the beginning of October.
12 Q So fall usually?
13 A Fall, yes.
14 Q And who sends those out to the plans?
15 A Generally the executive assistant.
16 Q To the secretary?
17 A It's that same role that does the minutes and the
18 agenda. It's kind of morphed over the years.
19 Q So Sherry --
20 A It would have been Sherry Etes.
21 Q Executive staff assistant from the office of the
22 secretary?
23 A Yes.
24 Q Okay. And when do the plans have to be signed,
25 the agreement?

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1 A Well, we give them a deadline. It's usually
 2 before -- I mean, it's before open enrollment
 3 begins, and that date kind of fluctuates. But
 4 generally it's like by the beginning of -- end of
 5 September/beginning of October.
 6 Q Okay. So not a real long turnaround time?
 7 A Right.
 8 Q And they largely know it's coming because they
 9 have been part of the process of developing --
 10 A Correct.
 11 Q -- the uniform benefits. Okay. And then they
 12 take effect in January typically; right?
 13 A Correct.
 14 Q Okay. Do the plans have to offer the uniform
 15 benefits package that ETF and GIB come up with?
 16 A Yes.
 17 Q Okay. They can't deviate from those uniform
 18 benefits?
 19 A Correct.
 20 Q Okay. I'd like to have you take a look at another
 21 document.
 22 (Exhibit No. 3 marked for
 23 identification)
 24 Q I'm showing you what's been marked as Exhibit 3.
 25 And mostly what I would like you to look at is the

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1 attachment which begins on the third page of this
 2 exhibit. I'm going to represent to you that this
 3 is not the full contract. This is the front
 4 material through essentially the table of contents
 5 of the State of Wisconsin Health Benefit Program
 6 Agreement. Do you see that? Do you recognize the
 7 form of that contract?
 8 A Yes.
 9 Q Okay. So obviously this isn't the whole thing.
 10 It's about a 200-page document, as I understand
 11 it. Is that about right?
 12 A Yes.
 13 Q Okay. And this particular example is a contract
 14 between Anthem Blue Cross/Blue Shield and the
 15 State of Wisconsin Department of Employee Trust
 16 Funds, the State of Wisconsin Group Insurance
 17 Board, and Anthem Blue Cross & Blue Shield; right?
 18 A Correct.
 19 Q And then the second page of the contract is the
 20 signature page; is that right?
 21 A Correct.
 22 Q And it's signed, it looks like, electronically by
 23 Mike Farrell; correct?
 24 A Correct.
 25 Q And he was the chair at the time of the Group

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1 Insurance Board?
 2 A Correct.
 3 Q And he's signing for the State of Wisconsin
 4 Department of Employee Trust Funds; correct?
 5 A Correct.
 6 Q Okay. And then what is this Exhibit A? Is this
 7 something that you work on with ETF staff at all?
 8 A I didn't work directly on this. So this contract
 9 was never actually implemented.
 10 Q Okay.
 11 A This is the self-insured contract.
 12 Q Okay.
 13 A So this Exhibit A I believe documents agreed
 14 changes from the original proposal.
 15 Q Okay.
 16 A This I think came about through negotiations with
 17 Anthem.
 18 Q With Anthem?
 19 A Uh-huh.
 20 Q Okay. So this looks like it was signed; right?
 21 So what happened?
 22 A It was signed because I think the Group Insurance
 23 Board had to give signed contracts to the Joint
 24 Finance Committee but they rejected this contract.
 25 Q Who rejected it? Joint Finance?

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1 A Joint Finance.
 2 Q So this would have been under the self-insurance
 3 program?
 4 A Correct. Correct.
 5 Q Okay. Would there be any difference between sort
 6 of this front cover page for the actual contracts
 7 with the individual plans that were not the
 8 self-insured plans?
 9 A Yes. There could be.
 10 Q Okay. How would it be different, if you know?
 11 MR. ROTH: Objection. Calls for
 12 speculation.
 13 A Yeah. I don't know exactly. I mean, these are
 14 pretty much kind of standard terms, but --
 15 Q So the first part would have been -- page 1 would
 16 have been largely the same; fair?
 17 MR. ROTH: Objection. It misstates
 18 testimony.
 19 A Yeah. I don't know.
 20 Q So let me ask, would the contract still be entered
 21 into between the State of Wisconsin Department of
 22 Employee Trust Funds, State of Wisconsin Group
 23 Insurance Board, and Anthem Blue Cross &
 24 Blue Shield if Anthem was the plan?
 25 MR. ROTH: Objection. Calls for

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1 speculation.
 2 A Yes, if they were the plan.
 3 Q Okay. So this was done for the purpose of
 4 essentially having signed contracts that Joint
 5 Finance could consider after the GIB recommended
 6 going to self-insuring basically the group health
 7 plans, and then Joint Finance rejected them for
 8 the state and then you reverted back to the
 9 original form of contracts which were the risk was
 10 taken by the health insurers?
 11 A Yes.
 12 Q Okay. If you take a look at -- let me see if I
 13 can give you the page number of the contract.
 14 It's 1, 2, 3, 4, 5, 6, 7, 8, the 9th page of the
 15 attached contract. It starts with RFP ETG0003 in
 16 a little box at the top.
 17 A Yep.
 18 Q So is this sort of document used in -- it has a
 19 table of contents. It sort of summarizes the
 20 terms and conditions of coverage in the plans. Is
 21 that typical of not necessarily the details, but
 22 typical of how the contracts -- how this document
 23 would look in the contracts with the plans
 24 currently?
 25 A Yes.

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1 Q And in 2016?
 2 A Yes.
 3 Q Okay. And one of the -- in the table of contents
 4 on the fifth page it has sub 400, uniform
 5 benefits. Is that how the uniform benefits that
 6 the ETF and the board decide on at their meeting
 7 in the spring get embodied in the contract with
 8 the plans?
 9 A Yes.
 10 Q And then exclusions and limitations would have
 11 included in this case the exclusion that we're
 12 talking about, the exclusion of services to treat
 13 gender dysphoria?
 14 A Yes.
 15 Q Okay. Do insurers sometimes object to benefits
 16 included in the uniform benefits?
 17 MR. ROTH: Objection. Vague.
 18 Q To the extent you know? Do you hear --
 19 A I mean, they don't outright object usually.
 20 Q What do they do?
 21 A But they might disagree with something, yes.
 22 Q Have you ever had -- In your experience have plans
 23 ever decided not to participate in the group
 24 health insurance program because of changes to
 25 uniform benefits?

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1 A I don't know of a plan not participating because
 2 of a change to uniform benefits.
 3 Q How about because of the contract price?
 4 A The contract price?
 5 Q Well, the premium amounts.
 6 A I don't think -- I don't have -- I don't know of
 7 anyone making -- pulling out because of that.
 8 Q Okay. I'll have you take a look at another
 9 document.
 10 (Exhibit No. 4 marked for
 11 identification)
 12 Q I'm showing you what's been marked as Pray
 13 Exhibit 4. Do you recognize this document?
 14 A Not off the bat, but I can look at it.
 15 Q If you can take a look at it.
 16 A Yes.
 17 Q So this is an email that you forwarded -- an email
 18 from Penny Bound that you forwarded to Eileen
 19 Mallow; is that right?
 20 A Yes.
 21 Q And Ms. Bound is who?
 22 A She is the sales rep -- or the account rep from
 23 Dean Health Plan.
 24 Q Which is one of the plans that participates in the
 25 group health insurance program; right?

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1 A Correct.
 2 Q Okay. And her email is a response to your request
 3 for information about the department's
 4 consideration of the exclusion on surgery and sex
 5 hormones associated with gender reassignment;
 6 correct?
 7 A Correct.
 8 Q And she expresses concerns that two exclusions in
 9 the ETF certificate could be read to prohibit
 10 coverage for treatment of gender dysphoria that is
 11 required by federal law?
 12 A Correct.
 13 Q So what is your understanding of what she meant by
 14 that? What is the ETF certificate? What does she
 15 mean by that?
 16 A That's another term for uniform benefits.
 17 Q Okay. And she's talking about two items, two
 18 exclusions in the plan -- or in the uniform
 19 benefits that exclude coverage for essentially
 20 gender reassignment; correct?
 21 A Correct.
 22 Q Although the language was different at that point;
 23 correct?
 24 A Correct.
 25 Q And Dean says that they've determined that they're

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1 required to cover these treatments in its large
2 group plans. Do you see that?
3 MR. ROTH: Where is that?
4 MR. DUPUIS: It's after the -- it's
5 still on the first page.
6 MR. ROTH: I see. Right here.
7 A Oh, okay. Yep.
8 Q So at this point ETF had already begun sort of
9 looking into what to do about the final ACA rules;
10 is that correct?
11 A Correct.
12 MR. ROTH: Objection. Vague.
13 Assumes facts not in evidence.
14 Q Had a contract already been entered into with any
15 of the plans at this point for 2017? This email
16 was sent on June 22, 2016.
17 A No.
18 Q Okay. But the board had already considered
19 uniform benefits changes at its May meeting; is
20 that right?
21 A Correct.
22 Q And approved a set of fairly small changes; is
23 that right?
24 A Correct.
25 Q Okay. But did not include this? Did not include

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1 removal of the exclusion for gender confirmation
2 or gender reassignment?
3 A Correct.
4 Q Okay. I'd like you to take a look at another
5 document.
6 (Exhibit No. 5 marked for
7 identification)
8 Q We may come back to these, but you sort of set
9 them aside. I'm showing you what's been marked as
10 Pray Exhibit 5.
11 MR. ROTH: Sorry. Larry, do you
12 have another copy of that one? Is it this?
13 MR. DUPUIS: Yes.
14 MR. ROTH: My apologies.
15 Q So this is a later email between you and Lisa --
16 you forwarding an email from Ms. Bound again to
17 Lisa Ellinger. Do you see that?
18 A Yes.
19 Q And in this one, this is in September of 2016. Do
20 you know if the contract had already been signed
21 or if it had been sent out at this point? Do you
22 know what was going on at this point?
23 A I don't remember exactly.
24 Q Okay. Has looking at it refreshed your
25 recollection at all?

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1 A Yes. So I believe that it had been sent out but
2 not yet signed.
3 Q Okay. And it seems like Dean was expressing some
4 concerns about the contract?
5 A Yes.
6 Q And are these -- I mean, do you see these kinds of
7 concerns coming from the plans regularly or is
8 this something unusual in your experience?
9 A I don't think it's unusual. Various plans have
10 had concerns with various things in the contracts
11 over the years.
12 Q Okay. And some of these are obviously unrelated
13 to this case in any direct way. But they're
14 concerned about the contract being uniformly
15 administered with all carriers. Do you know what
16 that's referring to?
17 A I don't exactly. I don't know if that's referring
18 to the change with the ACCESS plan becoming kind
19 of under the umbrella of the rest. I'm not
20 exactly sure of what that was about.
21 Q Okay. And then there is a concern about
22 withholding a portion of the December 2017
23 premium. Do you know if that would have been
24 unique to Dean or was that something that was
25 being done with all the plans?

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1 A It was being done with all the plans.
2 Q Okay. Did they all complain?
3 A No.
4 Q Okay.
5 A But --
6 Q And then the last item is removal of the exclusion
7 language specific to gender reassignment. Do you
8 know what her concern there was?
9 A I don't remember what exactly the concern was.
10 Because if I remember right, this plan actually
11 had experience covering that benefit.
12 Q They had done it with other plans -- or with --
13 A I think so.
14 Q -- or with other employer groups?
15 A Yeah. So I don't really remember what their
16 concern was related to this.
17 Q You don't recall having any further communication
18 with her about what that concern was?
19 A I don't recall. I might have talked with her.
20 But I just don't remember what the concern was.
21 Q Okay. And they ultimately signed a contract that
22 eliminated the exclusion; correct?
23 A I believe so, yes.
24 Q Yeah. And then they signed a contract addendum
25 after the exclusion was reinstated in February;

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1 correct?
 2 A Correct.
 3 Q I'm going to show you another document.
 4 (Exhibit No. 6 marked for
 5 identification)
 6 Q I'm showing you what's been marked as Pray
 7 Exhibit 6. Do you recognize that document?
 8 A Yes.
 9 Q And this is an email from you to Arlene Larson
 10 forwarding an email chain essentially that begins
 11 with an email from Brian Martin; is that right?
 12 A Yes.
 13 Q And who is Brian Martin?
 14 A He's the account rep for the State of Wisconsin
 15 for Anthem.
 16 Q So he works for Anthem?
 17 A He works for Anthem.
 18 Q Okay. And here he says, "Anthem's legal counsel
 19 has reviewed the request for the contract
 20 amendment," and this is the amendment that removed
 21 the -- reinstated the exclusion for gender
 22 dysphoria treatment; correct?
 23 A Correct.
 24 Q And it says, "At this time Anthem is unable to
 25 agree to this request to remove the coverage for

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1 gender reassignment surgery." Do you see that?
 2 A Yes.
 3 Q "For fully insured plans" -- and all of the group
 4 health insurance plans, other than this ACCESS
 5 plan, are fully insured; is that right?
 6 A Correct.
 7 Q -- "the question as to whether or not coverage
 8 must be provided is whether the insurer accepts
 9 federal money rather than the underlying
 10 employer." Do you see that?
 11 A Yes.
 12 Q "We recognize this provision of the regulation is
 13 on hold due to the court order, but it is our
 14 liability," and so they're not removing the
 15 benefit from any of their policies; is that correct?
 16 A Correct.
 17 Q Do you know what happened with -- did Anthem pull
 18 out of providing coverage to state employees as a
 19 result of this?
 20 A I don't believe so. Not as a result of that, no.
 21 Q Did they pull out?
 22 A Did they what?
 23 Q Did they pull out of providing coverage under the
 24 health insurance program?
 25 A Not for 2017.

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1 Q Do you know how this concern was resolved for them?
 2 A I don't.
 3 Q Okay.
 4 A I wasn't involved.
 5 Q Do you know who would know?
 6 A Lisa Ellinger would know and other people.
 7 Q Can you think of who else?
 8 A I'm sure Joan Steele, Eileen Mallow.
 9 Q So once the contracts are sent out, the GIB chair
 10 signs for the State and the Department of Employee
 11 Trust Funds and the GIB; correct?
 12 A Correct.
 13 Q And I think you mentioned that ETF -- that the
 14 process has changed some and that there is this
 15 new contract with Segal or -- actually, can you
 16 explain if Segal's role has changed and how since
 17 the study group process was eliminated?
 18 A So the Group Insurance Board hired Segal
 19 Consulting as a benefits consultant in either 2014
 20 or '15, and they asked Segal to study the program
 21 and make recommendations based on their expertise
 22 and, you know, quality, cost savings, those types
 23 of things.
 24 Q Okay.
 25 A They were also -- they also, though, have a

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1 contract for actuarial services for the board, and
 2 it's two separate contracts.
 3 Q Okay.
 4 A And so because Segal in their benefit consultant
 5 capacity was studying the program, making
 6 recommendations, it kind of put on hold the
 7 typical process of studying the program, making
 8 recommendations from the other stakeholders.
 9 Q From year to year?
 10 A From year to year, yeah.
 11 Q So this was, again, part of -- Was the benefits
 12 consulting contract geared toward this potential
 13 change to self-insurance?
 14 A I mean, partially, but I think it was overall for
 15 just kind of, like, efficiency, quality, you know,
 16 just an overall study for kind of best practices.
 17 Q Is this something that has happened in the past to
 18 your knowledge or is a regular process of bringing
 19 in a benefits consultant, outside benefits
 20 consultant?
 21 A I don't think so. They've kind of wanted their
 22 actuaries to do certain studies or things of the
 23 program. But this is the first time that I know
 24 of that they contracted for that specific service.
 25 Q Okay. And is that service -- Are they still

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1 contracted for that service?
2 A The contract is, like, closing out around now. So
3 I don't know exactly when it ended, but, no, it's
4 not an ongoing contract.
5 Q And it won't continue later as far as you know?
6 A As far as I know.
7 Q Okay. So this was sort of a special outside look,
8 as it were, at the whole benefits structure?
9 A Correct.
10 Q Okay. And is the anticipation that the process is
11 now going to go back to the sort of study group
12 approach?
13 A Well, it's kind of a new approach, but yes.
14 Q Okay. So after the contracts go into effect in
15 January, does OSHP have a role in enforcing the
16 contracts?
17 MR. ROTH: Objection. Vague. You
18 can answer if you can.
19 A Yes.
20 Q Can you describe that role?
21 A Sure. So, I mean, to the extent that we can, we
22 ensure that they're following the contract and
23 administering the benefits set forth. There are
24 certain deliverables of the contract that we make
25 sure that they deliver.

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1 Q So what sorts of deliverables besides basically
2 covering claims of participating members would
3 there be?
4 A They have to provide reports about certain things.
5 They have to provide, like, their marketing
6 materials for our review, letters they send to
7 members for review, those sorts of things.
8 Q Okay. Is there a mechanism by which ETF monitors
9 adherence to the uniform benefits package by the
10 plans?
11 A Not like a formal process.
12 Q What about appeals or grievances?
13 A Yes.
14 Q So are all grievances reported to ETF even if they
15 are resolved at the plan level?
16 A Not the details, but the fact that there was a
17 grievance. There is an annual grievance report
18 that they have to send to ETF and appeals,
19 grievances and appeals.
20 Q Okay.
21 A They also send us information if something goes to
22 an independent review process.
23 Q Okay. And, like, what level of detail would be
24 involved in that? I mean, in, say, the annual
25 grievance report? Would it say what benefit the

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1 member claims should have been covered but wasn't?
2 A I don't know exactly. I don't think so. I should
3 know, but they go to our Ombudsperson Services
4 area. I think they're general categories, like
5 maybe customer service and that kind of thing or
6 benefits. Benefits in general, but I don't think
7 it gets into what type of benefit.
8 Q Okay. And what about the independent reviews? Is
9 that a review by a physician or what do you mean
10 by independent reviews?
11 A That's a process where if it's something about
12 medical necessity, like if it was denied for a
13 purpose of medical necessity, then the participant
14 can choose -- you know, there is a process. But
15 if they can't get their issue resolved with the
16 plan, then they can choose to send it to it's
17 called independent -- an independent review
18 organization.
19 Q Okay.
20 A And the plans have to designate a formal -- like
21 they have to have a relationship with an
22 independent review organization. I think most of
23 them use the federal contractor for that process.
24 And then whatever the outcome of that review is is
25 final.

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1 Q When you say they use the federal contractor for
2 that, what does --
3 A I think it's Maximus.
4 Q Maximus. And they're a contractor with the
5 federal government for similar kinds of services?
6 A Correct.
7 Q Okay. And then there is a process by which a
8 person who is not satisfied with the result of a
9 grievance to the plan can appeal to ETF; correct?
10 A Correct.
11 Q Have you ever been involved in that process?
12 A Yes.
13 Q Okay. Can you describe your involvement in that
14 process? Have you actually -- well, describe your
15 involvement.
16 A Sure. So usually the starting point is our
17 Ombudsperson Services, and a lot of times they'll
18 be able to work with the plan to resolve the
19 issue. So I would be involved in that just in
20 like where they would consult with the policy
21 area, our ombudsperson staff would consult with us.
22 Sometimes I would follow up with the health
23 plan to get more information about what happened,
24 that kind of thing. But then sometimes if we
25 issue departmental determinations, so I have

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1 answered -- or I've issued -- I mean, my signature
 2 is not on it but I'm, like, writing the
 3 department's determination and then going through
 4 an approval process internally to issue kind of
 5 ETF's official departmental determination about a
 6 grievance.
 7 Q Okay. And then who does actually sign those? Is
 8 that Lisa?
 9 A Either Eileen or Lisa.
 10 Q So the deputy director or the director of OSHP?
 11 A Correct.
 12 Q Okay. When it's a group health insurance
 13 grievance as opposed to something that's not in
 14 OSHP's bailiwick?
 15 A Correct.
 16 Q Okay. So is that a paper determination or do you
 17 actually communicate with the grievant?
 18 A It is usually just in writing, the letter.
 19 Q So what do you consider in one of those grievances
 20 when they come to you in that form where you're
 21 writing a departmental determination?
 22 MR. ROTH: I just want to
 23 interject. I don't know to the extent any of
 24 this relates to communications you've had
 25 with ETF counsel, but to the extent it does,

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1 I guess I'd instruct you not to answer at
 2 least with respect to specific grievances.
 3 You can testify about generally what you
 4 would look at, but I just want to make sure
 5 you don't reveal any communications with ETF
 6 counsel about a specific appeal.
 7 THE WITNESS: Okay.
 8 A So usually we get, like, the grievance file from
 9 the health plan and review that. Sometimes we get
 10 medical documentation, like we get the
 11 authorization of the participant to release
 12 medical information, and then we kind of just work
 13 through that and look at how things have been
 14 resolved in the past and kind of each one is
 15 considered case by case.
 16 Q Okay. And so then you make -- you draft up a
 17 decision about whether you should reverse what the
 18 plan did or affirm what the plan did?
 19 A Correct.
 20 Q Is that correct?
 21 A Yep.
 22 Q And then it's sent to the plan and the member
 23 beneficiary?
 24 A I think it's -- I don't know if it's sent to the
 25 plan. I think it's just sent to the member.

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1 Well, I mean, it would go to the plan if we're
 2 instructing the plan to cover something that they
 3 denied, but usually they know about that before.
 4 Q Okay. And if the beneficiary is still not happy
 5 with the determination, they can appeal to the
 6 Department of Administration -- or they can do a
 7 Chapter 227 appeal, if you know what that is?
 8 A I think so. They can also appeal to the Group
 9 Insurance Board.
 10 Q Do they have to go to the Group Insurance Board
 11 before they go to the administrative law judge?
 12 A I'm fuzzy on that.
 13 Q Okay. Have you ever had to testify about a
 14 grievance either before the GIB or before an
 15 administrative law judge?
 16 A No.
 17 Q So as far as you know, that all happens on paper
 18 too?
 19 A I don't know.
 20 Q All right. Is there anything else you can think
 21 of that ETF staff do to ensure that the plans are
 22 adhering to the uniform benefits package besides
 23 what we've talked about?
 24 A Well, we review their communications about
 25 benefits to the member, so we make sure those are

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1 accurate. I know the plans have some audit
 2 requirements and things in the contract. Our
 3 program is audited like internally and also by the
 4 Legislative Audit Bureau, so there is various
 5 audit type things that happen.
 6 Q Do GIB -- Does the GIB as a body or individual GIB
 7 members have any role in ensuring adherence by the
 8 plans to the benefit package?
 9 A I mean, indirectly, yes, but I think the only
 10 direct would be if an appeal would get to them.
 11 Q So is it fair to say that ETF oversees the
 12 administration of health insurance benefits for
 13 state employees?
 14 MR. ROTH: Objection. Vague.
 15 A Yes.
 16 Q So does ETF receive any federal funding?
 17 MR. ROTH: Objection. Vague.
 18 A The only federal funding I'm aware of for -- I
 19 mean, I'm only aware of OSHP programs.
 20 Q Right.
 21 A The Medicare Part D subsidies is the only direct
 22 funding I'm aware of.
 23 Q So how does the Medicare -- how do the Medicare
 24 Part D subsidies, how are they applied by ETF?
 25 How does that work?

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1 A I don't really know.
 2 Q Okay. Who would know?
 3 A Jeff Bogardus.
 4 Q Okay. Have you talked to him about it?
 5 A No.
 6 Q Have you talked to him about it in the context of
 7 putting together a memo about why -- about whether
 8 or not ETF was a covered entity for purposes of
 9 the ACA regs?
 10 A Not really.
 11 Q Okay. When you say not really, what do you mean?
 12 Did you talk to him somewhat about that?
 13 A I mean, I think about him contributing to --
 14 you know, he was part of that discussion, but like
 15 he and I didn't work together on that part of
 16 anything.
 17 Q Okay. So basically Medicare Part D is a pharmacy
 18 benefit that the federal government offers to
 19 primarily retirees; is that correct?
 20 A Correct.
 21 Q Does it also apply to people with disabilities who
 22 are on Medicare?
 23 A Yes.
 24 Q Okay. So it covers part of their drug
 25 prescription costs; right?

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1 A Correct.
 2 Q And so the Medicare Part D subsidies that ETF
 3 gets, they're premium subsidies; correct?
 4 A I don't know exactly how it works.
 5 Q Okay. There is money that comes in to ETF to help
 6 subsidize --
 7 A Yeah.
 8 Q -- the pharmacy benefit for employees or retirees
 9 who have Medicare; correct?
 10 MR. ROTH: Objection. Asked and
 11 answered.
 12 Q To the extent --
 13 A I just don't know if it goes directly to the
 14 pharmacy benefit manager and then -- you know, I
 15 just don't know the logistics of how exactly
 16 the --
 17 Q Where the check goes?
 18 A I don't know where the check goes, yeah.
 19 Q Okay. But in some sense because it is a
 20 self-insured plan --
 21 A Right.
 22 Q -- the subsidy benefits ETF?
 23 A Yes.
 24 Q Okay. And Navitus or Navitus, I can never
 25 remember exactly how it's pronounced, is the

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1 pharmacy benefits manager; correct?
 2 A Correct.
 3 Q Are there employees who are older than 65 who are
 4 also getting Medicare as well as health insurance
 5 benefits from ETF?
 6 A Yes.
 7 Q Okay. Is there any other Medicare -- so you said
 8 you know that the Medicare funding for I believe
 9 it was three different -- two or three
 10 different -- Medicare Advantage, Medicare Plus,
 11 was there a third?
 12 A Yes.
 13 Q What was the third?
 14 A We call it --
 15 Q ACCESS, I think you said?
 16 A It's called It's Your Choice health plan Medicare.
 17 Q Okay. Are any of those self-insured?
 18 A No. Well, the Medicare Plus plan was self-insured
 19 in 2016.
 20 Q But not in 2017?
 21 A I think not for 2018. 2017 it was.
 22 Q Okay. So it was self-insured in 2016 and '17?
 23 A Correct.
 24 Q So that was -- so there is Medicare funding
 25 involved in Medicare Plus; is that correct?

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1 A Correct.
 2 Q But it goes to the plan, as far as you know,
 3 rather than to ETF?
 4 A On the medical side.
 5 Q On the medical benefits as opposed to the pharmacy
 6 benefits side?
 7 A Yeah. I think with that plan it actually goes --
 8 the Medicare benefits are kind of between the
 9 participants and Medicare directly and then the
 10 plan pays the --
 11 Q Balance?
 12 A -- the balance or a part of the balance depending.
 13 Q So the money flows directly from Medicare to the
 14 provider rather than to the plan?
 15 A I believe so.
 16 Q Okay. And what about the other two, Medicare
 17 Advantage and Medicare -- whatever the other one
 18 is. Medicare Advantage and Medicare wraparound?
 19 No.
 20 A Yeah, you can call it that.
 21 Q Okay.
 22 A So with Medicare Advantage, the Medicare funding I
 23 believe goes directly to the plan, to the health
 24 plan. And with the others, the Medicare
 25 wraparound plans, I'm not exactly sure how that

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1 works.
 2 Q So are Medicare -- So does the Medicare Advantage
 3 money go to the plans as, like, a set amount or is
 4 it a per service kind of amount?
 5 A I think it's a set amount that they determine with
 6 each plan each year.
 7 Q And does that go -- does that determination go
 8 through ETF at all or GIB?
 9 A No. No.
 10 Q So that's strictly between the plans and Medicare?
 11 A Correct. But it's a little more complex than
 12 that.
 13 Q Well, tell me what happens.
 14 A So Medicare and the plan work out, like, the
 15 premium that Medicare pays, but then the plan bids
 16 their premium to the Group Insurance Board where
 17 they might add on administrative costs or things
 18 like that.
 19 Q Okay. So the amount of the Medicare premium
 20 subsidy will affect the amount of the premium that
 21 ETF would be paying -- or that the state would be
 22 paying?
 23 A The members would be paying, correct. Yep.
 24 Q That the members would be paying, and because part
 25 of their -- the employee or beneficiary is --

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1 they've got some subsidy from the state as well?
 2 A Not really for Medicare participants. They pay
 3 their full premium.
 4 Q Okay.
 5 A I mean, ETF is the middle person logistically, but
 6 they pay the full amount.
 7 Q That's true for retirees and employees who are
 8 using these Medicare plans?
 9 A It's true for retirees who are 65 and older, which
 10 is generally when someone is Medicare eligible.
 11 But it works a little differently if there is
 12 someone who is Medicare eligible and they're still
 13 actively employed. Then the state, or whoever
 14 their employer is, pays a portion of their
 15 premium.
 16 Q And ETF is the middle person for that portion?
 17 A Correct.
 18 Q Okay. What about Medicaid funds? Does ETF have
 19 any plans that deal with Medicaid funding?
 20 BadgerCare, for example?
 21 A No.
 22 Q Is there any other federal money that you're aware
 23 of that GIB or OSHP deal with that are provided to
 24 members as a benefit of employment?
 25 A Not that I'm aware of.

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1 Q Okay.
 2 A There are disability programs, and I don't know if
 3 they have federal funding. They are not under
 4 OSHP but they were under the Group Insurance Board
 5 in 2016.
 6 Q Okay. So I'm going to go back a little bit to the
 7 self-insured and fully insured plans that OSHP
 8 deals with. Self-insured plans are those where
 9 the state assumes the primary financial risk for
 10 providing the benefit; right?
 11 A Correct.
 12 Q So if premiums and other sources of revenues, like
 13 premium subsidies, don't cover the costs, the
 14 state ends up eating the loss; correct?
 15 A Right.
 16 Q And fully insured plans are those where the state
 17 essentially pays a contract or premium amount or a
 18 portion of it on behalf of the employee to all --
 19 to private insurance companies that cover all
 20 claims that fall under the uniform benefits and
 21 takes the loss -- takes the risk of loss if the
 22 premiums or contract price don't cover it; right?
 23 A Correct.
 24 Q Okay. The pharmacy plan is a self-insured plan.
 25 You mentioned one other that was self-insured, the

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1 Standard Plan or the ACCESS Plan? Is it called
 2 both things? What is the actual name of it?
 3 A It's actually called both of those. In statute
 4 it's called the Standard Plan, but we call it,
 5 like the branding part, we call it the ACCESS plan.
 6 Q Okay. Did you say there is some disability
 7 programs that are also self-insured?
 8 A So I don't really know much of the details of the
 9 disability plans. But I can tell you that the
 10 Medicare Plus plan is self-insured -- or was
 11 self-insured and then also the uniform dental
 12 plan. Those are the OSHP benefits that are
 13 self-insured.
 14 Q Okay. So outside of dental and pharmacy, are all
 15 the other health benefits in the uniform benefit
 16 package fully insured at this point?
 17 A Yes, except for the ACCESS plan and the Medicare
 18 Plus plan. Yes.
 19 MR. DUPUIS: Right. So actually
 20 now would not be a bad time to take a break.
 21 MR. ROTH: Sure.
 22 (Recess)
 23 Q So I'd like to now turn to the events of 2016
 24 relating to the exclusion that we've talked about,
 25 the exclusion of coverage for procedures,

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1 services, and supplies related to surgery and sex
2 hormones associated with gender reassignment. Okay?
3 A Okay.
4 Q Do you know when the exclusion first appeared in
5 the plans?
6 A No.
7 Q Do you have an understanding of when they first
8 appeared?
9 A A long time ago.
10 Q Okay. In a galaxy far, far away.
11 The exclusion was removed at the July 2016
12 GIB meeting, correct, or the board voted to remove
13 the exclusion at the July 2016 GIB meeting; is
14 that right?
15 A Correct.
16 Q But it had been considered as part of the study
17 group process in earlier years; correct?
18 A Correct.
19 Q Okay. Do you know how far back the study group
20 considered removing the benefit?
21 A I don't.
22 MR. DUPUIS: Okay. We'll mark this
23 one.
24 (Exhibit No. 7 marked for
25 identification)

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1 Q I'm showing you what's been marked as Pray
2 Exhibit 7. Do you recognize that document?
3 A Yes.
4 Q So what is it?
5 A I believe this to be kind of the culmination of
6 the proposed changes for 2016. So it's kind of
7 like probably the first roundup of those items.
8 Q Okay. So this was -- This is a December 8, 2014,
9 email. So this would have been fairly early in
10 the study group process if there had been a study
11 group?
12 A Correct.
13 Q And to your understanding was there a study group
14 or something similar to what you call a study
15 group?
16 A Yes. I believe so.
17 Q Okay. And attached to this email is a document
18 that seems to be -- it's a memo but it also
19 includes a grid. Do you see that?
20 A Uh-huh. Yes.
21 Q And what is that document?
22 A So this is the list of possible recommendations
23 for changes to the group health insurance program.
24 Q Okay. And some of them are uniform benefits
25 changes, but it appears there are other kinds of

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1 changes as well. Any kind of eligibility changes
2 or are they mostly --
3 A They would mostly be contract changes,
4 administrative sort of changes.
5 Q Okay. And then there are some that are uniform
6 benefit -- potential uniform benefit changes;
7 right?
8 A Correct.
9 Q Okay. So where did the uniform benefit changes
10 come from in this process? Where did the ideas
11 come from for potential uniform benefit changes?
12 A So it would have been from a variety of sources.
13 This document doesn't detail where exactly it came
14 from, but it would have been from health plans, it
15 could be directly from members, it could be from
16 our Ombudsperson Services area, it could be from
17 employers.
18 Q It could be from Segal maybe?
19 A I think these were the ones that were kind of
20 before Segal, but they were passed along to Segal
21 as they were researching the program when they
22 first began their contract -- their work with us.
23 Q Okay. So this was -- the email says that we're
24 going to use the attached documents in our meeting
25 this Thursday to prepare for the benefit

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1 consultant Segal. Do you see that?
2 A Yes.
3 Q Okay. So do you recall that meeting?
4 A No.
5 Q Okay. Would you have been at it, do you think?
6 A Probably.
7 Q Okay. Could you look at page -- so on page 7 of
8 the attachment is where the Uniform Benefits -
9 Possible Recommendations begin, that part of the
10 grid. Do you see that?
11 A Yes.
12 Q And then on page 9, the first item in the grid is,
13 "Should we change our 'sex transformation'
14 exclusion language to 1. gender reassignment, 2.
15 remove the exclusion and include benefits, And, 3,
16 allow transgender people to change their sex in
17 the system with or without surgery? And, 4, allow
18 members to select a gender other than M/F in the
19 system and on apps." Do you see that?
20 A Yes.
21 Q So at least as of December 2014 there was some
22 consideration being given to eliminating the
23 benefit; right?
24 A Correct.
25 MR. ROTH: Sorry. Do you mean

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1 eliminating the exclusion?
2 Q I'm sorry. Eliminating the exclusion. Thank you.
3 Is that right?
4 A Yes.
5 Q Then there is a rationale here. It says, "The
6 employer (UW) requests change to enhance hiring.
7 Member presents documentation stating that the
8 coverage cost would be minimal." Do you see that?
9 A Yes.
10 Q Do you recall getting that request from UW or
11 seeing the request from UW?
12 A No. I don't think at this point that would have
13 come to me.
14 Q Okay. Do you know who would have gotten that
15 request?
16 A Probably Arlene Larson.
17 Q Okay. And this email was originally from Arlene
18 to you, among others, including Lisa Ellinger and
19 Mary Statz?
20 A Correct.
21 Q Who was your supervisor at the time?
22 A Yes.
23 Q In the cover email it says, "Tara and I went over
24 our tickler files and have inserted all items that
25 have been" considered -- or "requested for

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1 consideration." Can you say what your tickler
2 files are?
3 A So we would both during this timeframe track --
4 throughout the year track things, like issues that
5 would arise where someone would be requesting that
6 we make a change to a policy or benefit.
7 Q And then it says, "If we allow them to change sex
8 in the system, hormones and other services may be
9 paid that are currently denied." Can you explain
10 what that means?
11 A So this was an initial concern about how claims
12 would be either approved or denied based on the
13 sex in the system because there are certain things
14 that would be automatically denied if it wasn't --
15 Q For a Pap smear for a male, for example?
16 A Correct.
17 Q And is that called gender edits?
18 A Gender edits, yes.
19 Q Did all of the plans have gender edits or was that
20 something that happened at a level other than the
21 plan?
22 A So the plan determines how they -- whether or not
23 they use gender edits. We're not specific about
24 that. I mean, at the end of the day they are to
25 approve and deny benefits based on uniform

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1 benefits. How they get there is --
2 Q Is up to them?
3 A Is up to them.
4 Q Okay. There is a column here that says pursue
5 with a question mark and there are yes and no
6 boxes. So was this used as sort of a decision
7 matrix for what was going to end up being
8 recommended to the board?
9 A Yes.
10 Q Okay. And Approx. PMPM is price per member per
11 month or something?
12 A Yes.
13 Q And that's blank in this case at this point?
14 A Yes.
15 Q And obviously this didn't make it through as a
16 recommendation for 2016 benefits; is that right?
17 A Correct.
18 Q Do you know what happened? Were there discussions
19 of that benefit in particular at study group
20 meetings?
21 A I don't recall there being discussions at study
22 group meetings. I do recall discussion with
23 Segal, a very brief discussion about this.
24 Q Was that on the phone or as --
25 A I believe so, on the phone.

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1 Q Was it a group phone call, like a meeting?
2 A Yes.
3 Q Do you remember who else was on the call?
4 A It would have been Lisa, representatives from
5 Segal, probably their medical director. At the
6 time I can't remember if it was Eileen or it would
7 have been Mike or Mary. I don't know. Other
8 people from OSHP.
9 Q Mary is on this email chain.
10 A Oh. Bill Kox.
11 Q Bill Kox might have been there too?
12 A Yes.
13 Q Okay. Do you recall the substance of that
14 conversation with Segal?
15 A So I believe when they were first studying the
16 program we gave them a document -- I mean, this
17 might be a draft, but, you know, we gave them a
18 document and said these are the things that came
19 in to us through the year, explained our regular
20 process, and then had them kind of react to these
21 things. Like in terms of what were their other
22 clients doing, is it a typical benefit, that kind
23 of thing. So that was just very brief and high
24 level where we just literally probably spent an
25 hour running through these types of things.

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1 Q Okay. Do you remember what Segal said about how
2 typical or atypical this benefit would have been?
3 A They said that it was starting to become more
4 common and that generally it didn't cost much to
5 the program.
6 Q Okay. Did anyone at ETF react to that, say, well,
7 should we do it, or anything along those lines?
8 A The tone, I would say, at ETF at this time was
9 kind of just kind of like a wait and see what -- I
10 mean I think the -- I had a sense that the
11 direction kind of given to Lisa was let's see what
12 the benefits consultant comes up with as
13 recommendations. And so ETF wasn't really
14 pushing, you know, for any benefit changes at the
15 time and wasn't against it either. I mean, it was
16 just kind of neutral.
17 Q And was that true of all of these benefits that
18 are listed in the uniform benefits, do you recall,
19 or were there any that were sort of advocated by
20 ETF? I'm just talking about the uniform benefits,
21 not the other changes.
22 A Sure. I'm just refreshing. Yeah. I can say that
23 ETF wasn't advocating for any of these.
24 Q Okay.
25 A We were just, like, considering them.

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1 Q Okay. The bariatric surgery benefit is mentioned
2 right after the sex transformation exclusion;
3 right? Do you see that?
4 A Yes.
5 Q And that ultimately did end up being a
6 recommendation. Was that for this year or was
7 that for a different year? I'm trying to
8 remember.
9 A It didn't end up being a recommendation from ETF
10 staff. It kind of -- it made the radar a little
11 bit more. It was kind of -- it was listed as an
12 option for the board to be able to add it if they
13 wanted to, but it wasn't recommended.
14 Q Do you know why that made the radar in a way that
15 the sex reassignment benefit didn't?
16 MR. ROTH: Objection. Vague.
17 Q If you know.
18 A I think it's because we've had a board member ask
19 about it or they've shown some interest in it.
20 Q Do you know which board member that was?
21 A I don't.
22 Q Okay.
23 MR. ROTH: When you say "it," do
24 you mean bariatric surgery?
25 A Bariatric surgery, yes. Just to add, we had

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1 received some information that there was changing
2 technology in that field so that it was a less
3 risky surgery.
4 Q And, again, that's the bariatric?
5 A The bariatric.
6 Q Were you aware that when there was a teaching
7 assistants union that they had repeatedly
8 requested that the exclusion be removed from the
9 plan?
10 MR. ROTH: Objection. Assumes
11 facts not in evidence. You can answer.
12 A I'm not aware, no, or I have not been aware.
13 Q Do you know who Pam Oliver is or Pamela Oliver?
14 A No.
15 MR. DUPUIS: I'm going to mark this
16 and see if it refreshes your recollection in
17 any way.
18 (Exhibit No. 8 marked for
19 identification)
20 Q I'm showing you what's been marked as Exhibit 8, I
21 believe. This is an email from April 2014.
22 You're not copied on it. But it's copied to Mary
23 Statz who was your supervisor I believe at the
24 time; is that right?
25 A Yes.

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1 Q 2014. Okay. If you take a look at that, I'm just
2 going to ask you if you recognize the issue. You
3 presumably did not get this email forwarded to
4 you; is that right?
5 A Right. I'm not familiar with this.
6 Q Are you familiar with the issue at all coming up?
7 A No. Not this specific issue.
8 Q Okay.
9 A I mean, not this case, no.
10 Q So had you heard, though, about the UW in
11 particular being concerned about losing either
12 actual staff or potential staff as a result of not
13 covering this benefit?
14 A I didn't know of specific instances but I knew
15 because of the study group process that it was a
16 recommendation they were making to enhance hiring.
17 Q Okay. Did you know anything more than what's on
18 that grid about that? I mean, had you heard that
19 it had been a recruitment issue?
20 A No. I had not heard.
21 (Exhibit No. 9 marked for
22 identification)
23 Q I'm showing you what's been marked as Pray
24 Exhibit 9. Take a look at that quickly. Again,
25 this is a letter. You did not write it, but I

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1 just want to clarify that this is not something
2 that you've specifically dealt with. It's a
3 letter to Pam Oliver, apparently in response to
4 the concerns that she raised in the April 14
5 email.
6 MR. ROTH: Is there a question?
7 Q Yeah. Did you have anything to do with putting
8 this letter together?
9 A No.
10 Q Okay.
11 (Exhibit No. 10 marked for
12 identification)
13 Q I'm showing you what's been marked as Pray
14 Exhibit 10. Again, you're not on this email, but
15 this is an email from Professor Oliver again in
16 about the following year, January of 2015, once
17 again asking ETF to remove the exclusion for sex
18 reassignment surgery and providing some
19 documentation about the cost. Do you remember
20 hearing about this at that time or after?
21 MR. ROTH: Objection. Vague.
22 A Yeah. I don't really, but I knew that primarily
23 Arlene was working on some issues around this.
24 But I didn't -- I wasn't involved in the details.
25 Q Arlene is not actually on this particular email

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1 even, is she? It doesn't look like it.
2 A No.
3 Q Okay. And that would be Arlene Larson; right?
4 A Correct.
5 Q Okay. So ETF staff recommended that the exclusion
6 be removed in June of 2016; right?
7 A Correct.
8 Q But the previous request that ETF remove the
9 exclusion didn't go anywhere. Do you know why
10 they didn't before 2016 and why they did in 2016?
11 A I only know kind of just that brief time that I
12 was involved in the study group process. I think
13 the primary reason at that time was there was kind
14 of like this let's not make any changes to the
15 benefits until we get through this benefit
16 consultant, see what they recommend. I believe
17 that to be the primary reason that a lot of things
18 were kind of tabled on that list and not brought
19 forward.
20 Q Was there anybody who was advocating for the
21 removing the exclusion in any of those study group
22 meetings or within ETF?
23 A I don't think so. I don't remember. There is no,
24 like, clear -- you know, I don't recall anyone
25 clearly really talking about it or advocating for

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1 it except for -- oh, I do. We had one
2 ombudsperson who was requesting that we take a
3 closer look at it.
4 On the flip side, no one was really against
5 it either. It just kind of didn't kind of rise to
6 the -- through the process.
7 Q The ombudsperson who was advocating for its
8 adoption, who was that?
9 MR. ROTH: Misstates testimony.
10 Objection. You can answer.
11 A Okay. Allen Angel, A-n-g-e-l. I don't know if he
12 was really -- I mean, he was just passing along
13 information that he received, like a member,
14 you know, as a member advocate.
15 Q Was it somebody who had appealed a denial that he
16 was passing on information about?
17 A I don't know. I don't know.
18 Q In what setting? I mean, did he send emails?
19 What was the context in which he passed this on?
20 A Yep. So he sent me some information that was like
21 some rate studies or reports about kind of the --
22 I don't even know exactly because I didn't read
23 them in detail, but some information about how to
24 cover these benefits and the overall kind of
25 impact on that that he received from -- I don't

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1 know if he received them directly from a member or
2 I don't know the details. But I would say if
3 somebody was kind of advocating for it, he was.
4 Q And the attachments, were they like articles about
5 covering the benefit?
6 A Yeah, I think so, or papers.
7 Q Okay. Do you remember what those papers said?
8 A So I didn't read the papers in -- you know, I just
9 kind of glanced at them. But I think they were
10 talking about the relative low cost impact to
11 covering the benefits and then they were just kind
12 of like papers about, I don't know, maybe like
13 best practices, but I'm really fuzzy on that.
14 Q Okay. Did any of them talk about such exclusions
15 as being discriminatory in your recollection?
16 A I don't know. I don't know.
17 Q Okay. So ETF was at least aware of the issue in
18 your recollection as early as 2014 but didn't
19 actually take steps to remove the exclusion or it
20 didn't rise to the level of being seriously
21 considered as a recommendation until June of 2016;
22 right?
23 MR. ROTH: Objection. Misstates
24 the testimony.
25 A I believe so.

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1 Q Okay. What changed in 2016?
2 A The finalization of Section 1557 of the ACA.
3 Q So actually the regulations under the ACA; correct?
4 A Correct.
5 Q And at its July meeting in 2016, GIB voted
6 unanimously to remove the exclusion; correct? Do
7 you recall?
8 A I believe so. I don't recall.
9 Q Okay. We'll get there. So you wrote the memo to
10 the GIB making the recommendation that they remove
11 the exclusion for the upcoming plan year; is that
12 right?
13 A Correct.
14 Q Okay. This one has actually been marked before.
15 This was previously marked as Nispel Exhibit 1.
16 Do you recognize that document?
17 A Yes.
18 Q What is it?
19 A It is a memo to the Group Insurance Board
20 recommending that the board approve the changes
21 detailed in the memo.
22 Q And that basically the change was to remove the
23 exclusion for hormone and surgical treatment of
24 gender dysphoria and some notification
25 requirements; correct?

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1 A Correct.
2 Q How did you come to write this memo?
3 A So when we learned of the regulations being
4 finalized, we considered whether or not they
5 applied to the group health insurance program. We
6 were a little unclear, so we went to --
7 MR. ROTH: I'll just insert an
8 objection to the extent you're going to
9 disclose contents of communications you had
10 with ETF counsel, Diana, or anyone else on
11 whether the regulations apply to ETF. You
12 can say who you talked to but not the
13 substance of the conversation.
14 THE WITNESS: And their
15 recommendation?
16 MR. ROTH: Well, I would say we're
17 limited to what's disclosed in this memo.
18 THE WITNESS: Okay.
19 Q So why don't we just talk about -- let's start at
20 the beginning. Who asked you to put this memo
21 together?
22 A Lisa.
23 Q And do you remember when she asked you to do that?
24 A Or Eileen. I'm not sure. One of them.
25 Q Okay.

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1 A Well, I mean, this is -- part of the normal
2 process is that we would bring the final changes
3 to the board in August every year. So they take
4 the first pass in May, then in August. There was
5 a special meeting this year in July, so we brought
6 everything in July. And that would have been just
7 part of my normal job.
8 Q Okay. So were there other issues at the July
9 meeting besides this that were raised that you
10 recall?
11 A I don't remember.
12 Q Okay. Who did you talk to about this? Don't tell
13 me what you talked to them about, but who did you
14 talk to about the Section 1557 regulation?
15 A I would have talked with Arlene Larson, Diana
16 Felsmann, a little bit Jeff Bogardus, Lisa
17 Ellinger, and probably Eileen Mallow.
18 Q What about Segal? Did you communicate with Segal
19 about this?
20 A I'm not sure if I directly did, but ETF did.
21 Q Did you review anything that they did in writing,
22 Segal did?
23 A They sent -- I know they sent like a blast email
24 about this when the regulations were finalized and
25 they also reviewed this topic as it pertained to

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1 our program, and I believe they did give us
2 something in writing about their analysis of
3 whether or not ETF would be a covered entity.
4 Q And did Segal's views make their way into this
5 memo?
6 A Yes. I believe so.
7 Q Did Arlene Larson's views make their way into this
8 memo?
9 A Probably.
10 Q What did she tell you? She's, you said, the
11 federal programs -- I forget what you told us that
12 her --
13 A Yes. The federal -- I forget what her title
14 exactly is. But the federal program, yes.
15 Q She's the person with the most experience of the
16 ACA --
17 A The ACA.
18 Q -- and also Medicare presumably?
19 A Yes.
20 Q And did Jeff Bogardus' views make their way into
21 the memo?
22 A Yes.
23 Q And Lisa Ellinger's?
24 A Yes.
25 Q So on page 3, the second paragraph you say, "With

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1 respect to ETF's self-insured plans, ETF meets the
2 definition of covered entity because ETF
3 administers health insurance coverage, which comes
4 under the definition of a health program or
5 activity, and ETF accepts Medicare Part D
6 subsidies, which constitute federal financial
7 assistance through HHS." Do you see that?
8 A Uh-huh.
9 Q So is it your view that those are conjunctive or
10 disjunctive? In other words, do all of those
11 things have to be true in order for ETF to be a
12 covered entity or is one of them individually
13 sufficient?
14 MR. ROTH: I'll object to the
15 extent it calls for a legal conclusion, but
16 you can answer if you know.
17 A Yeah. I'm not exactly sure.
18 Q You don't remember? Did you know at the time?
19 A Whether health insurance coverage comes under the
20 definition of a health program or activity?
21 Q So whether ETF meets the definition of covered
22 entity. So you have a because clause here and it
23 says, "ETF administers health insurance coverage,
24 and ETF accepts Medicare Part D subsidies." Is it
25 necessary for both of those to be true in order

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1 for ETF to be a covered entity?
2 MR. ROTH: Same objection. You can
3 answer.
4 A I think so.
5 Q You think so, okay. The next sentence says,
6 "Regarding the insured plans, the regulations
7 provide that for an entity principally engaged in
8 providing or administering health insurance
9 coverage, all of its operations are considered
10 part of the health program or activity." Do you
11 see that?
12 A Yes.
13 Q Okay. And then, "As a result, ETF is also a
14 covered entity in connection with the insured
15 plans because ETF is principally engaged in
16 administering health insurance coverage." Right?
17 A Yes.
18 Q Okay. What do you understand "principally engaged
19 in administering health insurance coverage" to
20 mean?
21 MR. ROTH: Same objection.
22 A That that's their primary role.
23 Q Okay. And would you say ETF is primarily engaged
24 in administering health insurance coverage?
25 MR. ROTH: Same objection.

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1 A I mean, ETF is -- OSHP is primarily engaged in
2 that, yes.
3 Q And the Group Insurance Board is primarily engaged
4 in that?
5 MR. ROTH: Same objection.
6 A Correct.
7 Q And then you go on to say, "If ETF did not meet
8 the definition of covered entity, ETF staff would
9 still recommend the same changes to the uniform
10 benefits for two reasons." Do you see that?
11 A Yes.
12 Q And what are the reasons?
13 A Because we knew that the health plans would be
14 considered covered entities and there was language
15 in the regulation that -- we use the term here
16 putting contract away, but essentially the health
17 plans wouldn't be able to contract with us -- it
18 was our understanding the health plans wouldn't be
19 able to contract with us if we didn't follow the
20 regulation.
21 Q So that's sort of similar to the -- there is the
22 email we looked at earlier from Anthem, which is
23 Exhibit 6, I believe. Could you take a quick look
24 at Exhibit 6?
25 A Yes. Yes.

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1 Q So I think you said that you didn't think that
2 Anthem pulled out of providing coverage because of
3 the exclusion. Do you know of any plans that did
4 pull out because of the exclusion?
5 A No.
6 Q Do you know what the resolution was that allowed
7 them to feel that they could do this without a
8 risk of liability?
9 MR. ROTH: Objection. Calls for
10 speculation.
11 Q To the extent you know?
12 MR. ROTH: It lacks foundation.
13 A I don't know.
14 MR. ROTH: Calls for a legal
15 opinion.
16 Q Have you been told anything?
17 A No.
18 Q You gave a presentation on this topic to the GIB;
19 correct?
20 A Correct.
21 Q Okay.
22 (Exhibit No. 11 marked for
23 identification)
24 Q I'm showing you what's been marked as Pray
25 Exhibit 11. Do you recognize that document?

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1 A Yes.
 2 Q What is it?
 3 A This is the PowerPoint presentation that went
 4 along with this memo for the July 12th, 2016,
 5 Group Insurance Board meeting.
 6 Q Okay. And there is a cover email; correct?
 7 A Yes.
 8 Q And you say, "Here's the draft of my PowerPoint
 9 presentation," and you say, "A BIG thank you to
 10 Arlene who helped me considerably with this!" Do
 11 you see that?
 12 A Yes.
 13 Q So Arlene was helping you put this together, and
 14 she's the federal programs sort of point person;
 15 is that right?
 16 A Correct.
 17 Q Okay. She's not a lawyer; correct?
 18 A Correct.
 19 Q If you look at -- I'm not sure -- yeah, they do
 20 have page numbers on it. If you look at page 4 of
 21 the PowerPoint -- wait a minute. Actually it's
 22 page 7. So there you say that ETF meets the
 23 definition as a covered entity, and that's a
 24 covered entity under the ACA regulations; correct?
 25 A Correct.

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1 Q Because its self-insured plans administer health
 2 insurance coverage and accept Medicare Part D
 3 subsidies; correct?
 4 A Correct.
 5 Q And the fully insured plans are principally
 6 engaged in providing or administering health
 7 insurance coverage; correct?
 8 A Correct.
 9 Q So are those -- That's ETF or at least OSHP is
 10 principally engaged in providing or administering
 11 health insurance coverage. Is that what you mean?
 12 A Well, this meant that the plans we contract with
 13 are principally engaged in those activities.
 14 Q Okay. But your view in the memo was that ETF is a
 15 fully -- ETF is principally engaged in
 16 administering health coverage for its fully
 17 insured plans; correct? Do you want to go back
 18 and look at the memo?
 19 A Technically, I don't know that that was a point we
 20 were really making. It was more that we contract
 21 with these plans and that's their primary. Maybe
 22 I'm wrong.
 23 Q Well, if you look again at Nispel Exhibit 1, that
 24 same paragraph on the third page. You say, "As a
 25 result, ETF is also a covered entity in connection

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1 with" -- this is the last sentence, "in connection
 2 with the insured plans because ETF is principally
 3 engaged in administering health insurance
 4 coverage." Right?
 5 A Yep. Okay.
 6 Q And that was your view at the time?
 7 A Yes.
 8 Q And the view of the people you consulted with in
 9 preparing the memo?
 10 A Yes.
 11 MR. ROTH: Objection, to the extent
 12 it was a communication with counsel that
 13 you're referring to. Don't answer with
 14 respect to that.
 15 Q Everyone but counsel told you that or agreed with
 16 that; correct?
 17 A Yes.
 18 Q Okay. And then on page 9 of the -- I'm sorry.
 19 Going back to Exhibit 11, I'm not sure why yours
 20 is pink. Maybe it just looks pink from a
 21 distance.
 22 MR. ROTH: Oh, it's pink.
 23 Q The recommendations were to remove the exclusion
 24 for benefits and services related to gender
 25 reassignment effective January 1 and then include

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1 nondiscrimination notifications in communications
 2 in the fall; correct?
 3 A Correct.
 4 Q Was there any conversation about the presentation,
 5 any questions raised that you recall when you gave
 6 it to the board?
 7 A I think there might have been a question just
 8 about, like, just confirming that we believed the
 9 health plans wouldn't be able to have contracts
 10 with us if we didn't remove -- or didn't comply
 11 with these regulations.
 12 Q Okay. And who raised that question, do you
 13 remember?
 14 A I don't remember.
 15 Q Was it a board member?
 16 A Yes.
 17 Q Male or female?
 18 A I don't remember. It might have been Nancy
 19 Thompson, but I can't say for sure.
 20 Q Okay.
 21 (Exhibit No. 12 marked for
 22 identification)
 23 Q I'd like to show you what's been marked as Pray
 24 Exhibit 12. I just realized -- all right. We'll
 25 call it Pray Exhibit 12 even though it's already

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1 been marked as Nispel Exhibit 13.
 2 MR. ROTH: That's fine.
 3 Q Could you take a look at that document and tell me
 4 if you recognize it.
 5 A Yes.
 6 Q What is it?
 7 A Minutes from the July 12 Group Insurance Board
 8 meeting.
 9 Q Okay. And you attended that meeting; correct?
 10 A Yes.
 11 Q And this is the meeting at which you gave the
 12 presentation; is that right?
 13 A Correct.
 14 Q So if you could take a look at the first page
 15 where the board members present is listed. So
 16 we've already talked about Michael Farrell who is
 17 the chair, and you said that he has experience in
 18 insurance as a broker; is that correct?
 19 A Correct.
 20 Q What about Bonnie Cyganek, do you know what her --
 21 where she comes from?
 22 A She was the representative from the Department of
 23 Justice, but she worked at ETF in the past.
 24 Q Okay.
 25 A So she has some understanding.

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1 Q So when you say she was the representative from
 2 the Department of Justice, did she work at the
 3 Department of Justice?
 4 A Yes.
 5 Q Okay. And the board has a position for DOJ
 6 representation; is that correct?
 7 A Yes.
 8 Q Okay. And that's appointed by the -- or assigned
 9 by the Attorney General?
 10 A I think so.
 11 Q Okay. And Herschel Day we already talked about.
 12 He was the secretary at the time of the board?
 13 A Yes.
 14 Q Okay. Terri Carlson I think you mentioned as
 15 someone who worked for OCI; is that correct?
 16 A Correct.
 17 Q Office of Commissioner of Insurance. Who is Chuck
 18 Grapentine?
 19 A He is retired. There is a few spots on the board
 20 that are, like, for retirees, and I'm not sure
 21 exactly which slot he fills and I don't know his
 22 background.
 23 Q Okay. What about Michael Heifetz?
 24 A He was from DOA.
 25 Q Okay. And that's Department of Administration?

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1 A Correct.
 2 Q Okay.
 3 A The budget office.
 4 Q Okay. That's also -- The DOA secretary actually
 5 has essentially a representative, and this is who
 6 it was?
 7 A I believe so.
 8 Q Okay. Who is Stacey Rolston?
 9 A She is from -- I'm not sure at the time if it was
 10 the Office of State Employee Relations or if it
 11 was the Division of Personnel Management.
 12 Q That name changed at some point?
 13 A One of them, yes.
 14 Q It was essentially the same --
 15 A Yes.
 16 Q -- functions served by those offices; correct?
 17 A Yeah.
 18 Q Okay. Nancy Thompson?
 19 A She, I think, is a retired teacher. She's
 20 retired, and I'm not exactly sure which spot she
 21 fills, but I think she's a retired teacher.
 22 Q J.P. Wieske?
 23 A He's from OCI.
 24 Q All right. And then Bob Ziegelbauer?
 25 A I think he's just the governor's representative on

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1 the board.
 2 Q And Ted Neitzke was absent. Do you know who Ted
 3 Neitzke is?
 4 A I think he represents a local employer or a school
 5 district. Something like that.
 6 Q Okay. So is there somebody besides Stacey Rolston
 7 from OSER, or whatever it was before -- or after,
 8 representing employees on the board -- I mean
 9 employers on the board?
 10 A Employers?
 11 Q Yes.
 12 A Maybe Ted, I mean, because he's a local employer
 13 and maybe Herschel in his role as a teacher.
 14 Q He's a professor at UW-Eau Claire; correct?
 15 A Professor. Yes. So he may be representing
 16 employers in some capacity.
 17 Q Okay. So take a look at page 3 and 4 of the
 18 minutes. So this was the discussion of the change
 19 to remove the exclusion; correct?
 20 A Correct.
 21 Q And it says -- it starts out by saying, "Ms. Pray
 22 referred the board to the memo." And that's the
 23 memo that we just looked at; correct?
 24 A Correct.
 25 Q Okay. And you refer to at the May 18th meeting

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1 the board approved initial guidelines and uniform
 2 benefit change recommendations as presented and
 3 granted the staff authority to make additional
 4 changes and then you say that additional changes
 5 to the guidelines contract are necessary. What is
 6 the guidelines contract?
 7 A That was the name of the contract with the health
 8 plans at that time. We called it the guidelines
 9 contract for our health -- you know, it had a
 10 longer title than that, but that's kind of
 11 informally what it was called.
 12 Q Okay. And you say that the changes are necessary
 13 due to the federal Department of Health and Human
 14 Services issuing final regulations pertaining to
 15 Section 1557; correct?
 16 A Correct.
 17 Q Of the Affordable Care Act. So in the minutes,
 18 whoever wrote the minutes says, "After analyzing
 19 the new law, ETF's Office of Legal Services
 20 recommended two changes to bring ETF into
 21 compliance." Correct?
 22 A Correct.
 23 Q Was it just Office of Legal Services or was this a
 24 group project that made these recommendations?
 25 MR. ROTH: Objection. Vague.

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1 A I mean, we did a preliminary and then asked legal
 2 to analyze it.
 3 Q Okay. And when you say we, it's the same people
 4 you said --
 5 A Yes.
 6 Q -- were involved in giving you input into the
 7 memo; correct?
 8 A Yes.
 9 Q Okay. So on page 4 there is a paragraph that
 10 begins after the bullet points. "ETF's Office of
 11 Legal Services and Segal Consulting analyzed the
 12 new law and recommend that ETF consider itself a
 13 covered entity due to offering self-insured plans,
 14 providing and administering health insurance
 15 coverage, and accepting Medicare Part D
 16 subsidies." Do you see that?
 17 A Yes.
 18 Q Again I'm just going to ask, did you view these as
 19 conjunctive or disjunctive? Or do you view them
 20 as disjunctive or conjunctive?
 21 MR. ROTH: Objective. It's
 22 lunchtime. Objection. Calls for a legal
 23 conclusion. You can answer if you can.
 24 A Yeah, I don't really know. I didn't think about
 25 them that way.

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1 Q How did you think of them?
 2 MR. ROTH: Same objection.
 3 A I think what you're asking is do we have to meet
 4 all of these things to be considered a covered
 5 entity.
 6 Q Right.
 7 A And I didn't view them that way. I kind of viewed
 8 them as these were the reasons that -- these were
 9 the three different reasons we considered
 10 ourselves to be a covered entity after we reviewed
 11 the analysis from --
 12 Q Okay. So you say, "No further substantial changes
 13 to the 2017" -- this is a couple of paragraphs
 14 down -- "Guidelines Contract and Uniform Benefits
 15 are anticipated, and final change recommendations
 16 will be presented at the November 15, 2016, board
 17 meeting." Do you see that?
 18 A Yep.
 19 Q Is that part of the normal process, the
 20 November 15 board meeting would be where sort of
 21 the final recommendations for the uniform benefits
 22 are approved?
 23 A It would be normally August or November depending
 24 on kind of what occurs. But yes.
 25 Q Okay. And then the motion says, "Ms. Carlson

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1 moved to approve the changes to the Guidelines
 2 Contract and Uniform Benefits as detailed in
 3 Attachment A and grant ETF staff the authority to
 4 make additional technical changes necessary." Do
 5 you see that?
 6 A Yes.
 7 Q And Ms. Thompson seconded, and it passed
 8 unanimously. Do you see that?
 9 A Yes.
 10 Q So J.P. Wieske voted in favor of the benefit at
 11 the time; correct?
 12 A Correct.
 13 Q As did Bonnie Cyganek; correct?
 14 A Correct.
 15 Q Okay. As did Mr. Farrell?
 16 A Correct.
 17 Q Okay. And having reviewed these minutes, do you
 18 recall any other discussion or questions for you
 19 that came up during the presentation or before the
 20 vote?
 21 A No.
 22 Q Okay. Did you review the HHS regulations
 23 yourself?
 24 A Parts, yes.
 25 Q Okay. Did you read any interpretations of the

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1 coverage rule other than what you were given by
2 counsel?
3 A Yes.
4 Q What else did you read?
5 A Segal's analysis and then also there were just,
6 like -- you know, I'm on ListServes of kind of
7 industry emails and things that I reviewed.
8 Q Okay. And did those things that you reviewed
9 contribute to your view that ETF was a covered
10 entity?
11 A Yes.
12 Q Okay. There was an August 2016 GIB meeting;
13 correct?
14 A I think so.
15 Q Okay. Do you recall the gender dysphoria
16 treatment issue coming up at that meeting?
17 A I don't remember anything substantial happening
18 with it at that meeting.
19 Q Okay. How about at the November meeting?
20 A I don't remember.
21 Q Okay. But you're aware that in August there was a
22 memo from the Department of Justice asking --
23 basically indicating to the board the view that
24 GIB and ETF were not required to follow the HHS
25 regulations under the ACA; correct?

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1 A Correct.
2 MR. ROTH: I'll object to the
3 extent it mischaracterizes the document which
4 has not been put into evidence yet before the
5 witness. You can answer if you can.
6 A Yes.
7 MR. DUPUIS: Now would probably be
8 a good time to break and we can come back.
9 MR. ROTH: A half hour is probably
10 tough, so maybe 45 minutes.
11 MR. DUPUIS: Yeah, try for
12 45 minutes.
13 MR. ROTH: That's fine.
14 MR. DUPUIS: Sounds good.
15 (Lunch Recess)
16 (Mr. Godbe exited the proceedings
17 and Mr. Knight entered the
18 proceedings)
19 Q So welcome back. You're still under oath. Okay?
20 A Okay.
21 Q All right. So I think we were talking about the
22 November and August GIB meetings and whether there
23 had been any discussion or action related to the
24 exclusion at those meetings and I think you said,
25 if you --

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1 A So I couldn't remember. Then you reminded me
2 there was a memo from DOJ.
3 Q Right.
4 MR. DUPUIS: I didn't make extra
5 copies of this, if that's okay.
6 MR. ROTH: Is this the memo?
7 MR. DUPUIS: Yes. It's the memo.
8 It's actually the board packet for the
9 August 16th meeting.
10 MR. ROTH: If you can just give me
11 two seconds, I have copies in my office. I
12 don't have them with me but I do want to have
13 one.
14 MR. DUPUIS: Okay.
15 (Recess)
16 Q I'm going to show you what was marked in a
17 previous deposition as Day Exhibit No. 4. Do you
18 recognize that document?
19 A Yes.
20 Q So it's actually a memo, correspondence memo to
21 the GIB from, I believe, Sara Brockman, perhaps?
22 A Correct.
23 Q And who is Sara Brockman?
24 A She is a health policy advisor in OSHP.
25 Q So, again, in that same classification that you're

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1 in at OSHP?
2 A Yes.
3 Q Okay. And then it's got two attachments. One is
4 a memo from the Department of Justice, Andy Cook,
5 Deputy Attorney General; correct?
6 A Correct.
7 Q That's an August 10 memo. And then there is an
8 August 11 memo from David Nispel and Diana
9 Felsmann; correct?
10 A Correct.
11 Q Okay. Do you recall seeing those memos when they
12 were produced?
13 A Yes.
14 Q Okay. And on the front page of that -- on the
15 correspondence memo that attaches the other two
16 memos, in the lower right-hand corner there are
17 some boxes and it indicates meeting date. So that
18 would have been an 8/16/2016 meeting; is that
19 correct?
20 A Correct.
21 Q Do you recall this being discussed at the
22 August 16th meeting?
23 A I do not recall.
24 Q Do you recall any discussions of that memo within
25 ETF, the memo from the Department of Justice?

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1 MR. ROTH: I'll instruct the
 2 witness not to answer to the extent it
 3 involves conversations with ETF counsel. Any
 4 other conversations you can discuss.
 5 A I knew that we had received a memo and I knew that
 6 our legal counsel was preparing a memo kind of in
 7 response, but that was really all I knew about it.
 8 Q Okay. Did you have any involvement in helping put
 9 that memo -- the response memo together?
 10 A No.
 11 Q Okay. Were there any conversations between you
 12 and Ms. Ellinger about the DOJ memo at about this
 13 time?
 14 A I don't remember. I mean, nothing in depth.
 15 Maybe just that we had received this. I mean, at
 16 this time I was in -- I would be really involved
 17 in our member materials and so to the extent of
 18 any conversation would have been about what I
 19 needed to put in the member materials related to
 20 this.
 21 Q Okay. Was there any indication at this point that
 22 what had been approved at the July meeting was
 23 going to be changed?
 24 A At this point, no, I don't think we knew what
 25 would happen.

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1 Q Was there any effect on what you were preparing
 2 for members in the member communications that you
 3 recall as a result of this?
 4 A I mean, at the end of the day we went forward with
 5 information in materials that the exclusion was
 6 going to be removed, but we were kind of like on
 7 hold for a little while.
 8 Q Okay. So there was some delay maybe in sending
 9 out --
 10 A Some delay, yes.
 11 Q -- member materials?
 12 A Not in sending them out but in just kind of
 13 finalizing them.
 14 (Exhibit No. 13 marked for
 15 identification)
 16 Q I'm showing you what's been marked as Pray Exhibit
 17 No. 13. Do you recognize that?
 18 A Yes.
 19 Q Okay. And what is it?
 20 A Minutes from the December 13 Group Insurance Board
 21 meeting.
 22 Q And you were at that meeting; correct?
 23 A Yes.
 24 Q Okay. Take a look at page 8. There is a
 25 discussion and consideration of the 2017 uniform

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1 benefits - HHS nondiscrimination rule. Do you see
 2 that?
 3 A Yes.
 4 Q So this was another discussion of the removal of
 5 the exclusion; correct?
 6 A Correct.
 7 Q And it says in the first paragraph, second
 8 sentence, "The item was added to the December 13
 9 meeting agenda at the request of a board member,
 10 as the Wisconsin Department of Justice indicated
 11 the intent to send representation to the board
 12 meeting to discuss the issue." Do you see that?
 13 A Yes.
 14 Q Do you know who the board member was who requested
 15 that it be put on the agenda?
 16 A I think -- I believe it was J.P. Wieske.
 17 Q Okay. And he's the person who is -- he's one of
 18 the OCI representatives on the GIB?
 19 A Correct.
 20 Q Okay. Do you know how he made that request?
 21 A I don't.
 22 Q Did you see his request in any way?
 23 A No.
 24 Q How do you know that it was him?
 25 A I don't know for certain that it was him. I think

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1 it was him. And I think probably from Lisa.
 2 Q Okay. So then there is a little bit of a
 3 narrative of the history of the exclusion and its
 4 removal. Right? Then it says that Mr. Potter
 5 stated that the August 10, 2016, memorandum was
 6 authored by the DOJ at the request of the
 7 governor's office for the benefit of the board.
 8 Do you see that?
 9 A Yes.
 10 Q Do you know who Mr. Potter is?
 11 A No.
 12 Q Okay. Do you recall him saying that at the
 13 meeting?
 14 A Vaguely. I mean, I remember there being
 15 representatives, but --
 16 Q Okay. Do you remember whether there was any
 17 discussion of who at the governor's office had
 18 made the request to the DOJ?
 19 A I don't believe there was.
 20 Q And it says, "Mr. Potter noted the State of
 21 Wisconsin has joined a federal lawsuit in Texas
 22 challenging the federal Department of Health and
 23 Human Services' final regulations pertaining to
 24 Section 1557 of the Affordable Care Act." Do you
 25 see that?

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1 A Yes.
 2 Q To your knowledge, was ETF a party to that lawsuit?
 3 A No. Well, I mean, technically we're part of the
 4 State of Wisconsin, so maybe. I don't know.
 5 Q Have you been involved in any way in any -- as a
 6 witness or providing documents in that litigation?
 7 A No.
 8 Q Are you aware of anybody else at ETF providing
 9 documents in that litigation?
 10 A Not that I'm aware of.
 11 Q Do you know when that lawsuit was filed?
 12 A I don't know exactly when that was filed.
 13 Q Okay. So there is a paragraph here that says,
 14 "Mr. Potter stated that the DOJ recommends the
 15 board follow the law as it currently stands." Do
 16 you see that?
 17 A Yes.
 18 Q Did you have an understanding of what that meant
 19 in terms of the exclusion?
 20 A I thought it meant that ETF was to move forward
 21 with our interpretation of the regulation.
 22 Q That ETF was a covered entity and, therefore,
 23 needed to eliminate the exclusion?
 24 A Yes.
 25 Q Okay. Was this December 13 meeting a regularly

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1 scheduled board meeting?
 2 A I don't think so.
 3 Q There are four normal meetings; is that right?
 4 A Correct.
 5 Q And when are they?
 6 A February, May, August, and November.
 7 Q Okay. Did you make any -- Were you involved at
 8 all in the discussion of this item at the board
 9 meeting --
 10 A No.
 11 Q -- on December 13?
 12 A No.
 13 Q Do you recall any board members or others asking
 14 questions of Mr. Potter?
 15 A I don't remember.
 16 Q Do you remember any discussion beyond what's
 17 reflected in the minutes here?
 18 A No.
 19 Q Was there any discussion afterwards among ETF
 20 staff about what had come up at the meeting?
 21 A A little bit.
 22 Q What was discussed?
 23 A I mean, I think it was just kind of, like,
 24 you know, what happened, what does this mean, do
 25 we just keep moving forward. You know, we were

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1 just trying to figure out how to proceed.
 2 Q When you say "we," who do you mean?
 3 A So probably the same people. Arlene -- OSHP
 4 staff. Jeff.
 5 Q The same people who contributed to the memo that
 6 you had put together earlier?
 7 A Yes, uh-huh.
 8 Q So Ms. Ellinger?
 9 A Yes.
 10 Q Okay. Did Mr. Conlin give any direction about
 11 where things seemed to be headed with this?
 12 A No.
 13 MR. ROTH: Objection. Vague.
 14 A Not to me.
 15 Q Okay. Was there anyone else from DOJ at the
 16 meeting besides Mr. Potter?
 17 A I think Colin was there. I'm not sure if there
 18 was anyone else.
 19 Q Did it ever come up at this meeting that even if
 20 it wasn't required by the ACA the board could
 21 cover these benefits as a matter of policy?
 22 A I think at some point that did come up. I don't
 23 know if it was -- I don't remember the specifics
 24 of this meeting, but I think that was a question
 25 that the board had or someone on the board had.

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1 Q Did that come up among staff, OSHP staff?
 2 A Not that I was a part of. The question itself?
 3 Q The issue of whether just as a matter of policy
 4 ETF and GIB could just go ahead and cover this
 5 benefit regardless of the ACA's requirements.
 6 A I don't remember that specifically being a
 7 conversation with staff. But I remember a board
 8 member asking the question, I think.
 9 Q Okay. That's not reflected in the December 13th
 10 minutes to your --
 11 A I do not see that.
 12 Q So there was a subsequent meeting of the board on
 13 December 30; correct?
 14 A Correct.
 15 Q You did not attend that meeting; is that right?
 16 A Correct.
 17 Q Were you on vacation?
 18 A Yes.
 19 Q Okay. Do you know how long before that meeting
 20 the notice went out?
 21 A I don't know.
 22 Q Did anybody contact you about that meeting before
 23 it occurred? Anybody from ETF?
 24 A Yes. I mean, I knew the meeting was happening.
 25 Q Okay. So somebody contacted you while you were on

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1 vacation to let you know it was happening?
2 A Yes. I mean, I may have just checked my email or
3 something, but I did know that it was happening,
4 yes.
5 Q Did anybody ask you to come in for it?
6 A No.
7 Q Okay. Did you know what it was going to be about?
8 A Yes.
9 Q And there was only one item on the agenda really
10 for that meeting; is that right?
11 A I believe so.
12 Q And that was whether or not to reinstate the
13 exclusion that we've been talking about here?
14 A Yes.
15 Q Did you help prepare OSHP staff for this meeting
16 in any way? Did you communicate with anyone?
17 A No. Not before the meeting.
18 Q Did you have any communications at all with
19 anybody at OSHP before the meeting, between the
20 time it was announced and it happening?
21 A About the meeting? Just -- I mean, I knew that
22 the meeting was going to happen. We didn't know
23 what would happen at the meeting. So it was just
24 kind of like -- I mean, I'm responsible for
25 communications right after the meeting, so it was

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1 kind of like I needed to know what was going on to
2 be able to communicate out. So I was just kind of
3 anticipating what was going to happen.
4 Q Okay. And the board ultimately voted to reinstate
5 the exclusion upon the occurrence of four
6 contingencies; correct?
7 A Correct.
8 Q Do you know what led to the decision to reinstate
9 the exclusion based on these four contingencies
10 occurring?
11 A No.
12 Q So by this time the plans had already signed
13 contracts; is that right?
14 A Correct.
15 Q And those contracts included coverage of
16 treatments for gender dysphoria that had
17 previously been excluded; correct?
18 A Yes.
19 Q In your time at ETF, are you aware of any other
20 situations in which a benefit change like this
21 took place after the contracts had already been
22 signed by the plans?
23 A I don't think so.
24 Q Has there ever been a special meeting called on as
25 short a notice as this meeting was called, this

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1 December 30th meeting, in your time there?
2 A No.
3 Q Did you have a view about the consequences that
4 this could have for beneficiaries of the program
5 if the benefits were canceled?
6 A Did I have a view?
7 Q Yes.
8 A Yes.
9 Q What was your view?
10 A That it could have an impact on some of the
11 members covered by the program.
12 Q And what impact did you think it could have?
13 A That they wouldn't be able to receive services
14 that they thought they might be able to receive.
15 Q Did you view that as potentially harmful to them?
16 MR. ROTH: Objection. Vague.
17 A Potentially, yes.
18 Q Did you express that to anyone at ETF?
19 A Maybe.
20 Q Do you recall what you said?
21 A No. And I probably didn't say much, but, I mean,
22 amongst my colleagues I might have said, you know,
23 this is unfortunate, it's changing something after
24 the open enrollment materials have already gone
25 out and some of the -- you know, in writing.

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1 Q Did other people in ETF express similar concerns?
2 A Yes.
3 Q Who else expressed concerns about it?
4 A I mean, a lot of the concern was really about,
5 you know, we have to now go back and change all of
6 these things and put the notice out and, you know,
7 that kind of thing. So there is a lot of work
8 involved in that and it was quick timing to get
9 that communication sent out.
10 Q Was there concern about the health of the
11 beneficiaries as well?
12 A I mean, I think there may have been, but,
13 you know, we're all professionals and we're just
14 carrying out kind of what -- so, I mean, there
15 wasn't really much conversation about that. There
16 might have been a sentiment of that's too bad, but
17 we were kind of just getting the job done.
18 Q Had there ever been another situation in your time
19 there where you had to -- after you had already
20 issued the member information that you had to go
21 back and make changes like this?
22 A Not like this, no.
23 (Exhibit No. 14 marked for
24 identification)
25 Q I'm showing you what's been marked as Pray Exhibit

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1 No. 14. Do you recognize that document?
2 A Yes.
3 Q And what is that?
4 A Minutes from the December 30th Group Insurance
5 Board meeting.
6 Q And this confirms that you weren't at this
7 meeting; correct? The attendance, it looks like
8 you did not appear --
9 A Correct.
10 Q -- in the list. But did you see these minutes
11 afterwards?
12 A I don't know if I did. I may not have read them.
13 Q Were you involved in putting together
14 communications for members about what happened at
15 this meeting?
16 A Yes.
17 Q And also for I think maybe the term is internal
18 constituents as well?
19 A Yes.
20 Q Did you put together materials for the plans about
21 what had happened?
22 A Yes.
23 Q Okay. But you didn't specifically use the
24 minutes, as far as you know, to do that?
25 A I don't think I used the minutes.

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1 Q Where did you get the information about what had
2 happened at the December 30th meeting?
3 A I received a copy of the motion, and that's
4 primarily what I used.
5 Q Okay. Who sent you the motion?
6 A I don't remember.
7 Q Okay.
8 A Probably Eileen or Lisa.
9 (Exhibit No. 15 marked for
10 identification)
11 Q I'm showing you what's been marked as Pray
12 Exhibit 15. Do you recognize this document?
13 A I mean, I haven't seen this email, but I recognize
14 the substance of the email.
15 Q So there is an attachment to the email.
16 A Uh-huh.
17 Q Clarification: GIB action related to health
18 coverage based on gender identity. Do you see
19 that?
20 A Which --
21 Q The last document actually.
22 A Oh, yes. Yes.
23 Q I think it was item 5 maybe.
24 A Yep.
25 Q I didn't attach all of the attachments. So do you

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1 recognize that document?
2 A Yes.
3 Q Did you put that together?
4 A Yes.
5 Q Okay. So this is a document that was -- I believe
6 this email went out to health plans; is that
7 correct?
8 A Correct.
9 Q So this was sent by Joan Steele; correct?
10 A Correct.
11 Q And this is a description that you put together of
12 what happened at the board meeting on December 30,
13 2016; correct?
14 A Correct.
15 Q And it says, "GIB voted to reinstate the exclusion
16 if all of the following were to occur," and then
17 it's got the list of contingencies; correct?
18 A Correct.
19 Q Are you familiar with any other time -- well,
20 actually, let me ask you this first.
21 When did you first become aware of these
22 contingencies being the conditions on which the
23 benefit -- the exclusion would be reinstated?
24 A After the December 30th board meeting.
25 Q Were you aware of it that day, the next day, or

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1 the next day you came to work, do you remember?
2 A That day. After the meeting.
3 Q Okay.
4 A Or maybe the next day.
5 Q Did you come in early from -- were you planning to
6 have more vacation than this?
7 A No. I didn't come in early.
8 Q Okay.
9 A I don't think. I don't remember.
10 Q So after the listing of the contingencies, there
11 is an update of each of the contingencies as of
12 January 4, 2017. Do you see that?
13 A Yes.
14 Q Okay. And under number 2 you say, "This statute,"
15 and that's referring to Section 40.03(6)(c). Do
16 you see that?
17 A Yes.
18 Q "This statute provides parameters for
19 modifications to benefits, and modifications must
20 either be required by law or reduce premium costs
21 for the state or its employers in the current or
22 any future year." Do you see that?
23 A Yes.
24 Q So this modification wasn't required by law,
25 correct, reinstating the exclusion?

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1 MR. ROTH: Object to the extent it
 2 calls for a legal conclusion. You can
 3 answer.
 4 A Yeah. Correct. What's the question?
 5 Q Do you want me to ask the question again?
 6 A Yes.
 7 Q The reinstatement of the exclusion was not
 8 required by law?
 9 A Correct.
 10 Q And reducing premium costs for the state or its
 11 employees in any current -- in the current or any
 12 future year, do you see that?
 13 A Yes.
 14 Q And there is a paragraph that says that the
 15 board's actuaries -- that's Segal; right?
 16 A Yes.
 17 Q -- had estimated a nonmaterial cost for the health
 18 plans to eliminate the exclusion; correct?
 19 A Correct.
 20 Q And therefore ETF did not see an increase in the
 21 health plan premiums due to this coverage. Do you
 22 see that?
 23 A Yes.
 24 Q And then you say, "At this time, ETF does not
 25 anticipate a premium reduction due to the

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1 reinstatement of this exclusion." Do you see
 2 that?
 3 A Yes.
 4 Q So is it your understanding that you did not
 5 anticipate the exclusion going back into effect at
 6 this point?
 7 A At this point, I didn't quite --
 8 Q So at the time you wrote this, you did not expect
 9 there to be a premium reduction; correct?
 10 A Correct.
 11 Q Okay. So that means that contingency wouldn't
 12 have been met; correct?
 13 A The contingency was -- oh.
 14 Q Satisfaction of 40.03(6)(c).
 15 A Right, right. So we didn't know for sure, but we
 16 didn't anticipate it.
 17 Q Because every estimate before had indicated that
 18 there was no effect one way or the other really;
 19 correct?
 20 A Correct.
 21 MR. ROTH: Objection. I'm going to
 22 insert an objection before that one. It
 23 misstates the testimony and the evidence
 24 that's in the record.
 25 Q So who told you that -- I mean, on what basis did

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1 you say that ETF does not anticipate a premium
 2 reduction due to the reinstatement of the
 3 exclusion?
 4 A Lisa. We had talked about it.
 5 Q Okay. What did she say?
 6 A Just that -- I mean, this benefit wasn't really
 7 factored into the premium cost, so it was just
 8 kind of the logic that it wouldn't change the
 9 premiums up or down.
 10 Q And your understanding at the time was that 40.03
 11 required that there be a premium cost reduction
 12 for state employees in current or future year in
 13 order for a change to be made in the middle of the
 14 year; is that right?
 15 A I guess I don't have a really solid understanding
 16 of exactly what 40.03 requires.
 17 Q Okay. But that's what you understood at the time?
 18 That's what you wrote?
 19 A Right. Right.
 20 Q So at the bottom of the page, there is some
 21 background on all of this activity leading up to
 22 the meeting on December 31st; correct?
 23 A Correct.
 24 Q I'm sorry, December 30th. In the second paragraph
 25 it says, "The Group Insurance Board approved the

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1 removal of the exclusion in July to comply with
 2 federal regulations issued in May of 2016." Do
 3 you see that?
 4 A Yes.
 5 Q Is that why the Group Insurance Board removed the
 6 exclusion?
 7 MR. ROTH: Objection. Calls for
 8 speculation.
 9 A To comply with federal regulations?
 10 Q Yes.
 11 A Yes.
 12 Q "In the event that contingencies are met, this
 13 policy will be revisited to determine if changes
 14 will be made." Do you see that?
 15 A Yes.
 16 Q Who is going to revisit the policy?
 17 A The Group Insurance Board.
 18 Q That was your understanding?
 19 A That was my understanding.
 20 Q How did you get that understanding?
 21 A Probably from Lisa.
 22 Q Okay. So you were working closely with Lisa on
 23 the aftermath of the December 30th meeting?
 24 A Yes.
 25 Q When did you hear that the contingencies -- wait a

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1 minute. When did you learn that the contingencies
2 were or were possibly going to be met, do you
3 remember?
4 A When?
5 Q Yeah.
6 A I don't remember.
7 Q Okay. But it was after this was issued when --
8 at the time you thought it was unlikely the
9 contingencies were going to be met; correct?
10 A I don't know that I thought it was unlikely the
11 contingencies were going to be met.
12 Q All four contingencies had to be met; right?
13 A Right.
14 Q And you understood at the time Section 40.03(6)(c)
15 to require that a mid-year modification would
16 either be required by law, which it wasn't; right?
17 A Right.
18 Q Or that it actually reduce premium costs either in
19 the current year or future years, and prior
20 information indicated that that was unlikely;
21 right?
22 MR. ROTH: Objection. Asked and
23 answered and to the extent it calls for a
24 legal conclusion. You can answer if you can.
25 A I mean, I guess I didn't know if there was going

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1 to be a legal analysis about if it had to reduce
2 the cost in general or if it had to reduce the
3 premium cost or by how much, you know, that kind
4 of thing, so I didn't think ever that it was
5 unlikely that the contingency could be met.
6 Q Okay. But at that point you didn't anticipate
7 that one of them would be met. You anticipated
8 that one of them might not be met?
9 MR. ROTH: Objection. Asked and
10 answered.
11 A I didn't really know what was going to happen.
12 Q Okay. When did you hear that the contingencies
13 had been met?
14 A At some point in January of 2017. I don't
15 remember exactly when.
16 Q Do you remember who told you about it?
17 A I don't. I think Lisa, but I'm not positive.
18 Q Do you know whose decision it was that the
19 contingencies had been met? Who made that
20 determination?
21 A I don't.
22 Q Was there a board meeting at which the GIB
23 determined that the contingencies were met?
24 A I don't think there was a meeting.
25 Q Okay.

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1 MR. DUPUIS: This is the document
2 that I believe we've agreed you're
3 withdrawing the privilege assertion?
4 MR. ROTH: Correct.
5 (Exhibit No. 16 marked for
6 identification)
7 Q I'm showing you what's been marked as Pray
8 Exhibit 16.
9 A Okay.
10 Q Do you see that? Now, you weren't on this email
11 chain; correct?
12 A Correct.
13 Q But the first email is an email from Ms. Ellinger,
14 the first email from top to bottom, the last email
15 actually in the chain, is an email from Lisa
16 Ellinger to Robert Conlin, John Voelker, Eileen
17 Mallow, and David Nispel. Do you see that?
18 A Yes.
19 Q And Ms. Ellinger expresses a fear that "ETF moving
20 forward without additional board discussion makes
21 this seem ETF-driven. With a 2/8 board meeting,
22 could we present this contract amendment, along
23 with follow up info on the other three
24 contingencies (the injunction, DOJ opinion, Segal
25 cost analysis) and get board confirmation that

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1 they believe the contingencies have been met and
2 we should proceed with the contract amendment? I
3 would like the board to retain ownership of this
4 issue." Do you see that?
5 A Yes.
6 Q Did Ms. Ellinger express concerns about the
7 process of reinstating the exclusion appearing to
8 be ETF driven?
9 A Not to me.
10 Q Not to you. Did other people express that concern
11 to you?
12 A No.
13 Q Did you hear about it from anybody else that
14 attributed it to Ms. Ellinger?
15 A No.
16 (Exhibit No. 17 marked for
17 identification)
18 Q I'm showing you what's been marked Pray
19 Exhibit 17. Do you see that?
20 A Yes.
21 Q Do you recognize -- well, actually there are a few
22 emails in this chain that are redacted. But other
23 than the redactions, do you recognize this
24 document?
25 A Sort of, yes.

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1 Q Okay. So this is a chain of emails that took
 2 place in February -- starting in early February
 3 2017, February 3rd, in fact; is that right?
 4 A Yes.
 5 Q And it starts with an email from you to Joan
 6 Steele and Eileen Mallow, Lisa Ellinger, and
 7 Arlene Larson; correct?
 8 A Correct.
 9 Q And it's about a 60-day material modification
 10 notice. Do you see that?
 11 A Yes.
 12 Q What is your understanding of the 60-day material
 13 modification notice? What does that mean?
 14 A So it's my understanding that there is a rule
 15 that's part of ERISA that if a plan sponsor is
 16 going to make a material change to the benefits
 17 that a 60-day notice is required to the
 18 participants.
 19 Q Okay. And so you had a concern that rescinding
 20 the -- or reinstating the exclusion might
 21 affect -- might require a 60-day notice to members?
 22 A Yes.
 23 Q Okay. So in an email above I believe from Joan
 24 Steele back to you and a number of other people a
 25 little later on February 3rd, it looks like she

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1 cut and pasted something from WEA. Do you see that?
 2 A Yes.
 3 Q Who is WEA?
 4 A WEA Trust is an insurance -- or a health plan that
 5 we contract with -- or that provides benefits to
 6 the group health insurance program.
 7 Q Okay. So they're one of the plans?
 8 A They're one of the plans, yep.
 9 Q And WEA's comments noted on the addendum below the
 10 signature, is that something that they added to
 11 their signature to a contract or what -- do you
 12 understand what that is?
 13 A I believe this was added to their signature below
 14 on the contract addendum reinstating the
 15 exclusion.
 16 Q Okay. And that was the contract addendum that
 17 went out in late January after the contingencies
 18 were met; correct?
 19 A Correct.
 20 Q And it says, "WEA does not accept legal liability
 21 for adverse claim determinations made pursuant to
 22 the reinstatement of this exclusion." Do you see
 23 that? This exclusion being the exclusion of
 24 coverage for gender confirmation surgery and
 25 hormone therapy?

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1 A Correct.
 2 Q And they say, "WEA has no information to determine
 3 if the plan sponsor has complied with applicable
 4 federal law to provide timely notice of the change
 5 to its plan participants." Do you see that?
 6 A Yes.
 7 Q So was it determined that a 60-day notice was
 8 necessary?
 9 MR. ROTH: Objection. I'll
 10 instruct the witness not to answer on the
 11 basis of attorney-client privilege.
 12 Q Did you have any conversations with anyone other
 13 than counsel for ETF about whether or not the
 14 60-day notice requirement was -- whether 60-days
 15 notice was required?
 16 MR. ROTH: I'll object. You can
 17 say yes or no and say who it was, but I'll
 18 repeat the instruction not to answer to the
 19 extent that their opinion was also based on
 20 the advice of counsel.
 21 Q Did you talk to anybody else?
 22 A I believe just probably Joan Steele and Eileen
 23 Mallow.
 24 (Exhibit No. 18 marked for
 25 identification)

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1 Q I'm showing you what's been marked as Exhibit 18.
 2 Do you recognize this document?
 3 A Yes.
 4 Q Okay. What is it?
 5 A This is an email chain between Lisa and Mark
 6 Lamkins and myself.
 7 Q Okay. And this starts with an email from
 8 Mr. Lamkins. Who is he?
 9 A He's the communications director at ETF.
 10 Q Okay. And it has a link to information about what
 11 happened on December -- or actually on the
 12 reinstatement of the benefit, among other things;
 13 is that right?
 14 A Correct.
 15 Q And there is an email from Ms. Ellinger back to
 16 Mr. Lamkins?
 17 A Yep.
 18 Q It says, "Where did this line come from? However,
 19 since the State of Wisconsin is a participant in a
 20 federal lawsuit challenging this requirement, the
 21 Wisconsin Department of Justice urged the GIB to
 22 reinstate the exclusion." Do you see that?
 23 A Yes.
 24 Q Was this posting on the ETF website something that
 25 you had written?

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1 A Yes.
2 Q Okay. And had you written that line?
3 A Yes.
4 Q Okay. And you say in a response email, "I wrote
5 this. The goal was to fill out the 'how we got
6 here' part of the message based on feedback."
7 Correct?
8 A Yes.
9 Q And Ms. Ellinger replies to you, "This was
10 actually pushed by J.P. every step of the way."
11 Who is J.P.?
12 A J.P. Wieske of the Group Insurance Board.
13 Q Do you know what she meant by "pushed by J.P.
14 every step of the way"?
15 A Well, I didn't really, but this is why I think he
16 was the board member that requested this be
17 brought up again in late 2017, or brought back to
18 the board.
19 Q Did you have any other communications with
20 Ms. Ellinger about J.P.'s involvement,
21 Mr. Wieske's involvement in pushing this every
22 step of the way?
23 A No.
24 Q And then it says, "And I'm not sure DOJ would
25 appreciate being framed as the owner." Do you see

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1 that?
2 A Yes.
3 Q Did you have an understanding that DOJ had been
4 the moving force behind this at one point?
5 MR. ROTH: Objection. Vague.
6 A I mean, I just knew from the presentation that the
7 DOJ representatives gave at the board meeting and
8 from the memo.
9 Q Okay. Mr. Wieske voted to remove the exclusion
10 when it came up in July; correct?
11 A Correct.
12 Q And he voted to reinstate it with contingencies on
13 December 30th; correct?
14 A I believe so.
15 Q Do you know why he changed his mind?
16 MR. ROTH: Objection. Calls for
17 speculation.
18 Q Do you know?
19 A I don't.
20 Q There was no GIB meeting -- well, the exclusion
21 went back into effect effective February 1st,
22 2017; correct?
23 A Yes.
24 Q And there was no GIB meeting between December 30,
25 2016, and February 8, 2017; correct?

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1 A Correct.
2 Q So ETF ended up determining that the contingencies
3 were met without a vote of the GIB; correct?
4 A Well, I'm confused now, because I can't remember
5 if they did vote in February or not.
6 Q Okay. Well, we'll get to that in a minute.
7 A Okay.
8 Q And ETF sent out a contract addendum to the plans
9 that reinstated the exclusion; correct?
10 A Correct.
11 Q So transgender state employees had coverage for
12 these gender dysphoria treatments for one month,
13 but then it was taken away a month later; correct?
14 A Correct.
15 Q Do you know any similar instance in which a
16 benefit was provided and then rescinded in the
17 same plan year?
18 A No.
19 Q And we've already looked at the email from Anthem
20 saying that they had concerns about their own
21 liability as a result of rescinding the benefit;
22 correct?
23 A Correct.
24 Q And I think we've talked about this before. But
25 it may have been specifically in connection with

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1 some of the earlier meetings. But were there any
2 discussions in January or early February within
3 ETF about whether or not the exclusion could be
4 retained -- I mean exclusion could be eliminated
5 notwithstanding the ACA's applicability to ETF?
6 A I don't recall anyone really discussing that.
7 Q Okay. I'm going to show you what's been marked
8 previously as Day Exhibit 8. Do you recognize
9 that document?
10 A Yes.
11 Q What is that?
12 A Minutes from the February 8 Group Insurance Board
13 meeting.
14 Q And you attended that meeting?
15 A Yes.
16 Q And if you could look at pages 4 and 5. Do you
17 see that?
18 A Yes.
19 Q That there was a discussion of 2017 uniform
20 benefits and services related to gender
21 reassignment or sexual transformation. Do you see
22 that?
23 A Yes.
24 Q Okay. So at the bottom of page 4 there is an
25 indication that ETF issued a 2017 health plan

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1 contract amendment to all participating health
2 plans on January 31, 2017, to reinstate the
3 benefit exclusion effective February 1. Do you
4 see that?
5 A Yes.
6 Q Did you have involvement in sending out that
7 contract amendment?
8 A No.
9 Q Okay. Do you know who did?
10 A I'm guessing it was Sara Brockman.
11 Q Okay. Then in the next paragraph on page 5 it
12 says, "Ms. Ellinger referred to Group Insurance
13 Board correspondence, which included the numerous
14 letters received regarding this topic." Do you
15 remember seeing any of the letters that were sent
16 to the Group Insurance Board about this topic?
17 A I do. I think I received -- or I saw at least
18 one, or maybe they were articles, or like -- I
19 don't remember exactly.
20 Q What do you remember the content of those being?
21 A So I'm thinking now -- what I'm remembering is
22 more like interviews or articles that were in the
23 media from participants at the time. I don't know
24 if I saw the letters. I don't remember reading --
25 seeing the letters. So I could only speculate

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1 what was in them.
2 Q Okay. What did you see in the media reports?
3 A So I saw participants of -- I mean, I believe them
4 to be participants of the program just talking
5 about their disappointment with the decision to
6 reinstate the exclusion.
7 Q Was there any discussion at the board meeting
8 about those letters or about other complaints
9 about reinstating the exclusion?
10 A I don't remember.
11 Q Okay. The minutes indicate that Mr. Day -- who
12 would be Herschel Day; correct?
13 A Correct.
14 Q -- stated his opinion that reinstating the
15 exclusion could potentially increase the board's
16 risk of liability for breach of fiduciary duty if
17 the injunction -- preliminary injunction in the
18 Texas case were to be lifted. Do you see that?
19 A Yes.
20 Q Do you recall him saying that?
21 A Yes.
22 Q Do you recall the response that was given to that?
23 It says Mr. Nispel indicated that a preliminary
24 injunction requires showing of -- meeting a
25 threshold to indicate they would be likely to

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1 obtain a permanent injunction. Do you see that?
2 A Yes.
3 Q Do you recall that conversation?
4 A I don't really.
5 Q Okay. Do you see here Mr. Nispel also noted that
6 the board as part of a contingency set forth at
7 the December 30th meeting sought and received a
8 final opinion from the Wisconsin Department of
9 Justice which confirmed that the action taken does
10 not constitute a breach of the board's fiduciary
11 duties? Do you see that?
12 A Yes.
13 Q Did you ever see that opinion from the Department
14 of Justice?
15 A I think I did.
16 Q You think you did. Why were you given a copy of
17 it, do you know?
18 MR. ROTH: Objection. Calls for
19 speculation.
20 A I think I asked to see it, or maybe it was just
21 shared with staff at a meeting. I can't remember.
22 Q Did you have a need to know -- for any of your job
23 duties to know about the DOJ's fiduciary duty
24 memo?
25 MR. ROTH: Object to the extent it

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1 calls for a legal conclusion or speculation.
2 A I mean, only as it relates to communicating with
3 the contingencies and the topic. But not really
4 the details, no.
5 Q So you didn't need to know the details. You just
6 needed to know the conclusion?
7 MR. ROTH: Objection. Asked and
8 answered.
9 A Correct. I think.
10 Q But you saw the memo?
11 A I think so.
12 Q But you saw the full memo?
13 MR. ROTH: Asked and answered.
14 Objection.
15 A I think so.
16 Q Okay. The next paragraph says that Mr. Farrell
17 noted that the board's December 30th, 2016,
18 decision can be revisited at any date in the
19 future as desired by the board. Do you see that?
20 A Yes.
21 Q Do you know what prompted him to say that?
22 A I'm guessing Herschel's concern. Or I don't know
23 what prompted him to say that.
24 Q Was there any further discussion before this noted
25 audience disruption about whether to revisit the

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1 exclusion?
 2 A Was there -- say that again.
 3 Q Was there any further discussion at this board
 4 meeting that you remember about revisiting the
 5 exclusion?
 6 A I don't believe so.
 7 Q Was there any motion or action taken by the board
 8 on the exclusion at the February meeting?
 9 A Well, I don't remember.
 10 Q Is there anything indicated in the minutes that
 11 would suggest that there was any action taken on
 12 the exclusion?
 13 A I don't believe there was.
 14 Q And the February 8th meeting, that was a regular
 15 meeting of the GIB; correct?
 16 A Correct.
 17 Q It wasn't a special meeting?
 18 A Correct.
 19 Q Do you recall whether there was any discussion of
 20 the fairness of the exclusion at the GIB meeting?
 21 MR. ROTH: Objection. Vague.
 22 A I don't recall.
 23 Q What about among ETF staff? I think you've talked
 24 about earlier there were people who said it was
 25 unfortunate that the benefit was being -- or the

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1 exclusion was being reinstated. Did anybody ever
 2 talk about whether it was fair to exclude this
 3 benefit?
 4 MR. ROTH: Same objection.
 5 A I don't think -- I don't remember people really
 6 getting into, like using the word fair, talking
 7 about it that way, but --
 8 Q What about discriminatory, did that come up?
 9 MR. ROTH: Same objection.
 10 A No.
 11 Q In your time at ETF, has the Department of Justice
 12 or the Attorney General ever weighed in with an
 13 opinion about a policy decision that the GIB had
 14 already made?
 15 A No.
 16 Q Why do you think they did in this instance?
 17 MR. ROTH: Objection. Calls for
 18 speculation.
 19 A I think because of the Texas lawsuit.
 20 Q Did the Texas lawsuit, to your understanding,
 21 require them to take this position?
 22 MR. ROTH: Objection. Calls for
 23 speculation, legal conclusion.
 24 A No.
 25 Q Did you personally feel any pressure from the DOJ

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1 to reinstate the exclusion?
 2 A No.
 3 Q Do you think that others at ETF felt pressure?
 4 MR. ROTH: Objection. Calls for
 5 speculation.
 6 A I don't know.
 7 Q What about GIB members?
 8 MR. ROTH: Same objection.
 9 A I don't know.
 10 Q Did they express anything to you about feeling
 11 pressure from the Department of Justice, any GIB
 12 members?
 13 A No.
 14 Q Any staff?
 15 A No.
 16 Q So were the expected costs of eliminating the
 17 exclusion ever raised as a reason to reinstate the
 18 exclusion?
 19 MR. ROTH: Objection. Vague.
 20 A No.
 21 Q At no time was it expressed to you that the
 22 exclusion was being reinstated because it was too
 23 expensive to provide these benefits?
 24 MR. ROTH: Objection. Vague.
 25 A Correct.

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1 Q It was never expressed to you? I'm not sure how I
 2 asked that question.
 3 A Not that I can recall.
 4 Q Okay. Do you have any knowledge of how much
 5 gender confirmation surgery costs?
 6 A Nothing concrete. I would guess it depends on
 7 what the surgery is and it could probably really
 8 vary from a few thousand to tens of thousands, I
 9 would guess.
 10 Q What is the basis for what knowledge you have of
 11 the cost?
 12 A Just kind of the articles I've read about it or
 13 research that I've done on the topic. So I know
 14 there is kind of ancillary things that might go
 15 into the cost. But if you're asking the surgery
 16 itself, somewhere kind of in the range I gave you.
 17 Q And do you have a sense of how many procedures
 18 would be expected in an employee group the size
 19 served by ETF?
 20 MR. ROTH: Objection. Lacks
 21 foundation.
 22 Q To the extent you have an understanding of that?
 23 A We didn't know exactly how many. We just kind of
 24 knew from Segal's experience that it's generally
 25 low and from kind of anecdotally what we had heard

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1 from members.
 2 Q Do you remember seeing a Segal analysis for the
 3 state of Maryland?
 4 A Yes.
 5 Q Okay. And that estimated costs of less than 0.1
 6 or 0.2 percent of premiums; is that right?
 7 A Correct.
 8 Q Did the insurers ever express a concern about the
 9 cost of covering these services?
 10 A It might have been a part of the concern but not
 11 ever -- it wasn't ever a primary concern.
 12 Q Do you remember any specific insurers raising that
 13 as a concern?
 14 A No.
 15 (Exhibit No. 19 marked for
 16 identification)
 17 Q I'm showing you what's been marked as Pray
 18 Exhibit 19. Do you recognize that document?
 19 A Yes.
 20 Q What is it?
 21 A It's email correspondence between Herschel, Lisa,
 22 some OSHP folks, and I sent it to one of our
 23 procurement staff.
 24 Q That's Michael McNally?
 25 A Yes.

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1 Q And what does procurement staff do?
 2 A They work on contracts and procurements for
 3 vendors.
 4 Q Would that include the plans?
 5 A Yes. Well, sort of.
 6 Q Do you want to explain that?
 7 A So, I mean, I guess broadly, yes.
 8 Q Okay. What is a V.A.L.U.E. meeting?
 9 A So this is -- I don't know what the acronym stands
 10 for. But it's a regular meeting where Navitus,
 11 who is the pharmacy benefit manager, comes and
 12 presents on plan experience related to our program
 13 and sometimes they bring recommendations for the
 14 program.
 15 Q So the original email in this chain is from
 16 Mr. Day; correct?
 17 A Correct.
 18 Q And he asks the question about -- it sounds like
 19 he was at the July meeting but was unable to be
 20 there in person so he was on the phone and had
 21 some trouble sort of asking questions. Is that
 22 correct? A fair characterization of what he's
 23 saying?
 24 A Sure.
 25 Q And then he says he's fully supportive of the

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1 removal of the exclusion for benefits and services
 2 but he talks about there is usually an actuarial
 3 cost estimate and he was wondering if there had
 4 been one done; correct?
 5 A Correct.
 6 Q And he says, "I don't anticipate the cost of the
 7 change will exceed 0.1 to 0.2 percent so this
 8 doesn't seem overly material." And then
 9 Ms. Ellinger responds saying that based on work
 10 Segal has conducted in other states, they note
 11 that the cost impact is typically less than
 12 0.1 percent; correct?
 13 A Correct.
 14 Q Is that referring to the Maryland study --
 15 A Yes.
 16 Q -- to the best of your knowledge?
 17 A Yes.
 18 Q And then, "Given the negligible cost, we did not
 19 create a line item for this benefit change in the
 20 bid submissions." What does that mean, do you
 21 know?
 22 A So the bid submissions are what the health plans
 23 use for what they have to complete and fill in
 24 related to their premium bids for the next program
 25 year.

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1 Q Okay.
 2 (Exhibit No. 20 marked for
 3 identification)
 4 Q I'm going to show you what's been marked Pray
 5 Exhibit 20. Do you recognize this?
 6 A No.
 7 Q Okay. Do you recognize the format?
 8 A I mean, in general, yes.
 9 Q In general what --
 10 A The format?
 11 Q Yes. What does the format tell you about this?
 12 A It's kind of like a little policy paper on this,
 13 related to the exclusion.
 14 Q Okay. And who would do this sort of policy paper?
 15 MR. ROTH: Objection. Calls for
 16 speculation.
 17 A I'm guessing this was Arlene.
 18 Q Okay. Why do you guess that?
 19 A Because she was working on this project.
 20 Q Okay. But this isn't something she shared with
 21 you as far as you know, if she's the one who did it?
 22 A As far as I know.
 23 Q Okay. What is the drive -- there is essentially
 24 an address for this document at the bottom. Do
 25 you see that?

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1 A Yes.
 2 Q H:HBIPB. What is HBIPB?
 3 A That's the acronym for the bureau that we used to
 4 be before we became OSHP. So it's like health
 5 benefits insurance policy or -- bureau is at the
 6 end. Health Benefits and Insurance Policy Bureau,
 7 I believe.
 8 Q Okay. So were you aware of considerations before
 9 the May meeting, GIB May meeting in 2016 about the
 10 possibility of removing the exclusion within ETF?
 11 A Not really outside of the study group process.
 12 This, I believe, is related more toward changing
 13 gender in our systems.
 14 Q So this has more to do with the information
 15 systems aspect of things?
 16 A Correct.
 17 Q And how gender markers are recorded in the system?
 18 A Correct.
 19 Q But there is also an alternative noted. "Segal,
 20 on April 13, 2015, recommended against allowing
 21 members to select gender in the system, but said
 22 that a removal of the exclusion with strict
 23 prerequisites and protocols would result in a
 24 'minimal' cost increase." That's removal of the
 25 exclusion for services and supplies related to sex

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1 transformation; correct?
 2 A Okay. Yep.
 3 MR. ROTH: Objection. Calls for
 4 speculation.
 5 Q Is that what it appears to say to you?
 6 A Yes.
 7 Q Do you know about this April 13, 2015,
 8 recommendation from Segal?
 9 A No. I mean, I don't recall.
 10 Q Do you have an understanding of the reason or
 11 reasons the exclusion was reinstated?
 12 MR. ROTH: Objection. Calls for
 13 speculation and asked and answered, I
 14 believe.
 15 A I'm sorry. Can you say that one more time?
 16 Q Yes. What's your understanding of why the
 17 exclusion was reinstated?
 18 A Well, the board made a decision to reinstate it
 19 based on, I believe, the concerns brought forth by
 20 the DOJ.
 21 Q So the concerns about their lawsuit in Texas;
 22 correct?
 23 A Correct.
 24 (Exhibit No. 21 marked for
 25 identification)

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1 MR. ROTH: Do you want to take a
 2 break or should we power through?
 3 (Discussion held off record)
 4 Q I'm showing you what's been marked Pray
 5 Exhibit 21.
 6 A Okay.
 7 Q Do you recognize this document?
 8 A Yes.
 9 Q Okay. So this is a rather long email chain with
 10 some items redacted. But it appears that -- so
 11 there is an email from you on January 5th at
 12 3:29 p.m. to Kathy Wienkes or Wienkes.
 13 A Uh-huh.
 14 Q Do you see that?
 15 A Yep.
 16 Q And the subject line of this chain of emails is
 17 Procedures to Change Gender in myETF Benefits;
 18 correct?
 19 A Uh-huh.
 20 Q And myETF benefits is the online portal for state
 21 employees and municipal employees and retirees who
 22 are beneficiaries of ETF benefits; correct?
 23 A Correct.
 24 Q Okay. And so there was a policy to change -- to
 25 allow people to make changes in a different way

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1 than it had been before; is that correct?
 2 MR. ROTH: Objection. Vague.
 3 A So I don't know if -- it was kind of more that we
 4 finally established a policy, like a clear policy
 5 on how someone could change their gender in our
 6 system.
 7 Q Okay. So there had been no clear policy before?
 8 A Right. And ETF had kind of flip-flopped on
 9 allowing gender changes in the system because of
 10 uncertainty about the impacts of that. So ETF had
 11 allowed them and then stopped allowing them, and
 12 then these issues kind of, like, forced ETF to
 13 figure it out.
 14 Q So were part of the concerns that if somebody
 15 changed their gender marker in the ETF benefits
 16 system that that could trigger gender edits to
 17 inappropriately deny some sort of claim for
 18 benefits?
 19 A Correct.
 20 Q And did this procedure fix that in some way?
 21 A Yes. Well, we worked through the process to
 22 really just learn more about how the pharmacy
 23 benefit manager and the health plans handle gender
 24 edits and how they approved or denied claims based
 25 on them. So we are now much more confident that

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1 if someone changes their gender in our system,
2 their benefits will still be approved or denied
3 appropriately.
4 Q And when you say appropriately, if a transgender
5 man seeks a Pap smear, would that be denied or
6 approved appropriately?
7 A So if it's medically necessary, it should be
8 approved, and it's our understanding that health
9 plans review those cases to see if it should be
10 approved. It's kind of like a --
11 Q Prior authorization, special authorization?
12 A I don't know if it's a prior authorization, but --
13 I mean, they don't all uniformly do it the same in
14 terms of, like, the logistics, but it should get
15 to the same result.
16 Q So your email to Kathy says, "1 and 2 need to
17 remain separate for political reasons. The timing
18 would be spread out as well (for employers, but
19 not for ETF staff)."
20 So what are you referring to? Items one and
21 two being the Clarification: GIB action related
22 to health coverage based on gender identity and
23 the procedure to change gender in myETF benefits?
24 A Yes.
25 Q When you say they need to remain separate for

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1 political reasons, what did you mean by that?
2 A So there was just a concern that with kind of all
3 this going on with the gender --
4 Q Exclusion?
5 A With the exclusion and the reinstatement of the
6 exclusion that -- and the removal of the exclusion
7 and there was a lot of, you know, media around
8 that, that we really saw the ability to change the
9 gender in our system as a win for the people who
10 had been wanting to do this for a long time and we
11 really just didn't want, like, anything to kind of
12 get in the way. You know, we saw it as a separate
13 issue but didn't want to blast it out there that
14 we were now allowing this. I mean, we were
15 allowing -- you know, we didn't want to, like, put
16 it out there as a news alert because it wasn't
17 really a change, it was just finally kind of
18 codifying the process.
19 Q Okay. So were they separated in terms of the
20 timing ultimately?
21 A Yes.
22 Q Okay. Was there any political repercussion to the
23 gender change procedure?
24 A Not that I'm aware of.
25 Q I think I asked this, but outside of the

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1 December 30th board -- GIB decision, was there
2 ever a benefit change that was made contingent on
3 the occurrence of other events?
4 MR. ROTH: Asked and answered.
5 A Not that I'm aware of.
6 MR. DUPUIS: Should we talk for a
7 couple minutes and see if there is anything
8 else we may want to cover? Then we'll be
9 done.
10 (Recess)
11 MR. DUPUIS: Okay. One last
12 document for you to look at.
13 (Exhibit No. Exhibit 22 marked for
14 identification)
15 Q I'm showing you what's been marked as Pray Exhibit
16 No. 22. Do you recognize that document?
17 A Yes.
18 Q Okay. So this is an email chain, and what I would
19 like to call your attention to is five pages in
20 and the bottom of that page is an email from Mark
21 Lamkins on I believe December 29 at 12:08 p.m. Do
22 you see that one?
23 A Yes.
24 Q And if you look at the email right above that, it
25 appears to be an email from Lisa Ellinger to ETF

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1 DL INS Strategic Health Policy. Do you see that?
2 A Yes.
3 Q Would you be included in that group?
4 A Yes.
5 Q Okay. It says, "Hi all. I am sending a heads up
6 that the GIB will be meeting tomorrow (12/30) at
7 3:00 p.m. A draft agenda is attached, and this
8 will be publicly noticed shortly. We first heard
9 of this at 5:00 p.m. last night and confirmed that
10 it was a go within the last hour. As you can see
11 on the agenda, the only item is the gender
12 identity issue. None of you are expected to
13 attend. I am simply sharing so that you aren't
14 finding out about this in the media first." Do
15 you see that?
16 A Yes.
17 Q Is this the email that alerted you to the fact
18 that there was going to be a meeting about the
19 exclusion on December 30th?
20 A Yes.
21 Q Okay. Did you see it on December 29th, do you
22 think? Do you know?
23 A I think I saw it that night.
24 Q Okay. And the next email in the chain is from
25 Arlene Larson, and she says, "Mark and Rachel,

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1 hold the phone. I just talked to Lisa in light of
 2 tomorrow's GIB meeting on gender transformation.
 3 We should not post this new procedure this week.
 4 On Tuesday, when Tara is back, she will work to
 5 'package' this procedure and any GIB action." Do
 6 you know what the new procedure that was going to
 7 be posted is?
 8 A I believe it's the procedure for how to change
 9 gender within ETF's systems.
 10 Q And the documentation that's required or not
 11 required for that?
 12 A Correct.
 13 Q And then Arlene says, "Thanks, what a day!" Do
 14 you see that?
 15 A Yep.
 16 Q So this whole thing was pretty unusual, was it
 17 not?
 18 A Correct.
 19 MR. DUPUIS: That's all the
 20 questions I have.
 21 MR. ROTH: I have just two
 22 questions. Very quickly.
 23
 24
 25

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1 Q Did any group insurance board member ever tell you
 2 either in a meeting or outside of one that they
 3 saw the cost of these benefits as nonmaterial?
 4 A No.
 5 MR. ROTH: That's the only question
 6 I have.
 7 MR. DUPUIS: I don't have anything
 8 else.
 9 (Adjourning at 3:08 p.m.)
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1 EXAMINATION
 2 By Mr. Roth:
 3 Q So, Ms. Pray, I'm going to ask you just a couple
 4 questions. The same rules apply as when
 5 Mr. Dupuis was asking you. This will go very
 6 quickly, though.
 7 Can you refer back to Exhibit 15, what was
 8 marked as Pray Exhibit 15.
 9 A Okay.
 10 Q And can you turn to the last page which I think is
 11 the memo that you testified earlier that you had
 12 written.
 13 A Yes.
 14 Q And about halfway down the page where you have 1,
 15 2, 3, 4 listed after the sentence, "The following
 16 provides an update on each of the contingencies as
 17 of January 4," do you see the second bullet point
 18 under 2.b. -- I'm sorry, the first bullet point
 19 under 2.b.?
 20 A Yes.
 21 Q So you see where you wrote, "Earlier this year,
 22 the board's actuaries estimated a nonmaterial cost
 23 for health plans to eliminate this exclusion." Do
 24 you see this sentence?
 25 A Yes.

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

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

A	actual (5) 33:10;65:8;72:6; 100:2;112:12	115:8	alerted (1) 192:17	A-n-g-e-l (1) 115:11
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