

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

ALINA BOYDEN and
SHANNON ANDREWS,

Plaintiffs,

Case No. 17-cv-264

- vs -

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

Defendants.

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

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A P P E A R A N C E S

AMERICAN CIVIL LIBERTIES UNION, by
MR. LAURENCE J. DUPUIS and Ms. Asma Kadri,
207 East Buffalo Street, Suite 325,
Milwaukee, Wisconsin 53202,
appeared on behalf of the Plaintiffs.

STATE OF WISCONSIN DEPARTMENT OF JUSTICE, by
MR. COLIN T. ROTH,
17 West Main Street,
Madison, Wisconsin 53707-7857,
appeared on behalf of the Defendants.

Also present: Dan Hayes
Steven C. Kilpatrick

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Exhibits Identified:	Page
1 Department of Employee Trust Funds Functional Organizational Chart	35
2 E-mail from Lisa Ellinger to Mark Lampkins dated May 14, 2015, e-mail from Sherry Etes to Lisa Ellinger dated May 14, 2015, and Correspondence Memorandum to the Group Insurance Board from Tara Pray dated May 14, 2015	63
3 E-mail from Jeff Bogardus to Arlene Larson and Tara Pray dated April 27, 2015, e-mail from Tara Pray dated April 24, 2015, and Correspondence Memorandum dated April 24, 2015, to Guidelines Advisory Study Group from Tara Pray	68
4 E-mail from Bill Kox to Jeff Bogardus dated September 8, 2006, e-mail from Pam Licht to Bill Kox dated August 21, 2006, e-mail from Mary Berger to Pam Licht dated August 21, 2006, e-mail from Pam Licht to Mary Berger dated August 21, 2006, and excerpt from the 2005-2007 bargaining demands	71
5 E-mail from David Nispel to Jeff Bogardus dated March 23, 2016, and e-mail from Jeff Bogardus to David Nispel dated March 23, 2016	76
6 E-mail from Linda Owen to Jeff Bogardus dated October 22, 2008, e-mail from Jeff Bogardus to Linda Owen dated October 21, 2008, and excerpt from the 2008 bargaining demands	79

1 7 E-mail from Jeff Bogardus to Steven 90
Alexander, Shannon B. Tischer, and Pam
2 Olson dated December 29, 2016, and e-mail
3 from WI Department of Employee Trust Funds
to Jeff Bogardus dated December 29, 2016

4 8 E-mail to Ryan D. Olson, Shannon B. 98
Tischer, and Steven Alexander dated
5 February 1, 2017, and e-mail from Mark
Lampkins dated February 1, 2017

6 9 E-mail from Jeff Bogardus to Lisa Ellinger 106
7 and Eileen K. Mallow dated February 7,
2017, e-mail from Lisa Ellinger to Jeff E.
8 Bogardus and Eileen K. Mallow dated
February 7, 2017, an e-mail from Jeff E.
9 Bogardus to Lisa Ellinger and Eileen K.
Mallow dated February 7, 2017, e-mail from
10 Lisa Ellinger to Jeff E. Bogardus and
Eileen K. Mallow dated February 7, 2017,
11 and an e-mail from Jeff Bogardus dated
February 1, 2017

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(The original exhibits were attached to the original transcript and PDFs were provided to counsel)

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

1 JEFFREY E. BOGARDUS, called as a
2 witness, being first duly sworn, testified on
3 oath as follows:

4 EXAMINATION

09:02AM

5 BY MR. DUPUIS:

6 Q Good morning, Mr. Bogardus. My name, as we've
7 already talked about off the record, is Larry
8 Dupuis. I'm a lawyer with ACLU of Wisconsin
9 Foundation, and we represent the plaintiffs in the
10 fcase of Alina Boyden and Shannon Andrews versus
11 Department of Employee Trust Funds and a whole
12 bunch of other defendants.

09:03AM

13 A Right.

14 Q So I'd like to start by asking you to again state
15 your name for the record.

09:03AM

16 A Sure. My name is Jeffrey E. Bogardus.

17 Q And can you spell the last name?

18 A B-o-g-a-r-d-u-s.

19 Q Okay. And you go by Jeff?

09:03AM

20 A Jeff. Correct.

21 Q Have you ever been -- has your deposition ever
22 been taken before?

23 A No.

24 Q Have you ever given testimony in a court case?

09:03AM

25 A Just administrative law.

1 Q So what sorts of administrative law cases?

2 A It would be cases where we had appeals with the
3 department.

4 Q The department being --

09:03AM

5 A The Department of Employee Trust Funds.

6 Q And was that -- that was before Wisconsin
7 administrative law judges or hearing officers?

8 A It was both.

9 Q When's the last time you did that?

09:04AM

10 A Wow. It's been a long time. Yeah. I'd say it
11 was probably back in 2001 when I worked on the
12 retirement side of the business.

13 Q Okay. So Mr. Roth may have already gone over this
14 with you, but I'm going to just go over some of
15 the ground rules for depositions, in part, so, you
16 know, we understand one another.

09:04AM

17 A Sure.

18 Q And in part -- the main thing about all of these
19 rules is we got to remember that somebody is
20 trying to write down everything you say.

09:04AM

21 A Correct.

22 Q And so things like verbal answers, that's
23 essential that you actually answer yes or no if
24 it's a yes or no question. Nodding is okay, but
25 you also have to say yes or no.

09:05AM

1 Avoid crosstalk so try to wait until I'm
2 finished with the question. Sometimes I pause
3 and, you know, usually the pause means it's okay
4 to answer the question, but try to wait for the
09:05AM 5 end of the question, and I'll try to make sure I
6 give you a chance to finish your answer.

7 If at any point you don't understand a
8 question, let me know, and I can repeat it or
9 rephrase it. But if you understand the question,
09:05AM 10 I'm going to assume that -- or if you answer the
11 question, I'm going to assume that you understand
12 it; is that fair?

13 A Yes. Yes.

14 Q And you're represented by Mr. Roth in this matter;
09:05AM 15 is that right?

16 A That's correct.

17 Q Okay. And so Mr. Roth might at various times
18 raise objections to questions that I ask you. In
19 general, if you understand the question, you can
09:05AM 20 go ahead and answer it unless he actually
21 instructs you not to answer; okay?

22 A Yes.

23 Q Is there any reason you can think of today that
24 you would not be able to answer my questions fully
09:06AM 25 and accurately?

1 A No.

2 Q And you understand that you're under oath?

3 A Yes.

4 Q Did you meet with your attorneys in preparation
09:06AM 5 for this deposition?

6 A Yes.

7 Q When was that?

8 A Yesterday.

9 Q And for how long?

09:06AM 10 A Boy, I don't even remember. Three and a half
11 hours.

12 Q Was that yesterday morning?

13 A Yesterday morning.

14 Q Did you review documents?

09:06AM 15 A Yes.

16 Q Okay. And what documents did you review?

17 A There were e-mail messages, and I'm trying to
18 think what else. Mostly it was e-mail messages.

19 Q Did you do anything else to prepare for the
09:07AM 20 deposition besides meeting with Mr. Roth or other
21 counsel?

22 A I did clarify a couple things with co-workers when
23 I returned to work.

24 Q That was yesterday?

09:07AM 25 A Yesterday.

1 Q And what things were those that you clarified?

2 A Certain things were the length of a prior
3 authorization. Just confirmed what we had already
4 discussed in the deposition.

09:07AM

5 MR. ROTH: I'm going to object and
6 instruct the witness not to answer to the
7 extent it discloses communications during our
8 preparation session.

9 THE WITNESS: Thank you.

09:07AM

10 Q And so length of a prior authorization so is that
11 sort of when a physician orders some sort of -- in
12 your case probably at this point in your career --
13 medication, and it's a medication that's not
14 formulary or something, and they would have to
15 give some sort of separate authorization rather
16 than just prescribing it?

09:08AM

17 A That's correct.

18 Q And then when you say the length, what would that
19 mean?

09:08AM

20 A That would be the duration that the prior
21 authorization is in effect.

22 Q Okay. So is there, like, a default time?

23 A It would depend on the drug and the situation.

24 Q Okay. You said that you had a couple of things to
25 clarify. What else did you speak to your

09:08AM

1 co-workers about?

2 A I was just trying to think. The other came up as
3 to whether graduate assistants, who are members
4 within our program, were eligible for what we call
09:09AM 5 optional insurance plans.

6 Q And what are those?

7 A Optional insurance plans are the plans that
8 employees pay the full premium for.

9 Q But those are offered through ETF?

09:09AM 10 A Those are offered through ETF to state employees.

11 Q And are graduate assistants eligible?

12 A Yes, they are.

13 Q Are those optional insurance plans, do they follow
14 the same uniform benefits guidelines as the other
09:09AM 15 plans for the state?

16 A No. They do not.

17 Q How are those plans -- so private health insurers
18 offer those plans to employees through ETF; is
19 that how it works?

09:10AM 20 A It would not be health insurers. They do offer
21 them. It would be vision, for instance, dental.

22 Q Okay. So the optional plans don't cover medical
23 care?

24 A That is correct.

09:10AM 25 Q So we'll be talking about a number of documents

1 that were produced to us in the course of
2 discovery and they will have marked them -- many
3 of them anyway -- with a number that was assigned
4 to them, I believe, by the Department of Justice
09:11AM 5 when they produced them to us, and those documents
6 will have page numbers sometimes but sometimes
7 they won't, so I will try to guide you to them as
8 best as possible.

9 A Okay.

09:11AM 10 Q Did you have any involvement in responding to
11 discovery requests in this case?

12 A Explain, I guess. I don't understand what
13 involvement would -- how do I say this?

14 Q Well, I can rephrase. So you became aware that
09:11AM 15 there was a lawsuit --

16 A Uh-huh.

17 Q -- against ETF and others about coverage of
18 transition related health care; correct?

19 A Correct.

09:11AM 20 Q And did there come a time when you were asked to
21 go through your e-mails or go through documents
22 and try to find documents that might be relevant?

23 A Yes.

24 Q Who did that request come from?

09:12AM 25 A That came from our legal counsel, which was --

1 Q David.

2 A David Nispel. Thank you.

3 Q He'll have the pleasure of being in your chair
4 this afternoon.

09:12AM 5 A That's right.

6 Q And did you -- how did you respond to the request
7 for documents for Mr. Nispel?

8 A Fulfilled -- you know, if there were documents I
9 knew of, I provided those to them.

09:12AM 10 Q So did you see, like, a list of requests for
11 documents?

12 A I did not see a list, no. It was more based on
13 did you have any involvement with gender
14 reassignment surgery or the drugs associated with
09:13AM 15 those procedures, our policies with those uniform
16 benefits, those sorts of things.

17 Q Did you search your own e-mail using key words, or
18 did somebody do that for you?

19 A Somebody did that for me.

09:13AM 20 Q All right. I'd like to turn to some of your
21 personal background. Where do you live? Just the
22 city is fine.

23 A Waunakee.

24 Q And where is that?

09:13AM 25 A Waunakee is north of Middleton, northwest of

1 Madison.

2 Q And I'd like to ask you a few questions about your
3 educational background. I think we actually
4 established where you went to high school, but
09:14AM 5 that was before we were on the record, so could
6 you tell us again?

7 A Yes. I went to high school in Racine, Wisconsin.

8 Q And what school?

9 A J.I. Case High School.

09:14AM 10 Q Did you graduate?

11 A Yes.

12 Q When did you graduate?

13 A 1981.

14 Q And did you go to college?

09:14AM 15 A Yes.

16 Q Where did you go to college?

17 A University of Wisconsin-Eau Claire.

18 Q What did you study there?

19 A Accounting.

09:14AM 20 Q And did you graduate?

21 A No.

22 Q When did you -- what years were you at UW-Eau
23 Claire?

24 A I left -- that would have been 1981 through

09:14AM 25 1985 -- '86, sorry.

1 Q Did you have any further college level education?

2 A No.

3 Q And did you have any post-college education that
4 would lead to a degree --

09:15AM

5 A No.

6 Q -- anywhere else? Have you had any specific
7 training in health insurance administration?

8 A Just training through different seminars and that
9 type of thing that are offered.

09:15AM

10 Q So like continuing professional education type of
11 stuff?

12 A Correct.

13 Q Where have you done those trainings?

14 A That's been through the Department of Employee
15 Trust Funds at various --

09:15AM

16 Q And you're currently the pharmacy manager for the
17 Department of Employee Trust Funds; is that
18 correct?

19 A I manage the pharmacy benefit programs.

09:16AM

20 Q How long have you been in that position?

21 A Since 2006.

22 Q How long have you been at Employee Trust Funds?

23 A I started in April of 1993.

24 Q What did you do before -- between college and ETF?

09:16AM

25 A I was in the military.

1 Q So that would have been from '86 --

2 A 1987 through essentially 1994. There was an
3 overlap.

4 Q Okay. What branch?

09:16AM 5 A Army, U.S. Army.

6 Q Were you in the first gulf war?

7 A Yes.

8 Q So then in '93, you came to Employee Trust Funds.

9 Can you tell me just basically your understanding
09:17AM 10 of what the Department of Employee Trust Funds
11 does?

12 A Essentially, they manage or administer the
13 Wisconsin Retirement System, and they also
14 administer the state group health insurance
09:17AM 15 program and other insurance programs.

16 Q So is your position specifically within the Office
17 of Strategic Health Policy at the Department of
18 Employee Trust Funds?

19 A Yes. That's correct.

09:18AM 20 Q And what does the Office of Strategic Health
21 Policy -- I may refer to that as OSHP, or do you
22 have a fun pronunciation for that?

23 A We call it OSHP. Make sure you put the P at the
24 end. So OSHP, we are the unit within the
09:18AM 25 Department of Employee Trust Funds that

1 administers the group health insurance programs
2 and the optional insurance programs.

3 Q Are you also a member of the health insurance
4 programs that ETF manages and administers?

09:18AM

5 A Yes.

6 Q As a state employee?

7 A Yes.

8 Q So I'd like to ask you a few questions about your
9 prior positions with ETF. So before you were the
10 pharmacy -- I already can't read my handwriting.

09:19AM

11 You manage the pharmacy something programs?

12 A Benefit.

13 Q All right. Before you managed the pharmacy
14 benefits program, what did you do?

09:19AM

15 A Do you want me to start back in '93 and move
16 forward or go backwards?

17 Q Either way is fine.

18 A Okay. Starting in '93, I just worked as a what
19 they call a trust fund assistant. The dates are
20 all kind of fuzzy between '93 and 2006.

09:19AM

21 Q Okay.

22 A Then I moved onto being a lead worker in one of
23 the -- and this is all on the retirement side of
24 the business.

09:19AM

25 Q Okay.

1 A Then from a lead worker, I became the supervisor
2 of our Milwaukee office when we had a Milwaukee
3 office. And then from that point -- so the
4 Milwaukee office, I believe, was 1998 to 2006.

09:20AM

5 And then I came back up to Madison and started
6 working for what is now OSHP.

7 Q Okay. And within OSHP, is the pharmacy benefit
8 program's manager the only position you've had in
9 OSHP?

09:20AM

10 A Yes. That's the main function that I perform.

11 Q Was there a different title for that at one point?

12 A It may have been. I don't recall.

13 Q Okay.

09:21AM

14 A I know at one point I actually managed all of the
15 optional programs in addition to the pharmacy
16 benefit program and in addition to our accumulated
17 sick leave, so there were multiple roles at the
18 same time.

09:21AM

19 Q Okay. So as supervisor of the Milwaukee office,
20 was that also on the retirement side?

21 A That was retirement, correct.

22 Q So it's only been since 2006 that you've been in
23 the group health plan side of the business?

24 A Correct.

09:21AM

25 Q And for a time you also managed the optional

1 benefit programs or optional health programs, or
2 what were they called?

3 A The optional insurance programs, yes.

4 Q In accrued leave or what was the other?

09:21AM

5 A It was our sick leave program that in a very
6 general sense members can escrow their sick leave
7 to pay for health insurance premiums, so I managed
8 that program -- or a portion of that program.

9 Q So who is your supervisor?

09:22AM

10 A Currently, it is Eileen Mallow.

11 Q And what's her position?

12 A She is -- well, she's the deputy director of OSHP.

13 Q Okay. And during, let's just say 2015, '16, and
14 '17, who were your supervisors then?

09:22AM

15 A Bill Kox.

16 Q And that's Bill K-o-x?

17 A K-o-x. That's correct. And Eileen. And then
18 Eileen. Bill retired.

19 Q When did Bill retire, do you know, roughly?

09:23AM

20 A I don't recall. I want to say the end of 2015 or
21 2016. I should know, but the last few years have
22 been really busy.

23 Q Did you go to the retirement party?

24 A I did.

09:23AM

25 Q I won't tell him that you couldn't remember it.

1 A It's like he's still there.

2 Q Okay. And does Eileen Mallow report then to the
3 director of OSHP?

4 A That is correct.

09:23AM

5 Q Okay. And through much of 2015 through 2017, that
6 would have been Lisa Ellinger or is it Ellinger?

7 A Ellinger.

8 Q And who is the director of OSHP now?

9 A It is vacant currently, so Eileen is the acting.

09:24AM

10 Q And when did Ms. Ellinger leave OSHP?

11 A About three months ago.

12 Q Do you know where she went?

13 A She went to the Wisconsin Hospital Association.

14 Q Do you have any understanding of why she left?

09:24AM

15 A Not specifically, no.

16 Q How about not specifically?

17 A I know it was an advancement for her.

18 Q Do you know what her role is at the Wisconsin
19 Hospital Association?

09:25AM

20 A I believe she's the vice president of public
21 policy.

22 Q Did she say anything to you about why she was
23 leaving?

24 A Other than the move up, no.

09:25AM

25 Q Are there people in OSHP that you supervise?

1 A No.

2 Q So management in your case is not dealing with
3 subordinates in, like, a direct personnel
4 reporting relationship?

09:25AM

5 A That is correct.

6 Q But I assume you work with other folks in OSHP?

7 A Yes.

8 Q Who do you work with most often, would you say, in
9 your current position?

09:26AM

10 A I guess I don't understand the context of it
11 because I manage the pharmacy benefit program
12 pretty much independently. That's mine. I do get
13 some assistance from Arlene Larson and Renee Walk
14 in instances where that's needed. Does that
15 answer your --

09:26AM

16 Q I think so. Are you -- outside of ETF, are there
17 individuals or organizations you work with on a
18 regular basis?

19 A No.

09:26AM

20 Q What about Navitus?

21 A Oh, okay. Not me personally being employed by
22 them; correct?

23 Q Right. Correct.

24 A Okay. Thank you.

09:27AM

25 Q Work with in the sense of frequent interaction.

1 A Yes. Navitus Health Solutions.

2 Q What is Navitus?

3 A Navitus Health Solutions is the pharmacy benefit
4 manager that is contracted with the Group
09:27AM 5 Insurance Board.

6 Q So do you work on those contracts every year?

7 A Yes.

8 Q And you put them together, the contracts, based on
9 what?

09:27AM 10 A We do renewals. You know, the RFP process that we
11 go through gives us certain extensions that we
12 then take recommendations to the Group Insurance
13 Board about extending the contract or going back
14 out for another RFP, that type of thing.

09:27AM 15 Q So does Navitus then, do they essentially process
16 claims from members for pharmaceuticals?

17 A They do. As well as a number of other things.

18 Q Why don't you tell me what they do as the
19 contracted pharmacy benefit manager?

09:28AM 20 A Sure. Claims processing as you just indicated.
21 But then we also rely on them for clinical
22 formulary management, pharmacy network development
23 and administration, clinical program management,
24 meaning things like medication therapy management
09:28AM 25 or disease management or those type of programs.

1 Again, rely on the experts, if you will.

2 Q So explain for me, like, if a member of one of the
3 ETF plans has a prescription for a pharmaceutical,
4 is that always -- do the claims always go to
5 Navitus for processing or are they through the
6 plan like Dean or --

09:29AM

7 A They do go through Navitus.

8 Q So the pharmacy benefit is almost independent of
9 the health -- the group health insurance plan in
10 substance?

09:29AM

11 A That is correct. We refer to it as being carved
12 out. So the pharmacy benefits are carved out from
13 the medical.

14 Q So does a member have a card -- a Navitus card in
15 addition to whatever their plan card is?

09:29AM

16 A Yes, they do.

17 Q When I say member, I've been referring to, you
18 know, typically a state or local government
19 employee who is getting insurance through ETF; is
20 that fair?

09:30AM

21 A Yes.

22 Q Are there any other entities outside of ETF and
23 other ETF staff and Navitus that you deal with on
24 a regular basis?

09:30AM

25 A I deal with our auditor of the PBM. That would be

1 TRICAST.

2 Q You used the term *PBM*. What is that?

3 A I'm sorry. Pharmacy benefit manager. Navitus is
4 our pharmacy benefit manager so the acronym being
09:30AM 5 PBM. That kind of refers to Navitus.

6 Q Okay. And then I'm sorry. You said --

7 A So they are our third-party auditor, so they audit
8 the activities of Navitus.

9 Q And who is that?

09:30AM 10 A It's by the name of TRICAST Incorporated.

11 Q Anyone else you deal with regularly?

12 A Those are the main.

13 Q Okay. So when the -- actually, I'll come back to
14 that later. Do you have interactions with the
09:31AM 15 beneficiaries of health coverage, the members
16 directly?

17 A Not -- no. How do I -- I do on occasion, yes, if
18 an issue has escalated.

19 Q And when you say *an issue has escalated*, what
09:32AM 20 would that mean?

21 A That would mean our other staff who deal directly
22 with members, for instance, it goes beyond their
23 expertise and knowledge of the pharmacy benefit
24 program, then I would get involved at that point.

09:32AM 25 Q Okay. So a member has a complaint about a

1 prescription claim being denied, for example,
2 might reach you if it was in some gray area that a
3 lower level person couldn't handle?

4 A Correct. We would -- yes. That's correct.

09:32AM

5 Q What about appeals of denials of coverage? Would
6 you be involved in those?

7 A Only to the extent of making sure that the appeal
8 process that Navitus runs is being handled
9 appropriately.

09:32AM

10 Q So when you say ensuring that the process that
11 Navitus runs is handled appropriately, what do you
12 mean by that?

13 A Sure. So appeals of those type of things go
14 through Navitus. They do not go through us
09:33AM 15 initially. That's the first step in a person's --
16 drawing a blank -- actions that a person can take
17 if they're not happy.

09:33AM

18 From there, they're given other rights to
19 come back and file a complaint essentially through
20 the department. That goes in through our
21 Ombudsperson Services at which point I may help
22 with a review. Our review in those cases is
23 limited to did Navitus adhere to our contract with
24 them.

09:33AM

25 Q And when you say sort of making sure or -- I'm not

1 sure how you put it, ensuring that Navitus's
2 appeal process is appropriate, are there rules
3 that ETF has for them in the contract about how
4 those appeals are supposed to be handled?

09:34AM

5 A Yes. Yes.

6 Q About how often do you end up dealing with an
7 appeal of a denial of coverages?

8 A Personally, very rarely.

09:34AM

9 Q Do you have a sense as manager how often the
10 appeals come to the level of the ETF Ombudsperson?

11 A I don't specifically, no. I'm sorry.

12 Q Do you have a general sense? Is it once a month
13 or once a year?

09:34AM

14 A There is a report that's produced by the
15 Ombudsperson Services office, but, again, I
16 don't --

17 Q Off the top of your head.

18 A Off the top of my head, I don't know.

09:35AM

19 Q Okay. Do you have a sense of what the most common
20 sorts of issues are in those appeals when it comes
21 to Navitus?

22 A Yes. Coverage of certain drugs is generally the
23 main issue.

24 Q Is that usually a formulary issue?

09:35AM

25 A Could be a formulary issue. When I refer to a

1 formulary issue meaning, you know, do we cover the
2 drug on our formulary or not.

3 Q And just for the record, what is a formulary?

09:35AM

4 A So the formulary is basically our drug list. The
5 drugs that we do cover as a benefit.

6 Q Have you ever dealt with appeals or denials of
7 benefits more directly than you do now in the
8 group health insurance/pharmacy side of things?

09:36AM

9 A Yes. When I first started, they were a little
10 more -- we would -- how do I say this? I would
11 get involved more than our Ombudsperson Services
12 would. That was back in 2006 through 2008.

13 Q And what changed?

09:36AM

14 A The Ombudsperson Services took on that role of,
15 again, being that first line when it came back
16 through to ETF.

17 Q Did they exist before?

18 A Yes. Yes.

19 Q I mean, the Ombudspersons Office existed?

09:36AM

20 A Thank you. Yes.

21 Q So who is in the Ombudspersons Office?

22 A That's Dan Hayes's office or group. And did you
23 need the names of those?

24 Q So that's in the Office of Legal Services or is
25 that --

09:37AM

1 A Yes. Yes.

2 Q Do you get other inquiries that are not appeals
3 from members, beneficiaries?

4 A We do, yes.

09:37AM

5 Q How does that -- can you give some examples, or is
6 that all across the board?

7 A It's pretty broad. One big one is co-pay
8 lowering, cost-share lowering. That's one that's
9 a little more prevalent.

09:38AM

10 Q Are you familiar with the term transgender?

11 A Yes.

12 Q What does that mean to you?

13 A It means to me someone who is moving from a
14 physical -- and it could be a mental state as well
15 but. If they were born, for instance, say a man,
16 their preference is more towards a female and vice
17 versa.

09:38AM

18 Q And how did you come to that understanding?

19 A Through personal knowledge as well as, you know,
20 research.

09:38AM

21 Q And when you say *personal knowledge*, do you know
22 people who are transgender?

23 A Yes.

24 Q Friends?

09:38AM

25 A Yes.

1 Q Family members?

2 A No.

3 Q Are you familiar with the term gender dysphoria?

4 A Yes.

09:39AM

5 Q What is your understanding of that?

6 A That is somewhat of a conflict between those two.

7 More of a psychological is my understanding

8 between the birth -- and, again, I don't know how

9 to clearly explain it, but a male feeling more in

09:39AM

10 tune with a female. That conflict.

11 Q Are you familiar with the term hormone therapy in
12 the context of treating gender dysphoria?

13 A Yes.

14 Q What's your understanding of hormone therapy in
15 that context?

09:39AM

16 A Hormone therapy is required -- again, I don't know
17 clinically, but I do know it's required -- or I
18 shouldn't say required but helps the matters in
19 both gender dysphoria and --

09:40AM

20 Q When you say helps it, relieves the distress?

21 A Right. Correct. Thank you.

22 Q And those hormones are typically -- in your
23 understanding, are they cross gender hormones so,
24 for example, a man -- somebody born whose gender
25 identified at birth is male taking estrogen, for

09:40AM

1 example?

2 A Correct.

3 Q And conversely, it would be somebody whose birth
4 gender identified at birth was female taking
09:40AM 5 androgens to relieve gender dysphoria?

6 A That's my understanding.

7 Q And, again, how did you come to that
8 understanding?

9 A Again, personal and then through research.

09:41AM 10 Q And when you say *research*, what do you mean?

11 A Just reading various articles.

12 Q And was that in the context of your job?

13 A In the context of my job as well as personal.

09:41AM 14 Q Did you try to systematically educate yourself
15 about it at some point?

16 A Yes.

17 Q When was that?

18 A That would have been back in 2006 and 2007.

09:41AM 19 Q And why did you undertake that effort in 2006 and
20 2007?

21 A To have a better understanding of bargaining
22 demands.

23 Q And when you say *bargaining demands*, are those
24 demands from employee unions?

09:41AM 25 A That's correct.

1 Q So you play a role in responding to bargaining
2 demands -- or have in the past, at least, dealt
3 with responses to bargaining demands from state
4 employees?

09:42AM

5 A Yes.

6 Q Do you still do that?

7 A No.

8 Q When did you no longer do that?

09:42AM

9 A I did it twice. One was for the -- so it was --
10 it would have been -- let's see. It would have
11 been 2008 would have been the last time.

12 Q Okay. So you did it in 2006 and 2008?

13 A That's correct.

09:42AM

14 Q And how did you come to be involved in that
15 process?

16 A Luck of the draw mostly. We had -- in our office,
17 we had very few staff, so it was another one of
18 the multiple functions.

09:42AM

19 Q Okay. And are those bargaining demands over
20 health care benefits something that happens every
21 year?

22 A It did, but it wasn't every year. It was every
23 two years.

09:43AM

24 Q Is that the length of a -- at the time, the length
25 of a contract?

1 A I assume so, yeah.

2 Q And you say now it's not the same. So how does it
3 work now?

4 A There are no longer bargaining units.

09:43AM 5 Q And that's because of Act 10?

6 A That's correct.

7 Q So that would have been 2012 or '13 that it ended
8 roughly?

09:43AM 9 A I don't recall. Again, the last time we did
10 bargaining demands was for the 2009 to 2011
11 contract year, and that would be a fiscal year.

12 Q Is that October?

13 A July.

14 Q July?

09:44AM 15 A It would have been July through the end of June.

16 Q Are you familiar with the term gender confirmation
17 surgery?

18 A I'm not familiar with that term, no. Gender
19 confirmation surgery, no.

09:44AM 20 Q How about sex reassignment surgery?

21 A Yes.

22 Q And what's your understanding of that term?

09:44AM 23 A That's when physically they change from male to
24 female or female to male through a surgical
25 procedure.

1 Q Okay. So genital surgery is what you understand
2 to be sex reassignment surgery?

3 A It's part of it.

4 Q What other parts?

09:44AM

5 A For instance, the breasts, those types of things
6 may be involved.

7 Q Okay. Have you ever heard of the term tracheal
8 shave?

9 A Yes.

09:45AM

10 Q What's that?

11 A Don't know specifically.

12 Q And what's your understanding of the reason that
13 those surgeries are done?

14 A It's the choice of the person.

09:45AM

15 Q Is it to treat gender dysphoria?

16 A I don't know. I can't speak to that.

17 Q Surgical coverage isn't in your bailiwick really?

18 A No. Contract management is.

09:45AM

19 Q So do you -- what sort of interaction do you have
20 with the Group Insurance Board?

21 A On occasion, I will report to the Group Insurance
22 Board regarding audits of the PBM or Navitus.

23 Also give them recommendations on contract

24 renewals, those type of things. If there's

09:46AM

25 special topics that the Group Insurance Board is

1 interested in that are related to the pharmacy
2 benefit programs, I'll work with that as well.

3 Q So when you say you report to them, do you mean
4 you attend the meeting of the GIB when you're
09:46AM 5 doing that kind of reporting?

6 A Yes.

7 Q Do you otherwise -- so do you attend every regular
8 GIB meeting?

9 A No. I do not.

09:46AM 10 Q Only when there's something on the agenda that you
11 need to talk about?

12 A That's correct.

13 Q Is the audit annual?

14 A The audit is now annual, yes.

09:47AM 15 Q And do you then attend at least one meeting a year
16 of the GIB?

17 A Yes.

18 Q To present that audit?

19 A Correct.

09:47AM 20 Q So do you know who the board members are now?

21 A Yes.

22 Q If I asked you to name them -- I'm not going to.

23 A Thank you.

24 Q But if I asked you to name them, you could
09:47AM 25 eventually come up with them?

1 A Yes, I could.

2 Q Do you know how they're chosen?

3 A Not specifically. I know some of them are -- some
4 of them are appointed. In fact, I think all of
5 them are appointed.

09:47AM

6 Q Do you know how they're appointed? Who does the
7 appointment?

8 A Not specifically, no.

9 Q Do you know anything about the qualifications to
10 be on the Group Insurance Board?

09:47AM

11 A No.

12 Q Do you know if Group Insurance Board members are
13 paid for their work?

14 A No. I don't know.

09:48AM

15 Q Do you know if the GIB positions are full time?

16 A I don't believe they are, but, again, that would
17 be speculating.

18 Q Okay. Is there a reason you don't believe that
19 they are?

09:48AM

20 A We only see them -- and I know they all have other
21 jobs.

22 Q Do you ever have one-on-one interactions with GIB
23 members?

24 A No. I do not.

09:48AM

25 Q No e-mail exchanges just with GIB members?

1 A No.

2 Q So all of your communication with them goes either
3 through your supervisors to the Board or you
4 attend a board meeting and give them a report?

09:48AM

5 A That would be correct. Again, I don't know how
6 the communications specifically go through. So if
7 I had something to communicate to the Board, I
8 would go through my supervisor to do that.

09:49AM

9 Whether the supervisor talks to the Board
10 specifically or not, I don't know.

11 MR. DUPUIS: Can we go off the
12 record just real quick.

13 (Discussion off the record)

14 (Exhibit No. 1 marked for
15 identification)

09:49AM

16 BY MR. DUPUIS:

17 Q Mr. Bogardus, I'm showing you what's been marked
18 as Bogardus Exhibit 1. I'll represent to you that
19 that's something that we pulled down just in the
20 last few days from the Department of Employee
21 Trust Funds website. And do you recognize it?

09:50AM

22 A Yep.

23 Q And what is it?

24 A It's an organizational chart.

09:50AM

25 Q Okay. And that's as of January 2018; is that

1 correct?

2 A As of January 2018; correct.

3 Q And on that chart, it has in the center a box says
4 *Office of the Secretary*, and it indicates that the

09:50AM

5 Secretary, Deputy Secretary, and Assistant Deputy
6 Secretary are in the Office of the Secretary; is
7 that correct?

8 A Correct.

9 Q And that's the secretary of Employee Trust Funds;
10 is that correct?

09:50AM

11 A According to this, yes.

12 Q And who is the secretary?

13 A Bob Conlin.

14 Q And is John Voelker still the deputy secretary?

09:51AM

15 A Yes.

16 Q And Pamela Henning is the assistant deputy
17 secretary; is that correct?

18 A That's correct.

19 Q And then there's also a person named Tarna Hunter,
20 Strategic Engagement and Government Relations
21 Director, which also appears to be in the Office
22 of the Secretary in the list of leadership below
23 but does not appear to be in the box. Do you
24 understand Tarna Hunter to be in the Office of the
25 Secretary?

09:51AM

09:51AM

1 A I believe she is in the Office of the Secretary.

2 Q Okay. Do you have much direct interaction with
3 folks in the Office of the Secretary?

4 A Not regularly.

09:51AM

5 Q About how often would you say you have
6 interactions with Mr. Conlin?

7 A Maybe once every two to three months.

8 Q Is his office in the same building as yours? You
9 just moved; right?

09:52AM

10 A Yes. Now we are.

11 Q But before he was not?

12 A He was not.

13 Q And you moved when? That was just last week?

14 A That was just last week, yes.

09:52AM

15 Q Are you on the same floor --

16 A No.

17 Q -- of the building? How about Mr. Voelker? How
18 often do you --

09:52AM

19 A Currently John -- Mr. Voelker is kind of stepping
20 in and helping Eileen in Lisa's absence, so over
21 the past couple months, we've had more
22 interactions with him directly.

23 Q Okay. What sorts of interactions?

09:52AM

24 A Strategic planning type events and then certain
25 day-to-day operational type things. He makes

1 himself available to us.

2 Q So are you involved in a regular strategic
3 planning process or is this something --

09:53AM

4 A This is something we've initiated over the last
5 six months, yes, moving forward.

6 Q But there wasn't, like, routine strategic planning
7 every year?

09:53AM

8 A There is. Each year we do go through certain
9 processes for the group health insurance programs,
10 but what I was referring to when I say strategic
11 planning in this context was more of the five
12 years down the road, six years down the road, but
13 we do annual, you know, planning as well.

09:53AM

14 Q And then sort of going out from the box from the
15 Office of the Secretary at the top of this chart,
16 there are a number of boards, the Wisconsin
17 Retirement Board, Employee Trust Funds Board,
18 Teachers Retirement Board, Deferred Compensation
19 Board, and then the Group Insurance Board;
20 correct?

09:53AM

21 A Uh-huh. Yes.

22 Q And all of those are -- are those all attached
23 boards? Is that what those are, if you know?

09:54AM

24 MR. ROTH: Object to the extent it
25 calls for a legal conclusion.

1 A And I don't know.

2 Q What is your understanding of the relationship
3 between the Office of the Secretary and the Group
4 Insurance Board?

09:54AM

5 MR. ROTH: Again, object to the
6 extent it calls for a legal conclusion.

7 A I don't really know the extent of involvement. I
8 know that the Secretary and the Deputy Secretary
9 are in attendance at the board meetings, but I
10 don't know specifically the legal or -- yeah, I
11 don't know.

09:54AM

12 Q Would it be fair to say they staff the board
13 meetings, the Group Insurance Board meetings?

14 A I wouldn't know.

09:54AM

15 Q You wouldn't know?

16 A No.

17 Q And then under the Office of the Secretary, there
18 are a series of other offices and divisions;
19 correct?

09:55AM

20 A Correct.

21 Q Do you know what the difference between an office
22 and a division is?

23 A In my opinion, it's just a -- we used to be a
24 division, but we're now an office, but I don't
25 know other than -- I just don't know the

09:55AM

1 structure, you know, that type of a structure, if
2 there's any significance to it. I don't know if
3 that's the case.

09:55AM

4 Q And in the Office of Strategic Health Policy, is
5 that the office that primarily deals with the
6 Group Insurance Board?

7 A That is correct.

8 Q And with the group health plans?

9 A That's correct.

09:55AM

10 Q Including the pharmacy benefit?

11 A Programs, yes.

12 Q And so the Secretary supervises that office;
13 correct?

09:55AM

14 A So he would be -- actually, if I remember
15 correctly, it would be John Voelker who was Lisa's
16 supervisor.

17 Q Direct supervisor?

18 A Direct supervisor, yes.

19 Q And Mr. Voelker reports to the Secretary?

09:56AM

20 A Correct.

21 Q Are there any other of these divisions or offices
22 that you deal with on a regular basis?

23 A Pretty much all of them.

09:56AM

24 Q Okay. Did Ms. Ellinger attend all Group Insurance
25 Board meetings as far as you know?

1 A As far as I know, yes.

2 Q She's sort of a principal liaison between ETF and
3 the Group Insurance Board?

4 A I would assume so, yes.

09:56AM

5 Q Pretty much all of the benefit programs that the
6 Group Insurance Board deals with are also dealt
7 with by the Office of Strategic Health Policy; is
8 that correct?

9 A I'm sorry. Can you repeat that?

09:57AM

10 Q All of the programs and benefits that the Group
11 Insurance Board is responsible for, the Office of
12 Strategic Health Policy is also responsible for;
13 correct?

14 A That's my understanding, yes.

09:57AM

15 Q Do you know who prepares the agendas for GIB
16 meetings?

17 A It's a group effort is my understanding. It goes
18 from -- it starts with Strategic Health Policy,
19 OSHP, and then they work with the Secretary's
09:57AM 20 office. That's internally. Externally, I'm not
21 sure if there's any input.

22 Q Do you know who takes the minutes at GIB meetings?

23 A Yes.

24 Q Who is that?

09:58AM

25 A Currently, it's a person by the name of Lisa

1 Gurley.

2 Q What's her position?

3 A I don't know specifically.

4 Q Is she in OSHP?

09:58AM 5 A No. She is not.

6 Q Is she in the Office of the Secretary?

7 A I believe she is. Either that or the Division of
8 Management Services. I'm not sure which.

09:58AM 9 Q Do you ever get questions from GIB -- I think you
10 sort of alluded to this. In your position, do you
11 get questions from GIB that you're asked to
12 answer?

13 A During the board meetings I do, yes.

09:59AM 14 Q Do you ever get questions that you know that come
15 directly from GIB members to you?

16 A Nothing comes directly to me. It would go through
17 my supervisor.

18 Q So the office is called the Office of Strategic
19 Health Policy. Does OSHP do policy analysis?

09:59AM 20 A Yes.

21 Q Can you describe that, how that policy analysis
22 works?

09:59AM 23 A It's pretty extensive. But from the standpoint of
24 looking at insurance, you know, benefit design,
25 both medical and, again, the prescription drug and

1 other vision, so on and so forth, so we do, you
2 know, research types of things that are out there.
3 An example would be value based benefit designs
4 that are coming on. So we do a lot of research in
10:00AM 5 that, would it fit with our situation or our
6 programs, or could we create new programs from
7 those types of things.

8 Q And so then the policy research is done by OSHP
9 staff?

10:00AM 10 A That is correct. We do bring in our actuaries and
11 other experts because especially in my case, I'm
12 not a clinical pharmacist by any means, so I could
13 not speak well to that.

14 Q So what experts do you work -- is that Navitus
10:00AM 15 primarily in your case?

16 A In my case, it's Navitus as well as our actuary.

17 Q Who is the actuary?

18 A That's Segal currently.

19 Q So Segal is involved in figuring out the costs of
10:00AM 20 the benefits essentially?

21 A That is correct. Or other data or trends, you
22 know, national trends, those types of things.

23 Q And Navitus would be your source of sort of
24 clinical expertise on what sort of medications are
10:01AM 25 being covered in various places and that kind of

1 thing?

2 A That's correct.

3 Q And then that analysis, that goes into making
4 recommendations to the Board about benefit design?

10:01AM 5 A That is correct.

6 Q And staff make those recommendations?

7 A That is correct.

8 Q And typically it's OSHP staff under the direction
9 of Mr. Conlin ultimately?

10:01AM 10 A Yes.

11 Q And then after GIB makes decisions about benefit
12 design, who is ultimately responsible for making
13 sure those decisions are carried out?

14 A Can you repeat that, please?

10:02AM 15 Q After GIB makes decisions on those recommendations
16 for benefit design, who's ultimately responsible
17 for making sure that those decisions are carried
18 out?

19 A Yeah. That would be OSHP.

10:02AM 20 Q And Secretary Conlin ultimately?

21 A I would assume so.

22 Q And how does OSHP staff carry those out?

23 A We implement whatever programs. We utilize the
24 other resources within the department. You know,
10:02AM 25 when you mentioned, you know, what other units I

1 work with here, I work with all of them. Whether
2 that's the IT folks, whether that's our front line
3 call center staff, you know, the folks who deal
4 with our systems for eligibility, those types of
5 things. We involve those people then to get the
6 programs or the board's approvals implemented.

10:02AM

7 Q Does that include preparing contracts with group
8 health insurance plans or in your case Navitus?

9 A Yes.

10:03AM

10 Q And those contracts embody the terms of the
11 benefit programs that are adopted; correct?

12 A Yes.

13 Q So does ETF consider -- or OSHP really consider
14 possible changes to the state employee health
15 benefit plans every year?

10:03AM

16 A Yes.

17 Q When does that process usually start?

18 A That usually starts in April.

19 Q Has it always started in April in the time you've
20 been --

10:03AM

21 A Yeah. March, April time frame. These days it
22 starts before the other plan years even begin.

23 Q And what's happening at that stage?

24 A So from my perspective from the pharmacy benefit
25 side, we're continuously looking at ways to make

10:04AM

1 changes to the program. Of course we won't be
2 able to actually -- we get our approvals in May at
3 the May group insurance board meeting, but it's an
4 ongoing process. The other processes through the
10:04AM 5 health insurance side or the medical side, I would
6 not be able to speak to that specifically.

7 Q So on the pharmacy benefit side, you say you're
8 sort of always looking at what things to change,
9 what sources of information are you looking at?

10:04AM 10 A Different trade journals, different groups. I'm a
11 member of the Pharmacy Benefit Management
12 Institute. There's a very good series of web
13 resources that are out there. There's an
14 organization called Drug Channels. A gentleman by
10:05AM 15 the name of Adam Fein who -- so, you know, a lot
16 of resources like that. We also keep our eyes on
17 what other states are doing as well.

18 Q And when you say *we*, you mean OSHP staff?

19 A OSHP staff, correct.

10:05AM 20 Q Do you get recommendations from GIB members on
21 benefits that you know of?

22 A I have never received any recommendations outside
23 of the Group Insurance Board meetings from a board
24 member.

10:06AM 25 Q Have you at Group Insurance Board meetings?

1 A Yeah. Again, if we come with a recommendation,
2 they may, in fact, say we want to do it
3 differently from what we recommend.

10:06AM

4 Q Okay. But typically the recommendation is coming
5 from ETF staff --

6 A That's correct.

7 Q -- not from the Board?

8 A That's correct.

10:06AM

9 Q You say it starts in March and April, and then I
10 think you said that the May meeting of the GIB is
11 when the benefit changes are adopted?

12 A August is actually when they're finally adopted.
13 May is when we take to them here's where we're
14 going with it. Again, a lot of those are really
15 geared around -- that time frame is really focused
16 on the medical side, the health insurance side. I
17 try to adhere to that as well. But a lot of times
18 I will try to get my pieces in there whenever I
19 can.

10:07AM

20 Q So the May meeting?

21 A For the May meeting, yes.

22 Q But the August meeting is where the actual
23 adoption occurs?

24 A That's where the actual adoption occurs.

10:07AM

25 Q I've seen references to a policy or study group,

1 study group memos and so forth. Are you familiar
2 with that?

3 A I'm familiar with that. That, again, is something
4 more geared towards the medical side. I've only
10:07AM 5 marginally participated in those groups in the
6 past. If pharmacy benefit related items come up
7 in those meetings, the staff who work with those
8 mainly will bring those to me. Again, a lot of
9 times that has kind of replaced the bargaining
10 demands.

11 Q So the study group process is --

12 A Yeah. It tends to bring some of those similar
13 types of requests.

14 Q So are you familiar with requests from employer
10:08AM 15 groups, like UW, for example, making requests that
16 certain benefits be covered?

17 A Yes.

18 Q And does that go into the hopper of this process
19 of developing the benefit package?

10:08AM 20 A Yes.

21 Q So after this August meeting, when would any
22 adopted changes take effect?

23 A They would be effective the next plan year, which
24 would be January 1st of the following year.

10:08AM 25 Q When you say a plan year, is that sort of a

1 contract term for the -- I think they're called
2 the plans; correct? Like, what are the plans?

3 A So we refer to plans very loosely as the
4 participating insurers in our group health
10:09AM 5 insurance program. When we refer to a plan year,
6 that's to differentiate between a calendar year or
7 a fiscal year. Our plan year runs from January 1
8 through December 31st.

9 Q Is that the same -- is that the same length of
10:09AM 10 time that the contracts with the plans are for?

11 A Yes.

12 Q So it's January 1st is when the contract is --
13 takes effect?

14 A That would be the health insurers. Those carriers
10:09AM 15 or plans. The contracts for dental and pharmacy
16 tend to be longer than that in most cases. We'll
17 usually get a two- to three-year contract. We do
18 have a renewal process that we do with them every
19 year, but they are still under contract for those
10:10AM 20 extended periods of time.

21 Q If those renewals involve -- well, if there's a
22 decision to cover a new pharmaceutical product in
23 the middle of a two-year contract, is there an
24 opportunity for Navitus to ask for more money to
10:10AM 25 help cover that?

1 MR. ROTH: Objection. Calls for
2 speculation.

3 Q To the extent you know.

10:10AM

4 A So we -- every year for the renewal, Navitus --
5 this is a little complicated. So the business
6 model we have with Navitus is we pay them an
7 administrative fee. Because it's a self-insured
8 program, the state pays for all of the claims.
9 The administrative fee that we pay to Navitus each
10 year at the renewal they have the opportunity to
11 say we want more money in the admin fee to
12 administer the benefits.

10:10AM

13 Q So it's actually not -- unlike the group health
14 insurance plans, which are taking some of the risk
15 that claims might exceed the contract amount, for
16 example, Navitus for pharmaceuticals is just a
17 claims administrator or an administrator?

10:11AM

18 A Thank you. Yes.

19 Q But the state pays all of those claims and takes
20 all of the risk that claims will exceed premiums?

10:11AM

21 A Correct.

22 MR. ROTH: If we're getting close
23 to a stopping point for a break, five, ten
24 minutes, I could use one.

10:11AM

25 MR. DUPUIS: Now is fine. We can

1 do five minutes.

2 I should have mentioned that to you. If
3 you need a break at any point, just ask. But
4 I won't let you go if you're in the middle of
10:11AM 5 answering a question.

6 THE WITNESS: No. I understand
7 that.

8 MR. ROTH: Thanks. I appreciate
9 that.

10:12AM 10 (Recess taken)

11 BY MR. DUPUIS:

12 Q So in your experience, are plan benefits normally
13 pretty stable throughout a year?

14 MR. ROTH: Objection. Vague.

10:20AM 15 A What do you mean by throughout the year?

16 Q So in, say, the calendar -- the plan year --

17 A Okay.

18 Q Are the benefits pretty much set for January, and
19 they're the same throughout the plan year?

10:20AM 20 A Under normal circumstances, yes.

21 Q But benefit changes sometimes happen in the middle
22 of benefit years in your experience?

23 A They can.

24 Q How often has that happened in your time?

10:21AM 25 A Once as far as I know.

1 Q What was that?

2 A No. That wasn't in the middle of my year. No.
3 There are none that I can recall.

4 Q And are you referring specifically to
5 pharmaceutical benefits?

6 A Correct.

7 Q Do you know about the group health plan benefit
8 package?

9 A No.

10 Q So the ETF staff come up with recommendations for
11 changes to the benefit, the uniform benefits,
12 every year; is that right?

13 A That's correct.

14 Q And then the GIB approves, denies, modifies those
15 recommendations; correct?

16 A Yes.

17 Q And that's usually in August?

18 A Yes.

19 Q And then the ETF draws up contracts with the plans
20 to cover those benefits; correct?

21 A Correct. But, again, you're referring to the
22 health plans and not --

23 Q Both.

24 A Again, I would avoid speaking as an expert on the
25 health plans because, again, we go back -- to kind

1 of backtrack to the previous question you just
2 asked, May is when I get my -- usually when I get
3 my approvals for changes to the pharmacy benefits.

10:23AM

4 Other technical changes that the health
5 insurance plans -- or the people who work on the
6 health insurance plans, they get some technical
7 changes done in August, and that's when the
8 premium rates are established, so on and so forth.

10:23AM

9 But for the most part, we get most of our
10 pharmacy-related benefit changes approved at that
11 May meeting so we can start moving forward to
12 implement those.

10:23AM

13 Q And by implement, part of that is a contract with
14 Navitus or maybe changes that you just inform
15 Navitus of what's covered and what's not?

16 A It's setting up the benefit so that it pays
17 correctly so that their systems adjudicate a claim
18 correctly, that type of thing.

10:23AM

19 Q And then as far as the health plans, to your
20 knowledge, there's a contract that is offered to
21 the plans, and they bid on that and decide whether
22 to join or not; is that right?

23 A Again, I wouldn't respond -- I mean, I'm not an
24 expert on that, so I don't know.

10:24AM

25 Q You've participated in the response to union

1 demands in the past; right?

2 A Yes.

3 Q And those demands ended up going through a
4 process, and ETF either recommended or didn't
10:24AM 5 recommend; right?

6 A Yes.

7 Q And then GIB either adopted or didn't adopt based
8 on --

9 A Yes.

10:24AM 10 Q -- ETF recommendations; right?

11 A Yes.

12 Q And that resulted in a contract ultimately,
13 correct, to your knowledge?

14 A With the health plans?

10:24AM 15 Q Yes.

16 A Again, I don't know if those pieces are applied to
17 that contract. Again, I can't speak to specifics
18 on the health plan.

19 Q Do you know -- I've seen reference to, like, the
10:25AM 20 green uniform benefits listing, and then there's
21 another one that's -- I forget what the other
22 colors are. Do you remember that?

23 A The green and the blue.

24 Q And what are those?

10:25AM 25 A So the green uniform benefits or the guidelines as

1 they were called is the clean -- what we refer to
2 as the clean copy. Whereas, the blue is the
3 stricken -- shows editing from the previous
4 version.

10:25AM

5 Q Okay. But that green document is essentially the
6 operative document that the plans are bid --
7 that's the policy -- or the benefits package that
8 the plans are bidding on?

10:25AM

9 A From the drug side, from the pharmacy benefit
10 side, any provisions within Section 4 in the
11 uniform benefits would apply to Navitus.

12 Q But Navitus isn't taking any risk on that, so
13 they're not --

14 A Correct.

10:26AM

15 Q -- bidding on the contracts?

16 A Correct.

17 Q Like the way that Dean --

18 A Again, I can't speak to the health medical side.

10:26AM

19 Q Do you know if the health insurance companies, the
20 plans on the group health side, are able to offer
21 benefits packages that are different from what ETF
22 and GIB come up with?

23 A Again, I can't speak to the health plan side. It
24 is a uniform benefit package.

10:26AM

25 Q I'm just asking for your understanding. I'm not

1 asking you to be an expert.

2 A Again, my understanding is it's a uniform benefit
3 package, and all plans who participate must follow
4 the uniform benefits.

10:26AM

5 Q Okay. And you are yourself a member of one of
6 those plans; right?

7 A Yes.

8 Q And you get a choice of a couple of different
9 plans; right?

10:26AM

10 A Yes.

11 Q Prices might vary?

12 A State employees have one -- what do you want to
13 call it? One amount we pay for any plan depending
14 on the tier that that plan goes in.

10:27AM

15 Q So there's, like, gold plans and silver plans or
16 something along those lines?

17 A It's a tiered structure, yes. Tier, 1, 2, and 3.

18 Q So what role does ETF have in ensuring that the
19 plans, including Navitus, abide by the policy
20 decision that -- the benefit decisions that ETF
21 and GIB have come up?

10:27AM

22 A Can you repeat that?

23 Q Yeah. What role does ETF staff have in enforcing
24 the benefit coverage decisions that are made by
25 ETF and GIB?

10:28AM

1 A I don't really understand kind of what you're
2 asking.

3 Q How do you ensure that a benefit, like a change --
4 a new benefit is actually -- like, if somebody
10:28AM 5 asks for -- makes a claim for that coverage, they
6 actually get it?

7 A It depends on what it is. Okay. For instance, if
8 we add a new drug onto the formulary, the
9 enforcement there is is it on the formulary? Yes,
10:28AM 10 it is, or, no, it isn't. It's pretty
11 straightforward.

12 If they're not processing it correctly, we do
13 require Navitus to go through and do periodic
14 checks of their systems to make sure, and there
10:28AM 15 have been examples where they've found, oh, we
16 aren't processing these claims correctly, or we're
17 applying the wrong out-of-pocket limit. So we
18 require that in the contract that they do those
19 periodic checks.

10:29AM 20 We also get that from a member potentially
21 who says, hey, I went to the pharmacy, and I paid
22 \$30 instead of \$5 for my co-pay, and that would
23 trigger, you know, our investigation of it where
24 we inquire with Navitus.

10:29AM 25 Q So ETF oversees -- you specifically for ETF

1 oversees the administration of the pharmacy
2 benefits for members?

3 A Yes.

4 Q So are there any other consultants that you're
10:30AM 5 aware of that ETF uses regularly to help do
6 analysis of potential benefit changes besides
7 Segal and Navitus?

8 A In the past, we've used Deloitte, which was our
9 actuary at the time, and then there was a separate
10:30AM 10 contract with Segal as a benefit consultant.
11 Other than that, I'm not aware of any.

12 Q Does OSHP do a fair amount -- do they do internal
13 analysis, as well, of proposed benefit changes?

14 A We do kind of do a check of what we get back. A
10:31AM 15 reasonableness check of the information that, say,
16 a consultant or an actuary would provide us.

17 Q What about when you were involved in the union
18 demands, dealing with the union demands, did ETF
19 take a first look at those demands and do some
10:31AM 20 analysis, or what was the process there?

21 A So my role in that was when I would get the
22 demands in, we would look and see what the demands
23 from the prior period had been. You know, a lot
24 of those repeated time after time. And if we did,
10:31AM 25 we would provide the narrative that was done

1 previously to the actuary. At that time it was
2 Deloitte. And then we would ask Deloitte for an
3 update on that. New requests or new demands that
4 would come through would be included in there, as
10:32AM 5 well, and we would indicate these have not been
6 done. You know, give us an analysis of this.

7 So we didn't necessarily do -- we did not do
8 an analysis ahead of time. It was basically
9 regurgitating information that had already been
10:32AM 10 provided if it was there.

11 Q And then the new ones would go on just to Deloitte
12 directly, or would you do some initial analysis of
13 them, say, compared to other state programs or
14 anything?

10:32AM 15 A If the demand didn't have enough information, for
16 instance, or wasn't specific enough, we would look
17 through that and indicate that. That would not
18 move forward for an analysis by Deloitte.

19 Q Okay. So I'm going to be talking about the
10:33AM 20 "exclusion," in quotes. What we're going to be
21 referring to is the exclusion of coverage for
22 "procedures, services, and supplies related to
23 surgery and sex hormones associated with gender
24 reassignment." Okay. Are you familiar with that
10:33AM 25 exclusion in the plan?

1 A Yes.

2 Q How did you become familiar with that exclusion?

3 A We have to on the pharmacy side essentially follow
4 along with those exclusions that are on the

10:33AM

5 medical side. So it's there. We have to

6 implement it on the pharmacy side as well.

7 Q Do you know when that exclusion first came into
8 the plans?

9 A I do not.

10:34AM

10 Q Are you aware that the language was slightly
11 different at one point?

12 A Yes.

13 Q Do you know when it changed? The current version?

14 A I want to say 2015 or 2016.

10:34AM

15 Q In your view, was that change in language intended
16 to affect the substance of what was excluded?

17 A No.

18 Q When did ETF first consider eliminating the
19 exclusion, to your knowledge?

10:34AM

20 A I don't know specific dates unfortunately. I want
21 to say it's in that 2015-2016 time frame. Again,
22 the pharmacy side is kind of reactionary to the
23 medical side in this event. On the pharmacy side,
24 we were just kind of waiting and seeing what's

10:35AM

25 going to happen so we can make adjustments

1 accordingly.

2 Q Did you have any input into the consideration of
3 eliminating the exclusion in that 2015-2016
4 period?

10:35AM 5 A No.

6 Q Did you express any opinions at ETF about it?

7 A I did.

8 Q What opinions did you express about it?

9 A Personal only.

10:35AM 10 Q What was it?

11 A That it was not a bad thing.

12 Q That what was not a bad thing?

13 A Taking away the exclusion.

14 Q So providing the benefit?

10:35AM 15 A Providing the benefit, yeah. But that was
16 personal only.

17 Q When you say *not a bad thing*, what do you mean by
18 that?

19 A It would be good to have the benefit covered.

10:36AM 20 Q Why would it be good in your opinion?

21 A That's a personal opinion.

22 Q But there's a reason for that opinion.

23 A That's a personal opinion. It's my opinion.

10:36AM 24 Q Right. But is it because you think it's
25 beneficial to people or because you think it --

1 I'm just trying to get what your reasoning for why
2 you agree with it.

3 A Personally, I think it's a benefit to people that
4 should be available.

10:36AM 5 Q Did your -- you said you did some research on the
6 issue at one point --

7 A Uh-huh.

8 Q -- back in 2006, I believe you said?

9 A I believe it was 2006, yeah.

10:37AM 10 Q Did that go into your belief of why the benefit
11 should be available to people?

12 A That would have been part of it. Just the general
13 knowledge overall of gender dysphoria and --

14 Q Do you know that people suffer if they don't get
10:37AM 15 this coverage? I mean, if they don't get these
16 services?

17 MR. ROTH: Objection. Vague.

18 A And that's a -- I mean, I don't know. I don't
19 know firsthand.

10:37AM 20 Q Have people told you that --

21 A Some people have.

22 Q -- they've suffered from not having these
23 services?

24 A Yes.

10:37AM 25 Q In the 2015-'16 time frame when there was

1 consideration given to eliminating the exclusion,
2 was the exclusion eliminated at that time?

3 A I believe it was at one point, yes.

4 Q Okay. I'm going to actually show you -- I'm

10:38AM

5 trying to decide which of these two to use. Okay.

6 I'm going to show you what's been marked as

7 Exhibit 2423, and then there's an attachment to

8 that exhibit as well.

9 MR. ROTH: Larry, I assume you mean

10:38AM

10 the ETF marker is 2423, not the exhibit.

11 MR. DUPUIS: Yes. ETF02423. This

12 is Exhibit 2; is that right?

13 MR. ROTH: Uh-huh.

14 (Exhibit No. 2 marked for

10:39AM

15 identification)

16 BY MR. DUPUIS:

17 Q I'm showing you what's been marked as Exhibit 2.

18 And that is an e-mail. You're not on the e-mail

19 chain, but I mostly want you to take a look at the

10:39AM

20 attachment. Do you see that?

21 A Yes.

22 Q And the attachment, do you recognize that

23 document?

24 A I recognize -- yes.

10:39AM

25 Q What is it?

1 A It's a Board memo or a memo to our Board, the
2 Group Insurance Board, regarding benefits for the
3 2016 plan year.

4 Q Okay. And the date on that is May 14th, 2015?

10:39AM

5 A Yes.

6 Q And Tara Pray is the author?

7 A Yes.

8 Q Who is Tara Pray?

10:39AM

9 A Tara Pray is currently in a communications
10 position within OSHP, but at that time, she was
11 the manager of the alternate health plans.

12 Q Okay. And this memo is -- is this sort of a
13 culmination of the process that you described for
14 recommendations that ETF makes to GIB about
15 benefit changes for the upcoming plan year?

10:40AM

16 A That's correct.

17 Q Down in the background section, the second
18 paragraph in the background section talks about
19 *ETF staff collected benefit change suggestions*
20 *from its usual sources over the past year: health*
21 *plans, members, employers, and ETF Ombudsperson*
22 *Services staff*; do you see that sentence?

10:40AM

23 A Yes.

24 Q Does that seem like an accurate reflection of the
25 process --

10:40AM

1 A Yes.

2 Q -- every year. And this was a year in which there
3 was a study group; correct?

4 A Yes.

10:41AM

5 Q So there's no specific reference to union demands;
6 correct?

7 A Correct.

8 Q Because there would not have been a union
9 bargaining over benefits at this point?

10:41AM

10 A Correct.

11 Q Because of Act 10?

12 A Correct.

13 Q And then *These suggestions have been discussed*
14 *with Segal and those that are supported by both*
15 *Segal and ETF staff are recommended in the options*
16 *included in this memo; do you see that?*

10:41AM

17 A Yes.

18 Q Is that your understanding of how that process
19 works?

10:41AM

20 A Yes.

21 Q And then the next paragraph says *Every year, ETF*
22 *convenes a "Study Group" to discuss potential*
23 *benefit changes in order to provide the Board with*
24 *feedback from the member, employer and health plan*
25 *perspectives; do you see that?*

10:41AM

1 A Yes.

2 Q Does that generally describe the process, the
3 normal process, as you understand it?

4 A Yes.

10:41AM

5 Q I'd like you to take a look at page 10. About
6 two-thirds or three-quarters of the way down
7 there's a section headed *Suggestions Deferred to*
8 *Future Plan Years*; do you see that?

9 A Yes.

10:42AM

10 Q And it says *The following proposed changes are not*
11 *recommended for 2016 based upon discussions*
12 *between ETF and Segal staff. Consideration of*
13 *these changes will be deferred as possibly part of*
14 *a broader program redesign for 2017 or beyond*; do
15 you see that?

10:42AM

16 A Yes.

17 Q And then number 9 in that list following that
18 sentence says *Add coverage for gender reassignment*
19 *benefits with strict protocols*; do you see that?

10:42AM

20 A Yes.

21 Q So at this point at least in 2015 for the 2016
22 plan year, coverage for gender reassignment
23 benefits was deferred or recommended to be
24 deferred?

10:43AM

25 A Yes.

1 Q Do you know why that particular benefit was
2 deferred?

3 A No.

4 Q Do you -- do you know what this reference to
10:43AM 5 *possibly part of a broader program redesign in*
6 *2017* refers to?

7 A Not specifically, no.

8 Q Generally?

9 A Generally, we were looking at making some changes
10:43AM 10 with self-insuring our plans instead of fully
11 insured plans like we have now, so that was the
12 broad scope. But as far as benefits within those,
13 I don't know.

14 Q And the self-insurance proposal was not ultimately
10:44AM 15 adopted; is that correct?

16 A Correct.

17 Q Okay. You can set that one aside for the moment.

18 A For the moment.

19 Q Anything can come back at any time.

10:44AM 20 A Absolutely.

21 Q Now, that wasn't the first time ETF staff at least
22 considered the possibility of eliminating the
23 exclusion, was it?

24 A I don't know.

10:44AM 25 Q I'm going to just ask you to take a quick look at

1 this. We could make this one exhibit really.

2 (Exhibit No. 3 marked for
3 identification)

4 BY MR. DUPUIS:

10:45AM

5 Q I'd like you to take a look at what's been marked
6 as Exhibit 3. This is an e-mail from April of
7 2015 from you -- or at least the lead e-mail is
8 from you to Arlene Larson and Tara Pray; is that
9 correct?

10:45AM

10 A That's correct.

11 MR. DUPUIS: And I just want to
12 make a note for the record, as well, you'll
13 note that these printouts of e-mails at the
14 very top have the name of the lawyer who
15 printed them out. That's because the
16 documents were produced in native format, and
17 the only way we could read those documents
18 was to use the software that then put that on
19 the --

10:46AM

20 MR. ROTH: Understood.

21 MR. DUPUIS: -- document.

22 MR. ROTH: Understood.

10:46AM

23 Q So and then the attachment to the e-mail, do you
24 recognize that?

10:46AM

25 A Yes.

1 Q And that is actually to the -- that's a memo from
2 April 24th to the Study Group, Advisory Study
3 Group?

4 A Yes.

10:46AM

5 Q I'm sorry. Guidelines Advisory Study Group;
6 correct?

7 A Correct.

8 Q Also from Tara Pray?

9 A Yes.

10:46AM

10 Q And is this essentially an earlier step in the
11 process of devising the memo in Exhibit 2?

12 A I don't know. It appears to be, but I don't know.

13 Q Can you take a look at -- you did see this memo;
14 correct?

10:47AM

15 A Well, it's familiar. I've seen them in the past,
16 but I don't know if I've seen this exact one.

17 Q Okay. You responded to getting this memo by
18 making some suggestions specifically to the
19 pharmacy benefits; correct?

10:47AM

20 A Yes. Yes.

21 Q So you at least saw those sections?

22 A Yes. It does indicate there I saw it.

23 Q On page 5 of the attached memo, there's a heading
24 Section VI, *Changes not to be recommended to the*
25 *Board for 2016*; do you see that?

10:48AM

1 A Yes.

2 Q And, again, in the list of things not to be
3 recommended is letter "h" *Add coverage for gender*
4 *reassignment benefits with strict protocols*; do
10:48AM 5 you see that?

6 A Yes.

7 Q Again, here, it says *Many of these changes will be*
8 *considered as part of a broader program redesign*
9 *for 2017 or beyond. We will not take the time to*
10:48AM 10 *discuss these at the Study Group meeting, but*
11 *wanted to inform the group of the status of these*
12 *proposals. Study Group members can contact Tara*
13 *Pray to discuss any of these issues*; do you see
14 that?

10:48AM 15 A Yes.

16 Q Are you aware of anybody at this point raising the
17 issue of gender reassignment benefits not being
18 included for 2016?

19 A I don't recall, no.

10:49AM 20 Q Do you know who was on the Guidelines Advisory
21 Study Group?

22 A No, I don't.

23 Q Do you know who generally is on those?

24 A Again, it would be employer representatives,
10:49AM 25 health plan representatives, some employees.

1 That's the extent of my knowledge of who would be
2 on those. And, of course, ETF staff would be
3 involved.

4 Q You can set that one aside. I'd like you to take
10:49AM 5 a look at another exhibit here. Again, I'm just
6 going to staple this and treat it as one.

7 (Exhibit No. 4 marked for
8 identification)

9 BY MR. DUPUIS:

10:50AM 10 Q I'm going to show you what's been marked as
11 Exhibit 4. Do you recognize that?

12 A No. But it was sent to me so -- I mean, it's an
13 e-mail from Bill Kox to me.

14 Q And Bill Kox at the time was your supervisor?

10:51AM 15 A That is correct.

16 Q And what is the date on that e-mail?

17 A The date on that e-mail is September 8th, 2006.

18 Q And that would have had an attachment with
19 bargaining demands; correct?

10:51AM 20 A Yes. According to the message from Pam linked
21 below.

22 Q And taking a look at the attachment, which is the
23 heading on the first page is *Wisconsin Retirement*
24 *System*; do you see that?

10:51AM 25 MR. ROTH: Larry, sorry. I just

1 like to get on the record. It doesn't appear
2 that we have the entire --

3 MR. DUPUIS: Yes.

4 MR. ROTH: -- attachment. It looks
5 like we skip from --

10:51AM

6 MR. DUPUIS: Right.

7 MR. ROTH: -- appears page 1 to
8 page 19.

9 MR. DUPUIS: Yeah. This is an
10 excerpt I'll represent. These are just two
11 or three pages in the exhibit.

10:52AM

12 Q Do you recognize that excerpt of the attachment?

13 A Yes.

14 Q Okay. And what is that?

10:52AM

15 A So these are the responses that we would have put
16 together for bargaining demands back in -- this
17 one, I believe, is -- according to the e-mail, it
18 should have been the 2005-2007 bargaining demands.

19 Q Okay. So basically this document is -- how is
20 this document assembled?

10:52AM

21 A This document is assembled by ETF staff based on
22 the bargaining demands received by ETF.

23 Q Demands received from whom?

24 A Bargaining units. I think those were at the time
25 provided to us by -- I want to say the Office of

10:53AM

1 State Employee Relations, which is now Department
2 of Personnel Management, I believe.

3 Q I'd like you to take a look at page 19, what's
4 marked as page 19 on the exhibit -- or the
10:53AM 5 attachment. And number 18 there; do you see that?

6 A Yes.

7 Q *Provide coverage for transgender, and transsexual*
8 *individuals to get surgery and follow-up hormone*
9 *therapy; right?*

10:53AM 10 A Yes.

11 Q And that proposal was submitted by whom?

12 A By the Teaching Assistants Association.

13 Q And then on the next page is ETF's response?

14 A Yes.

10:54AM 15 Q Which says *The Board's actuary estimates that in a*
16 *population of the size of the state program, there*
17 *would be two procedures annually.* Do you know
18 what procedures they're referring to?

19 A They would be the gender -- figure out what we
10:54AM 20 called them here. The transgender surgery or
21 transsexual surgery.

22 Q So this didn't deal with costs of -- it estimates
23 the cost of each surgery at about 55,000; right?

24 A That's correct.

10:54AM 25 Q For an annual estimated cost of 110,800; correct?

1 A Yes.

2 Q Do you recall this demand and this response?

3 A Yes.

4 Q And you had said that back in 2006, you did a

10:54AM

5 little research. Is this what triggered this
6 research?

7 A Yes. The research was actually provided by the

8 Deloitte actuary that did this cost analysis for

9 us and the evaluation for us, so they just felt it

10:55AM

10 was, you know -- again, when we would get these
11 back, we would kind of do a reasonableness check,
12 and that was one way we did it was to look at some
13 of the research that was provided.

14 Q Okay. So this document does not appear to

10:55AM

15 actually make a recommendation. ETF doesn't
16 appear to make a recommendation. There's just a
17 response that is more this is what it would cost?

18 A That is correct.

19 Q Just the facts?

10:55AM

20 A That is correct.

21 Q Do you know what happened with this demand in
22 2006?

23 A No.

24 Q Did you participate in any meetings with other ETF

10:55AM

25 staff about these demands?

1 A Only in the development of this document.

2 Q Okay. Were there discussions of that particular
3 request to your recollection?

10:56AM

4 A Only discussion of the cost analysis or the
5 overall analysis. For instance, it indicates the
6 population size and numbers of procedures. So
7 that would be -- that's the discussion we would
8 have had.

9 Q Do you remember that discussion?

10:56AM

10 A No. I wish I did.

11 Q You remember doing the research?

12 A Yes. I remember doing the research.

13 Q This was before the Affordable Care Act was
14 enacted; right?

10:56AM

15 A That's my understanding, yes.

16 Q And that was before the health -- U.S. Health and
17 Human Services regulations implementing the
18 Affordable Care Act came out; correct?

19 A Yes.

10:56AM

20 MR. ROTH: Objection. Vague.

21 Assumes facts not in evidence.

22 A I don't know specifically.

23 Q Do you know when the Affordable Care Act --

24 A Yeah. Again the date --

10:57AM

25 Q -- was enacted?

1 A -- is the problem. I'm not good with dates.

2 Q The Affordable Care Act was enacted during the
3 Obama administration?

4 A The Obama administration, right.

10:57AM

5 Q And this is 2006; correct?

6 A Yeah. I don't know if there were other -- yeah.

7 There were other -- yeah, correct.

8 Q And the regulations would have been subsequent to
9 the actual act; correct?

10:57AM

10 A Correct.

11 Q So we can safely assume this came out before?

12 A Yes.

13 Q Once again you can provisionally set that aside.

14 (Exhibit No. 5 marked for
15 identification)

10:58AM

16 BY MR. DUPUIS:

17 Q I'm showing you what's been marked Exhibit 5.

18 A Thank you.

19 Q Do you recognize that document?

10:58AM

20 A It is an e-mail from David Nispel to me and
21 another on March 16th.

22 Q Okay.

23 A Or 23rd of March in 2016.

24 Q And the subject of that e-mail is *Transgender*

10:58AM

25 *Benefits and Bargaining Demands: 2009-2011*; do you

1 see that?

2 A Yes.

3 Q But this e-mail is actually a 2016 e-mail;
4 correct?

10:58AM

5 A Yes.

6 Q A March 2016 e-mail?

7 A Yes.

8 Q And can you -- so your e-mail to Mr. Nispel
9 appears below that, an e-mail from the same day,

10:59AM

10 March 23rd, 2016; correct?

11 A Yes.

12 Q And it says -- your e-mail says *The TAA once again*
13 *included the transgender/transsexual benefit*
14 *demands in their 2009-2011 request. The MGAA also*
15 *included this in their list of 2009-2011*

10:59AM

16 *bargaining demands for the first time; do you see*
17 *that?*

18 A Yes.

19 Q And the TAA is the Teaching Assistant Association;
20 correct?

10:59AM

21 A That's correct.

22 Q And that would have been the same bargaining unit
23 that had requested that the benefit be implemented
24 in 2006?

10:59AM

25 A Correct.

1 Q What is the MGAA?

2 A I don't recall.

3 Q Okay. And then you say *A review by Deloitte did*
4 *not show much change from the previous bargaining*
5 *demands cycle*. What did you mean by that?

11:00AM

6 A So that was comparing the 2007-2009 bargaining
7 demands, which again is the first time that I was
8 aware of the TAA submitting that demand. The
9 change went from then to 2009 to 2011. There was
10 not much of a change.

11:00AM

11 Q In terms of the cost?

12 A In terms of the cost and the number of cases and
13 the population size.

14 Q Okay. Do you know what documents Deloitte
15 reviewed in coming up with their estimates?

11:00AM

16 A I do not.

17 Q Would they have been some of the same research
18 documents that you mentioned before?

19 MR. ROTH: Objection. Asked and
20 answered.

11:00AM

21 Q To the extent you know.

22 A Two of the documents I do know of. They were
23 provided to us.

24 Q And what were those documents?

11:00AM

25 A I don't know right off the top of my head. I'm

1 sure there's an e-mail because they would have
2 come through as an e-mail attachment.

3 Q So both in Exhibit 5 and Exhibit 4 --

4 MR. DUPUIS: Have you mark this
5 one.

11:01AM

6 (Exhibit No. 6 marked for
7 identification)

8 BY MR. DUPUIS:

9 Q Showing you what's been marked as Exhibit 6.

11:02AM

10 A Thank you.

11 Q Do you recognize that e-mail?

12 A It's from Linda Owen to myself from, let's see
13 here, October 22nd of 2008.

14 Q Who is Linda Owen?

11:02AM

15 A Linda Owen was -- I don't remember exactly what
16 her specific role was at ETF, but she worked on
17 the retirement side kind of in a policy analysis
18 type position.

19 Q And what is DRS?

11:02AM

20 A The Division of Retirement Services.

21 Q So take a look at the attachment to this. Do you
22 see that?

23 A Yes.

24 Q And does that appear to be the 2008 bargaining
25 demands?

11:02AM

1 A It's not dated, so I can't tell.

2 MR. ROTH: Again, I'd like to note
3 for the record it appears to be an excerpt.

4 It goes from page 1 to 16.

11:03AM 5 Q Can you -- so there are references to 2008?

6 A Yeah. There are references to 2008 in the
7 document.

8 Q So could you take a look at the second page of the
9 excerpt, which is page 16 -- marked as page 16; do
10 you see that?

11 A Yes.

12 Q And this recommendation is, 8, *Guarantee coverage*
13 *for transgender, and transsexual individuals to*
14 *get surgery and follow-up hormone therapy*; do you
15 see that?

16 A Yes.

17 Q Again, submitted by the Teaching Assistants
18 Association?

19 A Yes.

11:03AM 20 Q So this one, unlike Exhibit 4, specifically
21 mentioned hormone therapy; do you see that?

22 A Yes.

23 Q The analysis then goes on to talk about -- or the
24 ETF response goes on to talk about the cost of
11:04AM 25 surgery and show that the cost of these procedures

1 are lower than earlier reported; do you see that?

2 A Yes.

3 Q And what do you mean by *earlier reported*? Is that
4 the reference to the earlier Deloitte analysis for
5 2006?

11:04AM

6 A The previous bargaining demands analysis, yes.

7 Q It talks about complication rates being difficult
8 to determine; do you see that?

9 A Yes.

11:04AM

10 Q *Research indicates most complications occur when*
11 *Female-to-Male patients undergo either*
12 *metoidioplasty or phalloplasty but the vast*
13 *majority of Female-to-Male patients choose not to*
14 *undergo either procedure; do you see that?*

11:04AM

15 A Yes.

16 Q And then the estimated annual cost this time is
17 40,000 to 50,000; do you see that?

18 A Yes.

19 Q So that's a reduction; correct?

11:05AM

20 A Correct.

21 Q Do you know whether this demand was met in the
22 2009 to '11 period?

23 A I don't. So the uniform benefits didn't change.

24 Q Right. Okay. That's what I'm asking, I think.

11:05AM

25 Are there other ways the demand could have been

1 met?

2 A I don't know.

3 Q Now, neither Exhibit 4 nor Exhibit 6 mention the
4 cost of hormones; correct?

11:05AM

5 A They don't specifically list --

6 MR. ROTH: I'm just going to note
7 for the record the title of this one that
8 you've been discussing says hormone therapy.

11:06AM

9 Q But the cost of hormone therapy is not assessed,
10 correct, so far as you can see?

11 MR. ROTH: Objection. Calls for
12 speculation.

13 Q It's not discussed in the document?

11:06AM

14 A What's discussed in the document is an overall
15 cost. I don't know if that includes both the
16 surgery and the hormone therapy.

17 Q So to your knowledge from 2006 to 2016, did ETF
18 ever recommend that GIB eliminate the exclusion
19 for these treatments for gender dysphoria?

11:06AM

20 A I don't recall. It may have been, but I don't
21 recall.

22 Q So at some point in 2016, ETF did recommend to the
23 GIB that the benefit -- or the exclusion be
24 eliminated; correct? The exclusion for treatment
25 for gender dysphoria?

11:07AM

1 A At some point, yes.

2 Q Do you know when that happened?

3 A I do not.

4 Q Do you know if that was done at the usual August
11:07AM 5 meeting?

6 A I don't know.

7 Q Do you know when it was going to be effective?

8 A It would have been effective 1/1 of '17.

9 Q Do you know why --

11:08AM 10 A Let me get my dates right. Yeah. There's an
11 e-mail in there somewhere that indicates it, but
12 it would have been effective the next plan year in
13 the year -- the year following the year of
14 discussion.

11:08AM 15 Q Were you aware of the fact that ETF made that
16 recommendation?

17 A Yes. Because we had to change the edits on the
18 drug side.

19 Q And when you say *the edits*, what do you mean?

11:08AM 20 A There are gender edits. What we refer to as
21 gender edits in claims processing for drugs.

22 Q So is that basically -- are gender edits a
23 mechanism for dealing with a -- providing coverage
24 for a drug that would otherwise not be covered
11:09AM 25 because it is not a drug that would ordinarily be

1 prescribed to a person of that gender?

2 A For a specific situation, yes.

3 Q I'm going to get to that by using another document
4 later.

5 A Yes.

6 Q Do you know the reason -- do you have an
7 understanding of the reason that the exclusion --
8 why ETF made the recommendation to eliminate the
9 exclusion?

11:09AM 10 A I had some supposition. I had some thoughts as to
11 why that I felt were -- you know, there's an
12 e-mail in there that expressed that.

13 Q What I'm asking now is were you aware of the
14 reason that they were going to start covering the
11:10AM 15 benefit?

16 A No. Other than it was a bargaining -- not a
17 bargaining. The EEOC -- was it EEOC? No. It was
18 something federal. I don't know specifically.

19 Q So it was a reaction to some --

11:10AM 20 A It was a reaction, yes. That's a good way to put
21 it.

22 Q Would it have been the issuance of the Affordable
23 Care Act nondiscrimination regulations?

24 MR. ROTH: Objection. Calls for
11:10AM 25 speculation. Asked and answered.

1 Q If you know.

2 A Don't know.

3 Q So at some point -- to your knowledge, GIB did
4 approve of that recommendation by ETF to eliminate
11:11AM 5 the exclusion?

6 A To my knowledge, yes.

7 Q But then at some point later, you learned that the
8 exclusion -- they were considering reinstating the
9 exclusion; is that correct?

11:11AM 10 A Yes.

11 Q How did you come to know of that?

12 A Boy, again, I don't recall. I'm sure there was an
13 e-mail and discussions within OSHP regarding that
14 because, again, it would have affected how we
11:11AM 15 allowed claims to process.

16 Q Okay. Do you know roughly when you learned about
17 it?

18 A It was very late in the year prior to the year of
19 implementation.

11:11AM 20 Q Were you part of discussions with ETF when that --
21 other ETF staff when that came up?

22 A Only to the extent of how it would impact the
23 claims processing for drugs.

24 Q And what was the discussion around that?

11:12AM 25 A If it went, we would have to reinstate edits. If

1 the exclusion stood, we would remove gender edits.
2 If the exclusion was placed back on, then we would
3 have to reinstate the gender edits.

11:12AM

4 Q Okay. Did you talk about your personal views
5 about removing -- reinstating the exclusion?

6 A Yes. That's indicated in one of the e-mails.

7 Q Do you remember what your reaction was?

8 A I was not very happy.

9 Q Why were you not happy?

11:12AM

10 A A couple of things. First of all, it was very
11 late in the year and we were preparing -- I
12 believe the e-mail indicates when we finally got
13 word, it was December 29th, and on January 1st, I
14 had to have a system up and running to process
15 claims.

11:12AM

16 So part of it was very reactionary. Very
17 stressful time for us at ETF. And so I let it
18 fly, so to speak, and my personal opinions came
19 through.

11:13AM

20 Q And your personal opinion was what?

21 A That the exclusion should be removed or they
22 should have not --

23 Q Gone back to reinstating it?

24 A Yes.

11:13AM

25 Q And that personal opinion is based on what you

1 had --

2 A My own personal feelings and the reason it got
3 broadcast like that was because of the stressful
4 times.

11:13AM

5 Q Okay. In your time at ETF, has there ever been
6 any other change to the benefits that late in the
7 process?

8 A I don't recall.

9 Q You don't recall there ever being one?

11:13AM

10 A I don't recall there ever being one.

11 Q It's disruptive for everyone?

12 A Very.

13 Q Did anybody tell you the reason that the
14 benefit -- that the exclusion was being
15 reconsidered?

11:14AM

16 A Yes.

17 Q What was the reason?

18 A I believe the reason was an opinion that had come
19 from the attorney general, and there were
20 discussions with the Board, and then there was a
21 board meeting to discuss that.

11:14AM

22 Q What was the opinion from the attorney general, if
23 you know?

24 A I don't recall specifically.

11:14AM

25 Q Did you ever see it?

1 A I may have, but I don't recall.

2 Q What did you think of it?

3 A Most of what I had seen were news reports of it,
4 and I didn't agree with it.

11:15AM 5 Q Didn't agree with what?

6 A Personally.

7 Q Didn't agree with what?

8 A With the attorney general's opinion.

11:15AM 9 Q Do you recall what the attorney general's opinion
10 was?

11 A It was to essentially -- I don't know what the
12 specific opinion at this point. I can't recall
13 that. But the effect of his opinion would put the
14 exclusion for the coverage back into our program.

11:15AM 15 Q Did other people in ETF express their opinions
16 about the reinstatement of the exclusion?

17 A Yes.

18 Q Who did?

11:15AM 19 A Numerous people. Don't recall specifically who.
20 We would have discussed this in staff meetings
21 with OSHP so OSHP staff.

22 Q Do you remember Ms. Ellinger saying anything in
23 particular?

24 A I do not.

11:16AM 25 Q What kinds of things did you hear?

1 A Just, again, the decision late in the game, the
2 impacts it would have on us implementing the
3 program. Not a lot of personal comments during
4 that but it was mostly focused on, you know, how
11:16AM 5 are we going to get this to work now this late in
6 the game.

7 Q Anybody express disagreement with eliminating the
8 exclusion on policy grounds?

9 A I don't recall.

11:16AM 10 Q Anybody say that this is discriminatory?

11 MR. ROTH: Objection. Asked and
12 answered.

13 A Yeah. And I don't recall.

14 Q Did anyone say anything about harm to people who
11:17AM 15 are beneficiaries?

16 MR. ROTH: Objection. Asked and
17 answered.

18 MR. DUPUIS: No, it wasn't.

19 MR. ROTH: He already said he
11:17AM 20 doesn't recall about five times.

21 MR. DUPUIS: But people can be
22 reminded by being asked questions. That's an
23 improper objection.

24 THE WITNESS: And I don't recall.

11:17AM 25 MR. DUPUIS: Let's mark this one.

1 (Exhibit No. 7 marked for
2 identification)

3 BY MR. DUPUIS:

4 Q Show you what's been marked as Exhibit 7.

11:17AM

5 A Thank you.

6 Q Do you recognize that?

7 A Yes.

8 Q What is that?

11:18AM

9 A That is a message I sent to Steven Alexander and
10 Shannon Tischer and Pam Olson, who are Navitus
11 employees, on December 29th of 2016.

12 Q And this is your reaction to learning that the GIB
13 was going to be considering rescinding -- or
14 reinstating the exclusion?

11:18AM

15 A Yes.

16 Q So you say this special GIB meeting is scheduled
17 for tomorrow, and it came up at 5:00 p.m. last
18 night; do you see that?

19 A Yes.

11:18AM

20 Q Why did you tell that to the folks at Navitus?

21 A Navitus attends the Group Insurance Board meetings
22 to keep abreast of what activities are occurring.

23 Q And so are you usually the person who lets them
24 know if there are special meetings?

11:18AM

25 A Especially when -- yes. Just to make sure they

1 had seen the notice that goes out publicly.
2 Again, I manage their contract so it's their --

3 Q You're their point of contact?

4 A I'm their point of contact, yes.

11:19AM

5 Q I think we've already established that this was
6 very unusual to make a change this late in the
7 year; correct?

8 A Yes.

11:19AM

9 Q How about notice two days before a meeting? How
10 often have you seen that happen?

11 A Personally, that was the first time I had
12 experienced that myself.

11:19AM

13 Q So in the second paragraph you say that the
14 *Meeting will be a discussion with Department of*
15 *Justice and their recommendation to the GIB to not*
16 *implement the uniform benefit changes for 2017*
17 *surrounding gender identity*; correct?

18 A Correct.

11:20AM

19 Q What was the basis of your information for that
20 sentence?

21 A That would have been information I received
22 through Lisa and Bill Kox or Eileen, depending on
23 who was there at the time.

24 Q Would it have been an e-mail?

11:20AM

25 A Verbal potentially.

1 Q Okay. Next sentence says *This is being pushed by*
2 *the Governor's office and attorney general*. What
3 is the basis upon which you made that statement?

11:20AM

4 A This is the embarrassing part. I really have no
5 basis on that that I can recall. That was more of
6 my own personal spin on this.

7 Q Why did you think that?

8 A Just based on media reports but I had no firsthand
9 knowledge.

11:20AM

10 Q Next sentence says *It is based solely on the AG's*
11 *opinion that the HHS non-discrimination rule is*
12 *illegal -- which I think the courts would have to*
13 *determine -- not the AG; do you see that?*

14 A Yes.

11:21AM

15 Q And, again, what is the basis for that?

16 A Again, same response. It was a very knee-jerk
17 response.

18 Q Based primarily on -- I mean, you assert facts
19 that are based on something?

11:21AM

20 A Again, media reports and what I read in the media
21 and then coming to my own conclusions, you know.

22 Q Did other people in the department -- in ETF
23 express similar opinions to this?

11:21AM

24 A I couldn't -- they didn't express them to me, no,
25 that I recall.

1 Q And then you say *The link below (revised*
2 *agenda/notice) takes you to the agenda where you*
3 *can link to the documents they will be discussing.*
4 *The DOJ memo is an interesting read but doesn't*
5 *account for all the facts -- which isn't a*
6 *surprise and which our Legal Counsel points out in*
7 *his recommendations memo from August 2016 (also*
8 *included in that package of info). Do you see*
9 *that?*

11:22AM

10 A Yes.

11:22AM

11 Q So did you read the memo at the time?

12 A Yes.

13 Q What facts did you think it wasn't taking account
14 of?

11:22AM

15 A I don't recall. I really don't.

16 Q And you say it *isn't a surprise*. Why do you say
17 that?

18 A Because the discussion with the memo that David
19 Nispel had provided to the Board, you know, based
20 on that was -- you know, we were -- we felt that
21 that was reasonable and was a good response and it
22 didn't account for -- in my opinion, it didn't
23 account for those.

11:22AM

24 Q And you're not a lawyer; correct?

11:22AM

25 A No.

1 Q So the next paragraph says *While you never know*
2 *what will happen these days we don't expect the*
3 *GIB to change from what they were doing*
4 *previously. Nonetheless, just a heads up that the*
5 *gender edits may have to be put back on if the*
6 *politics outweigh the BIB's -- and I assume you*
7 *mean GIB's?*

11:23AM

8 A Correct.

9 Q -- *consideration of their fiduciary duty and the*
10 *facts; do you see that?*

11 A Yes.

12 Q Why did you think -- why did you not expect the
13 GIB to change from what they were doing
14 previously?

11:23AM

15 A Because, again, the decisions that had already
16 been made we felt were sound.

17 Q Were you aware of a December 13th meeting at which
18 the same issue was discussed?

11:23AM

19 A I don't -- I mean, I don't know dates. I'm not
20 really good at keeping track of those dates. I do
21 know there were a couple meetings that occurred.

22 Q That revolved around this issue?

23 A Revolved around this issue, yeah.

11:24AM

24 Q At that time, there was no action taken to reverse
25 the earlier decision to --

1 A I don't know specifically now.

2 Q Did you attend those meetings?

3 A I don't recall. I don't believe I did, but I
4 would be on the roster of people that were there
11:24AM 5 if I was, but I don't recall being in those
6 meetings.

7 Q And then where you say *if the politics outweighs*
8 *the GIB's consideration of their fiduciary duties*
9 *and the facts*, what did you mean there?

10 A Personal conjecture. It was just my concern that
11:24AM 11 more politics were playing into this than actual
12 facts. But, again, there's no basis. There's no
13 sound basis for me making that statement.

14 Q No basis other than your views and the news media
11:24AM 15 reports you had seen?

16 A Media reports, correct.

17 Q So if the media reports were accurate, you might
18 be right?

19 A Correct.

11:25AM 20 Q Were you -- are you aware of any other situations
21 in which the Department of Justice or the attorney
22 general has weighed in on an individual benefit
23 determination by ETF or GIB?

24 A I don't recall. Not on the insurance side. We
11:25AM 25 used to get AG opinions all the time on the

1 retirement side, but that's going back years.

2 But, no, I don't recall this.

3 Q So this was a novel experience?

4 A Again, I don't know if it had happened previously

11:25AM

5 or not. For me, it was a new experience.

6 Q You can set that one aside tentatively.

7 MR. ROTH: Larry, I can use a short

8 break at some point. If you want to go for

9 another five or ten, that's fine too but just

11:26AM

10 sometime.

11 MR. DUPUIS: Yeah. Why don't we do

12 it now if we can keep it to five especially.

13 MR. ROTH: Sure.

14 (Recess taken)

11:31AM

15 MR. DUPUIS: Back on.

16 BY MR. DUPUIS:

17 Q I'd like to just show you two documents that were

18 marked yesterday as Exhibits 5 and 6. Do you

19 recognize the form of those documents? What,

11:31AM

20 generally speaking, they are?

21 A Yes. They're the meeting minutes from Group

22 Insurance Board meetings.

23 Q Okay. And what are the dates of those meetings?

24 A The first date is December 13th, 2016. And the

11:31AM

25 second is December 30th, 2016.

1 Q And can you tell from those minutes whether you
2 attended either of those?

3 A Yes, I could. Let's see here. And I was at
4 neither of those meetings it doesn't appear.

11:31AM

5 Q Actually, if you look at the second page of them,
6 there's sometimes other ETF people. I don't
7 believe you're listed, but I just want to make
8 sure I'm not missing something.

11:32AM

9 A Yeah. It does not appear I was in attendance at
10 those meetings.

11 Q So do you know what came out of that December 30th
12 meeting?

13 A Could you be more specific?

11:32AM

14 Q In terms of the reinstatement to the exclusion of
15 the treatments for gender dysphoria?

16 A No. Again, moving forward, it was a matter of
17 having to reinstate the gender edits in our claims
18 processing. So I don't know specifically what
19 came out of that meeting, but I know it impacted
20 what I had to do moving forward.

11:33AM

21 Q Do you recall any -- do you recall there being
22 contingencies attached to the reinstatement of the
23 exclusion?

24 A I don't recall, no. I'm sorry.

11:33AM

25 MR. DUPUIS: Okay. I'll have

1 another exhibit marked here.

2 (Exhibit No. 8 marked for
3 identification)

4 BY MR. DUPUIS:

11:34AM

5 Q Showing you what's been marked as Exhibit 8. Do
6 you recognize that document?

7 A Yes. An e-mail to me -- or I should say to Ryan
8 Olson, Shannon Tischer, and Steve Alexander from
9 Navitus on February 1st, 2017.

11:34AM

10 Q Sent by you; correct?

11 A Sent by me, yes.

12 Q And all three of those people are, again, from
13 Navitus; is that correct?

14 A That is correct.

11:34AM

15 Q And the subject is *Reinstatement of Gender*
16 *Exclusion*; do you see that?

17 A Yes.

18 Q And this is dated February 1st, 2017; is that
19 right?

11:34AM

20 A That's correct.

21 Q So you say in the e-mail *I just found out this*
22 *morning that we are reinstating the exclusion of*
23 *gender reassignment procedures, services &*
24 *supplies in our Uniform Benefits effective today,*
25 *2/1/17, based on GIB's opinion on the*

11:34AM

1 *non-discrimination rules*; do you see that?

2 A Yes.

3 Q So the exclusion was not effective right after the
4 December 30th meeting; is that right?

11:35AM 5 A That is correct.

6 Q Does this refresh your recollection as sort of the
7 process that played out after December 30th?

8 A Somewhat, yes.

9 Q Okay. So in the second paragraph you talk about
11:35AM 10 *ETF had informed Navitus that we would no longer*
11 *apply gender edits for certain drugs in 2017*; do
12 you see that?

13 A Yes.

14 Q And that your first reaction to that *was to ask*
11:35AM 15 *Navitus to turn the gender edits back on*; do you
16 see that?

17 A Yes.

18 Q Let's talk a little bit about these gender edits.
19 So what exactly are gender edits?

11:36AM 20 A So a gender edit is what we refer to as a hard
21 stop in the claims processing system that Navitus
22 administers. That if a male gender -- according
23 to our eligibility records, if a male gender
24 member tries to get a prescription for, say,
11:36AM 25 estrogen, that claim will stop, and, again, hard

1 stop being there's no alternative that the
2 pharmacist can do to make that go through and have
3 the claim paid.

11:36AM

4 That doesn't mean the member can't get the
5 drug. It's just the member would have to pay for
6 that drug, and that also goes vice versa for a
7 female gender member trying to get, say, androgen.

8 Q And you were planning to turn gender edits off in
9 January of 2017; is that correct?

11:37AM

10 A Initially, yes.

11 Q Did you, in fact, turn them off?

12 A They did, yes.

11:37AM

13 Q And so the hard -- but there were cases in which
14 people, members, were able to get what appeared to
15 be cross gender hormones; correct?

16 A Yes.

17 Q And so there was a process for making that happen
18 if it was appropriate for whatever reason;
19 correct?

11:37AM

20 A Yes.

21 Q And that was a work-around around the gender
22 edits; correct?

11:37AM

23 A I wouldn't call it a work-around, but it was part
24 of the process. I mean, it was a way for someone
25 to have had a valid reason to have those, that

1 prescription filled. It was part of a process
2 established.

3 Q Okay. Did that process involve getting a prior
4 authorization?

11:38AM

5 A Yes.

6 Q What else was involved in that process?

7 A It would be the prior authorization. I mean, they
8 would have to complete the prior authorization,
9 submit that to Navitus, and if it indicated that
10 they were not having gender reassignment surgery
11 or planning to have gender reassignment surgery,
12 then the drug would be filled.

11:38AM

13 Q So the next sentence says *notwithstanding this*
14 *gender reassignment decision, ETF will be allowing*
15 *members to make gender changes in our system in*
16 *accordance with their own wishes*; is that correct?

11:38AM

17 A Correct.

18 Q And *As such, I am concerned that if we turn the*
19 *gender edits on and a member changes their gender*
20 *in our system but still requires a medically*
21 *necessary prescription (not associated with gender*
22 *reassignment), we will unduly restrict the*
23 *member's access to the drug*. So can you explain
24 how that might work?

11:38AM

11:39AM

25 A We just had some concerns that that cross gender

1 identifier if we turned those edits back on would,
2 in fact, as it states here, restrict someone who
3 in some cases would need that, that drug. Again,
4 gender dysphoria can be treated with the
5 various -- you know, the androgen or the estrogens
6 as appropriate, but it does not involve the
7 surgery, which is what our specific exclusion is.

11:39AM

8 So we wanted to make sure that we weren't --
9 if somebody went in and changed their gender to
10 identify themselves, that we didn't inadvertently
11 stop them from getting the drug that they needed.

11:39AM

12 Q So say a male-to-female transgender person who had
13 not had surgery --

14 A Right.

11:40AM

15 Q -- could continue to get estrogen under the --

16 A That's correct.

17 Q Because it wasn't associated with surgery; is that
18 right?

19 A Correct. Correct.

11:40AM

20 Q And what about someone -- would gender edits also
21 prevent a female-from-male transgender person who
22 had not had surgery from obtaining a pap smear,
23 for example?

24 A That would be on the medical side, so I can't
25 answer that.

11:40AM

1 Q Do you know if gender edits exist on the medical
2 side?

3 A I do not. No. I do not know.

11:41AM

4 Q And you ask a series of questions of Navitus in
5 this e-mail; correct?

6 A Yes.

7 Q And at the bottom of that after the list of
8 questions for Navitus, you say, *Welcome to the*
9 *fickle & politically infused benefit world of the*
10 *state of WI*, smiley face. Did I read that
11 correctly?

11:41AM

12 A Yes, you did.

13 Q What did you mean by that?

14 A It was a lot of changes occurring very quickly,
15 and, again, a lot of politics involved in that.

11:41AM

16 Q Having looked at -- actually, if you could look at
17 the second page.

18 A Yes.

19 Q Well, second or third page. This is an e-mail
20 from Mark Lamkins, who's he?

11:42AM

21 A Mark Lamkins was the -- or is the communications
22 director at ETF.

23 Q So he sent you sort of this public explanation of
24 what's going on with the exclusion; correct?

11:42AM

25 A Yes.

1 Q And it includes some background information
2 including a little chart with four contingencies;
3 do you see that?

4 A Yes.

11:42AM

5 Q Does that refresh your recollection about the
6 contingent implementation?

7 A Yes. Yes.

8 Q Did you have anything to do with coming up with
9 these contingencies?

11:43AM

10 A No.

11 Q Have you ever heard of a contingent policy change
12 being made before?

13 A Again, I don't recall.

14 Q You don't recall one occurring?

11:43AM

15 A I don't recall ever occurring.

16 Q So this would be the first one you can remember?

17 A This would be the first one I can remember.

18 Q Did the gender edits get turned back on?

11:43AM

19 A The gender edits eventually did get turned back on
20 on March of that year -- March 1st of that year.

21 Q So it took another month?

22 A It took another month.

23 Q Are you aware of anything other than the DOJ AG's
24 memo and other efforts that led to this reversal

11:44AM

25 in the policy decision that was made earlier in

1 the year to eliminate the exclusion?

2 A I don't recall anything.

3 Q Are you aware of anything in state law that
4 forbids GIB from providing the coverage of hormone
11:44AM 5 therapy or gender confirmation surgery?

6 A Boy, I don't. I'm sorry. No.

7 Q Are you aware of anything in federal law that
8 would prohibit GIB or ETF from doing it?

9 A Again, I don't know specifics.

11:44AM 10 Q But as far as you know, there's nothing?

11 A I think there's something, but I don't know what
12 it is.

13 Q That would prohibit it?

14 A Can you rephrase the question or restate it?

11:45AM 15 Q This is complicated. We're talking about an
16 exclusion. Is there anything that would -- in
17 federal law that you're aware of that would forbid
18 GIB from covering -- or authorizing coverage of
19 hormones and gender confirmation surgery?

11:45AM 20 MR. ROTH: Object to the extent it
21 calls for a legal conclusion or speculation.

22 Q But you can answer if you understand.

23 MR. ROTH: You can answer.

24 A I don't know of anything.

11:45AM 25 Q Anybody ever -- in the course of these discussions

1 that you've been part of or communications you've
2 been part of, has the cost of hormone therapy ever
3 been an issue that's been raised as a reason to
4 exclude coverage?

11:46AM

5 A I don't recall that being discussed with me.

6 Q And you have background and experience in
7 pharmacy-related matters; correct?

8 A In the management of a pharmacy benefit program,
9 yes.

11:46AM

10 Q So you have some sense of the cost of --

11 A Correct.

12 Q -- these pharmaceuticals?

13 A Yes.

14 Q And you discuss costs with Navitus all the time;
15 correct?

11:46AM

16 A Yes. Correct.

17 Q Do you have a sense of how much hormone therapy
18 costs for a treatment of gender dysphoria?

19 A Right off the top of my head, I do not. I'm sure
20 we have it documented somewhere.

11:46AM

21 (Exhibit No. 9 marked for
22 identification)

23 BY MR. DUPUIS:

24 Q I'm showing you what's been marked as Exhibit 9.

11:47AM

25 A Thank you.

1 Q Do you recognize this document?

2 A Yes, I do.

3 Q What is that?

4 A It's a series of e-mails between Lisa Ellinger and
11:47AM 5 Eileen Mallow to and from me.

6 Q And I'd like you to take a look early in this
7 chain back to pages 2 and 3.

8 A Uh-huh.

9 Q You sent an e-mail on February 1st, 2017, saying
11:48AM 10 that *Navitus got back to me with the following*
11 *data about claims processed in 2017 so far (all*
12 *January)*. Do you see that?

13 A Yes.

14 Q And got *Males filling Estrogen*; right?

11:48AM 15 A Yes.

16 Q Seven members had claims and the total cost of the
17 claims was 241.05; is that right?

18 A Yes.

19 Q And the total cost to the plan was 185.60; is that
11:48AM 20 right?

21 A Yes.

22 Q What accounts for the difference?

23 A It would be the amount the member paid.

24 Q The co-pay?

11:48AM 25 A The co-pay or cost shared.

1 Q Okay. So I'm going to represent that I did a
2 little math. Maybe that was a mistake. We had
3 the mathematician here yesterday, but that's about
4 \$34 a month -- or \$30 per prescription; does that
5 sound about right?

11:49AM

6 A Without doing the math, I don't know but --

7 Q Does that seem about right based on your knowledge
8 of --

9 A Which number are you referring to?

11:49AM

10 Q The 241 divided by 7.

11 A Yeah.

12 Q I believe in a later e-mail you indicate one of
13 them might have been more than a 30-day supply if
14 you look up at on page 2 a little farther up a
15 couple other notes. *All scripts written are for a*
16 *30-day supply except one.*

11:49AM

17 A Right.

18 Q It's possible that one of those estrogens was even
19 cheaper per month than that; correct?

11:49AM

20 A Yes.

21 Q And does that number seem about consistent to you
22 with the cost of estrogen?

23 MR. ROTH: Objection. Vague.

24 A Yeah. I couldn't respond to that without doing
25 further research.

11:50AM

1 Q *Females filling Androgens* is nine members at a
2 total cost of 585.15; do you see that?

3 A Yes.

4 Q And it's about \$65 a month maybe, maybe less if
11:50AM 5 the one that was more than a 30-day supply is
6 included in the androgens; right?

7 A Well, you're indicating that it's per month, but
8 this is actually a one-month reporting.

9 Q So would be a month either way?

11:50AM 10 A So it's \$585 -- I see what you're saying. For the
11 number of members, yep. Yep.

12 Q So it's about \$65 for the month of prescription?

13 A Yep.

14 Q And for both of these, Navitus couldn't tell if
11:51AM 15 they were for gender dysphoria even; correct?

16 A That is correct.

17 Q Do you think that cost is a reason for the
18 exclusion of hormone therapy?

19 MR. ROTH: Objection. Calls for
11:51AM 20 speculation.

21 Q To the extent you know.

22 A I couldn't answer that. I don't know.

23 Q What's your view?

24 A I would say no.

11:51AM 25 Q Why do you say that?

1 A The cost is fairly low compared to other drugs in
2 the market.

3 Q That you do pay for?

4 A That we do pay for, yes.

11:51AM 5 Q Do you know what the reason for the exclusion of
6 coverage for treatment of gender dysphoria is?

7 MR. ROTH: Objection. Vague.

8 Calls for speculation.

9 Q To the extent that you know.

11:51AM 10 A No.

11 Q Do you have a belief?

12 A It would call for speculation and I don't. Yeah.
13 I don't have facts.

14 Q I'm asking for your opinion.

11:52AM 15 A For my opinion, I think it should be covered. I
16 think I stated that a few times before.

17 Q So we talked a little bit about gender edits, and
18 on the first page of this document there's some
19 more discussion of that. So there have been times
11:52AM 20 that -- are state employees still able to get
21 coverage for cross gender hormones?

22 A As long as they are not -- they have the prior
23 authorization in place.

11:52AM 24 Q And what would they need to get the prior
25 authorization?

1 A The prior authorization would have to be completed
2 by their doctor and submitted to Navitus.

3 Q And what -- so hormone therapy is covered for
4 treatment of gender dysphoria if it's not
5 connected to surgery?

11:53AM

6 A That is correct.

7 Q What does it mean to be connected to surgery?

8 A If it's not part of the process or the surgical
9 process as a procedure as a whole.

11:53AM

10 Q So per your conversation -- this is the
11 February 7th e-mail on page 1 from you to
12 Ms. Ellinger, and you say *Certain prescriptions*
13 *that will be blocked if Gender Edits are turned*
14 *on.* And then basically it's the thing we talked

11:53AM

15 about is that members who are identified as male
16 in their computer system will be blocked from
17 receiving scripts for estrogens or oral
18 contraceptives and any other drugs related to
19 disease states associated with females and members
20 who are identified as female in the system will be
21 blocked from receiving androgens and other drugs
22 associated with disease states associated with
23 males; is that correct?

11:54AM

24 A Yes.

11:54AM

25 Q Okay. So the prescribing physician can then

1 submit a request for an exception to coverage;
2 correct?

3 A Yes.

4 Q So there is -- would it be fair to say the process
11:54AM 5 is more involved if gender edits are on rather
6 than if gender edits are off?

7 MR. ROTH: Objection. Vague.

8 A Can you kind of rephrase the question?

9 Q Yeah. Are there more steps in the process to deal
11:54AM 10 with coverage of hormones if gender edits are on
11 than if gender edits are off?

12 A Steps for who?

13 Q For Navitus?

14 A For Navitus, yes. There are more steps that have
11:55AM 15 to be --have to go through to allow that to run
16 through, yes.

17 Q Did anybody at Navitus complain about having to
18 turn gender edits back on?

19 A Not that I am -- no. Not that I'm aware of.

11:55AM 20 Q Back to that third page, at the second to last
21 sentence you say *Navitus indicated most of their*
22 *clients have removed gender edits completely*; do
23 you see that?

24 A Yes.

11:55AM 25 Q Do you know why they removed their gender edits?

1 A I do not.

2 Q Did they give any indication as to why?

3 A No. They did not. It was a very straightforward
4 question.

11:56AM

5 Q Okay. Are you aware of anyone who was able to
6 start coverage or start receiving coverage for
7 hormone therapy or gender confirmation surgery
8 during January who subsequently lost coverage?

11:56AM

9 A I don't recall. We had one case, but I don't
10 think it was associated with the surgery. I do
11 remember specifically working for one member to
12 get -- they had gotten coverage during that time
13 period, but I can't recall if it was associated
14 with the surgery or not.

11:57AM

15 Q Do you know who decided whether the contingencies
16 that GIB had set at the December 30th meeting had
17 been met?

18 A Can you state that again?

11:57AM

19 Q Do you know who made the decision that the
20 contingencies that the GIB had set at the
21 December 30th meeting for the reinstatement of the
22 exclusion had been met?

11:58AM

23 A I don't know. I think as we moved forward, it was
24 just -- we said, okay, here's what it is. We
25 received word from Lisa and Eileen, but I don't

1 know who made that decision that all of the
2 criteria had been met.

3 Q Did anybody express any concerns about the process
4 of determining whether the criteria were met?

11:58AM 5 A I know I did not hear it personally, and, yeah --

6 Q Did you hear it indirectly?

7 A No. I mean, I didn't hear anything about it. I
8 was just trying to think if there was any message
9 that was sent out that basically kind of gave us a

11:58AM 10 rundown of where we were, you know, as the
11 contingencies progressed through, and I don't
12 recall any specifically.

13 Q Do you believe the exclusion discriminates against
14 transgender individuals?

11:59AM 15 MR. ROTH: Objection to the extent
16 it calls for a legal conclusion.

17 A I can't answer that except on a personal basis.

18 Q And on a personal basis?

19 A The exclusion -- that's a difficult -- I would say
11:59AM 20 no. I think it should be covered, but I don't
21 think it discriminates.

22 Q Why do you say that?

23 A Because there's a lot of things we don't cover.

24 There are other things that we don't cover. So

11:59AM 25 that's my personal opinion.

1 Q Are there other things where there's a blanket ban
2 on coverage for a treatment of -- for treatment of
3 a disorder that only affects a defined class of
4 people?

12:00PM

5 MR. ROTH: Objection. Assumes
6 facts not in evidence.

7 A The gender or bariatric surgeries is one that
8 comes to mind immediately.

9 Q So that's people who are --

12:00PM

10 A Obese, yeah.

11 Q Are there any situations in which bariatric
12 surgery can be covered?

12:00PM

13 A There are situations where it can be. If the
14 member enrolls in a self-insured -- I don't know
15 if that provision is still there. That's a
16 medical provision that I am not up on on those
17 programs.

18 Q So it might not be completely excluded from
19 coverage?

12:00PM

20 A Right. In the past I know we had allowed
21 bariatric surgery if you enrolled in the standard
22 plan, which was at a much higher cost.

23 Q Would you consider an exclusion of treatment --
24 coverage of treatment for sickle cell anemia to be
25 discriminatory?

12:01PM

1 MR. ROTH: Objection. It calls for
2 a legal conclusion. Assumes facts not in
3 evidence.

4 A Yeah. I don't have an opinion on that.

12:01PM

5 MR. DUPUIS: All right. I'd like
6 to take a quick break just to consult.

7 MR. ROTH: Sure.

8 (Recess taken)

9 MR. DUPUIS: We don't have anymore.

12:07PM

10 MR. ROTH: Okay. I just have a
11 very short series of questions. Like, two or
12 three. I'm just going to ask you a couple
13 questions.

14 BY MR. ROTH:

12:08PM

15 Q Good morning, Jeff. I'm Colin Roth. I represent
16 the Department of Employee Trust Funds, Group
17 Insurance Board, a variety of other state
18 defendants. I'm just going to ask you a couple
19 questions to finish this off. Do you understand
20 what's going to happen here?

12:08PM

21 A Yes.

22 Q Same rules as before. Tell the truth.

23 A Yes.

24 Q Let me know if you don't understand the question.

12:08PM

25 So I think you testified earlier this morning --

1 and please correct me if I'm wrong. This is what
2 I think the testimony was.

3 At one point you testified you thought that
4 hormone therapy could help to treat gender
12:08PM 5 dysphoria; is that correct?

6 A Yes.

7 Q Are you a doctor?

8 A No.

9 Q Do you have any clinical training?

12:08PM 10 A No.

11 Q Have you received any clinical education at any
12 point during your career or otherwise?

13 A No.

14 Q So do you have any clinical basis upon which to
12:08PM 15 opine on whether hormone therapy treats any
16 particular type of disorder?

17 A No.

18 Q Do you have any clinical basis on which to opine
19 whether gender reassignment surgery treats any
12:08PM 20 type of disorder?

21 A No.

22 Q I think at one point I believe -- let me go back
23 to -- so can you refer back to Exhibit 7, please.

24 A Got it here.

12:09PM 25 Q And the third paragraph where you say *The DOJ memo*

1 *is an interesting read but doesn't account for all*
2 *of the facts; do you see that?*

3 A Yes.

4 Q Are you a lawyer?

12:09PM

5 A No.

6 Q Do you have any legal training?

7 A No.

8 Q Do you have any legal basis on which to opine
9 whether certain facts should have been considered
10 but were not in the DOJ memo that you're
11 referencing?

12:09PM

12 A No.

13 Q I think at one point you testified that you didn't
14 agree with the DOJ memo?

12:10PM

15 A Yes.

16 Q Do you have any legal training or legal basis on
17 which to rest your disagreement with the attorney
18 general's memo?

19 A No.

12:10PM

20 MR. ROTH: I have no questions.

21 MR. DUPUIS: That's all I have.

22 MR. ROTH: You're done.

23 (Adjourning at 12:10 p.m.)

24

25

1 STATE OF WISCONSIN)
2 COUNTY OF DANE) ss.
3

4 I, Tammy L. Uhl, Certified Realtime Reporter
5 and Notary Public in and for the State of Wisconsin,
6 do hereby certify that the foregoing deposition of
7 JEFFREY E. BOGARDUS was taken before me on
8 April 3, 2018, and reduced to writing by me, a
9 professional court reporter and disinterested person,
10 approved by all parties in interest and thereafter
11 converted to typewriting using computer-aided
12 transcription.

13 I further certify that I am not related to nor
14 an employee of counsel or any of the parties to the
15 action, nor am I in any way financially interested in
16 the outcome of this case.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and affixed my notarial seal of office at Madison,
19 Wisconsin, this 9th day of April 2018.

20
21 *Tammy L. Uhl*

22 _____
23 Notary Public, State of Wisconsin
24 My Commission Expires 8/18/2020
25

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