

**In The Matter Of:**

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

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*Deposition of Nancy L. Thompson  
May 25, 2018*

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

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ALINA BOYDEN and  
 SHANNON ANDREWS,

Plaintiffs,

-vs- Case No. 17-CV-264

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

Defendants.

---

Deposition of NANCY L. THOMPSON,

taken at the instance of the Plaintiffs, under and  
 pursuant to the Federal Rules of Civil Procedure, before  
 Peggy S. Christensen, RPR, CRR, CRC, and Notary Public  
 in and for the State of Wisconsin, at the offices of the  
 offices of the State of Wisconsin Department of Justice,  
 17 West Main Street, Madison, Wisconsin, on  
 May 25, 2018, commencing at 9:47 a.m. and ending at  
 12:17 p.m.

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1

2

3 AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN

4 FOUNDATION, by

5 ASMA I. KADRI, LAURENCE J. DUPUIS and CHARLIE BOWEN,

6 ACLU of Wisconsin Foundation,

7 207 East Buffalo Street, Suite 325,

8 Milwaukee, Wisconsin 53202,

9 appeared on behalf of the Plaintiffs;

10

11

12 STATE OF WISCONSIN DEPARTMENT OF JUSTICE, by

13 STEVEN C. KILPATRICK,

14 17 West Main Street,

15 Madison, Wisconsin 53707,

16 appeared on behalf of the Defendants.

17

18 Also Present: Diana Felsmann

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

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1 NANCY L. THOMPSON, called as a  
2 witness, being first duly sworn, testified  
3 on oath as follows:  
4  
5 EXAMINATION  
6 By Ms. Kadri:  
7 Q Good morning, Ms. Thompson.  
8 A Good morning.  
9 Q My name is Asma Kadri, and I'm a lawyer for the  
10 plaintiffs. I represent the plaintiffs in this  
11 case, and I'm here with my co-counsel for the ACLU  
12 of Wisconsin Foundation. Could you please state  
13 and spell your name for the record.  
14 A My name is Nancy L. Thompson, N-a-n-c-y, middle  
15 initial L for Louise, Thompson, T-h-o-m-p-s-o-n.  
16 Q Thank you. So we're going to go through some  
17 ground rules about how I think we should handle  
18 our discussion here today. So first, I'm going to  
19 ask that you give verbal answers because nods are  
20 hard for the court reporter and I know that's hard  
21 for all of us. We're going to try our best to  
22 avoid crosstalk. So when I ask you a question,  
23 I'd ask that you let me finish asking before you  
24 answer, and I'll do the same.  
25 A Okay.

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1 Q And if at any point you don't understand a  
2 question, let me know. I can repeat it or  
3 rephrase it. But if you do answer it, I'm going  
4 to assume that you understood my question. Is  
5 that fair?  
6 A Yes.  
7 Q Okay. Have you ever been deposed before?  
8 A No, I have not.  
9 Q Okay. Any other kind of sworn testimony that you  
10 can remember?  
11 A I don't know if I was sworn. I was on a potential  
12 jury trial once but I wasn't selected for it. So  
13 I don't know if I would have been or not. I don't  
14 recall. That's a long time ago.  
15 Q Okay. Do you remember how long ago approximately?  
16 A All I remember is I had a broken heel and that's  
17 why I wasn't selected. I had a doctor's  
18 appointment. I would say ten, fifteen years  
19 probably.  
20 Q Okay.  
21 A I really don't --  
22 Q Okay. And you're represented by Mr. Kilpatrick  
23 and the Attorney General's office in this matter  
24 as far as you know?  
25 A Yes.

Page 7

1 Q Okay. So I'm sure you went over this with  
2 counsel, but throughout this deposition he may  
3 raise objections to some of my questions. But  
4 unless he instructs you specifically not to  
5 answer, you should go ahead and answer my  
6 question. Okay?  
7 A Okay.  
8 Q If you need a break at any time, water, the  
9 restroom, please feel free to let me know. The  
10 only thing I ask is if there is a question pending  
11 that you answer before we take a break. Okay?  
12 A Okay. So what's the sign for that if I need a  
13 break?  
14 Q Just let me know. Yeah, go ahead and say it.  
15 A Okay.  
16 Q Is there any reason you think you wouldn't be able  
17 to answer my questions fully and accurately today?  
18 A No.  
19 Q And you understand that you're under oath?  
20 A Yes.  
21 Q Great. So we understand that there were some  
22 notes that you have made in your time on the GIB  
23 and at meetings that were not disclosed to us; is  
24 that right?  
25 A That's correct.

Page 8

1 Q Okay. So what we're going to do is we're going to  
2 proceed with the questioning today, and then once  
3 those notes are disclosed to us, we may need to  
4 call you back and ask additional questions about  
5 the notes. Okay?  
6 A Yes.  
7 Q Okay.  
8 MR. DUPUIS: And --  
9 MR. KILPATRICK: And that is fine  
10 with counsel as well.  
11 Q Did you meet with your attorneys in preparation  
12 for this deposition?  
13 A I met yesterday with Attorney Kilpatrick and  
14 Attorney Roth.  
15 Q And about how long did you meet with them?  
16 A I'd estimate about an hour and a half.  
17 Q Okay. And did you review anything while you were  
18 meeting with your lawyers?  
19 A Basically they went over the process that would  
20 happen today since I hadn't been involved with  
21 this before.  
22 Q Okay. And did you review any documents?  
23 A They showed me just some documents. They said  
24 this might happen tomorrow, they'll show you a  
25 document, and take time to review it.

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1 Q Do you remember what types of documents? Were  
2 they emails, minutes, things like that?  
3 A I think a variety. Minutes -- I think it was  
4 basically -- minutes, memos perhaps.  
5 Q Okay. And as far as you know, all related to this  
6 case?  
7 A Yes.  
8 Q Okay. So as you know, we're going to be talking  
9 about a number of documents that were produced to  
10 us in discovery, and some of these documents have  
11 page numbers, some of them don't. So I'll do the  
12 best I can to direct you to the right page and  
13 what to review. And hopefully we can do that  
14 quickly.  
15 A All right.  
16 Q All right. Can you tell me where you live?  
17 A I live right outside of Waterloo, Wisconsin.  
18 Q And how long have you lived there?  
19 A Since 1974.  
20 Q Are you from Wisconsin?  
21 A Yes.  
22 Q Okay. I'd like to ask a couple of questions about  
23 your educational background.  
24 A Okay.  
25 Q So where did you go to high school?

Page 10

1 A It was called Lowell Reeseville High School. It  
2 does not exist anymore.  
3 Q Okay. And where was that?  
4 A That was in Reeseville, Wisconsin.  
5 Q And then after high school -- Did you graduate  
6 high school?  
7 A Yes, I did.  
8 Q Okay. Did you go to college?  
9 A Yes, I did.  
10 Q Where did you go?  
11 A I went to University of Wisconsin-Stevens Point.  
12 Q And when was that?  
13 A I was there from 1962 to -- I graduated in 1966.  
14 Q Okay. And what did you graduate with? What was  
15 your degree?  
16 A BS degree in education with majors in English and  
17 speech.  
18 Q Okay. Did you pursue any post-graduate education?  
19 A No.  
20 Q So what was your first job out of college?  
21 A I was an English and speech teacher at Beaver Dam  
22 Senior High School.  
23 Q And how long were you in that position?  
24 A Eight years full-time, and then I subbed for I  
25 think three years after the birth of my first

Page 11

1 child.  
2 Q Okay. Where did you go -- or did you continue  
3 working after you had children?  
4 A I have to think now. So that was -- I would have  
5 quit in '74. Then as far as the next working type  
6 job, and you didn't want to know about working in  
7 the canning factories and that during college and  
8 that, but my next working job was I'm a clerk and  
9 I currently am, I'm a clerk for a town, a town  
10 clerk for the Town of Portland, and I would have  
11 started that in -- oh, I think I've been a clerk  
12 for about 18 or 20 years. Boy, I don't remember  
13 now, but it's been a long time.  
14 Q Okay. I'm a little interested to hear about the  
15 canning. Is the position of clerk for the Town of  
16 Portland, is that an elected position?  
17 A Yes, it is.  
18 Q And how often --  
19 A We get -- we're up for election every two years.  
20 Q Every two years.  
21 A So next year I will be up again.  
22 Q Okay. So you said about 18 to 20 years, okay.  
23 A Yeah, I'm thinking. It might be more than that.  
24 I don't remember.  
25 Q Okay. Is that a partisan election?

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1 A No.  
2 Q No.  
3 A No.  
4 Q So we kind of already started getting into this,  
5 but can you tell me about what you're involved  
6 with outside the Group Insurance Board.  
7 Memberships, organizations?  
8 A I'm a member of the Waterloo School Board. I have  
9 been since 1986.  
10 Q And what position do you have?  
11 A Currently I'm vice president. I've also been  
12 president in the past. I'm a long time 4-H  
13 leader, Dodge County 4-H leader. I have served in  
14 the past on the Teachers Retirement Board for  
15 about five years. I served on the ETF board for  
16 about ten years. I served on the Wisconsin  
17 Association of School Boards Board of Directors  
18 two different terms, so a total of about 18 years.  
19 I've been on the state PTA board, the state music  
20 board. I've been on lots of boards like that.  
21 Q Can you tell me a little bit about your position  
22 on the ETF board?  
23 A That was I think from 1999 to about 2009. And I  
24 don't know what you want to know about that.  
25 Q Did you have a specific title or position?

Page 13

1 A At one time I know I was on what was called the  
 2 executive committee or something, but I don't  
 3 recall if there were titles or whatever.  
 4 Q Were you appointed to that position?  
 5 A Yes.  
 6 Q And who appointed you?  
 7 A I believe Governor Thompson originally.  
 8 Q Okay. Any other community work, organizations,  
 9 memberships?  
 10 A I've helped with blood banks, I've served on,  
 11 you know, library boards -- not the library board  
 12 but there is a friends group, I've served on a lot  
 13 of -- when my children were in school, a lot of  
 14 school booster club organizations. I'm trying to  
 15 think of anything else. I serve on a CESA board.  
 16 I've been on there almost 25 years I think.  
 17 Q Can you tell us what a CESA board is?  
 18 A Cooperative Education Service Agency, so it's  
 19 related to education.  
 20 Q Do you have any experience related to healthcare?  
 21 A Specifically, no.  
 22 Q Okay. And none of the organizations or  
 23 memberships that you've been involved with worked  
 24 on matters of healthcare or issues of healthcare,  
 25 apart from this Group Insurance Board?

Page 14

1 A No, not that I recall.  
 2 Q So I'm going to sort of shift over to your service  
 3 on the Group Insurance Board.  
 4 A Okay.  
 5 Q How long have you been a member of the GIB?  
 6 A Since February of 2012.  
 7 Q Okay. And do you know in what capacity you serve  
 8 on the board?  
 9 A I serve as a -- oh, as far as which seat I take?  
 10 Q Yes.  
 11 A Okay. I'm a representative of an entity that's a  
 12 participating member of the WRS.  
 13 Q And which member is that?  
 14 A That would be the school board.  
 15 Q The school board.  
 16 A Yes.  
 17 Q And you were appointed to that position as well?  
 18 A Yes.  
 19 Q And who appointed you?  
 20 A That would have been Governor Walker, I would  
 21 assume. Yes.  
 22 Q Okay. And do you know if this is an appointment  
 23 somebody approached you about or did you seek it  
 24 out?  
 25 A I think I was encouraged to apply probably by -- I

Page 15

1 don't know if it was Bob Conlin or somebody from  
 2 ETF just because they knew that I had served on  
 3 those boards in the past and they knew of me.  
 4 Q So you knew Secretary Conlin prior to being  
 5 appointed?  
 6 A Yes.  
 7 Q And that was through your time on the board?  
 8 A Correct. Correct.  
 9 Q Did you keep in touch with Secretary Conlin after  
 10 your time --  
 11 A No.  
 12 Q Okay. Anyone else on the ETF board after you  
 13 finished your service there?  
 14 A That I kept in touch with? No, no.  
 15 Q So can you sort of walk us through your roles and  
 16 responsibilities in your position on the GIB.  
 17 A Well, as I see my role, it's to serve as a  
 18 fiduciary for the group and for the members that  
 19 are involved with their benefits. We meet  
 20 quarterly typically. I'm trying to think, is it  
 21 quarterly?  
 22 So as I see my role, it's to be fully  
 23 prepared for those meetings, reading the materials  
 24 ahead of time, participating in the meetings,  
 25 participating in the decision making, and abiding

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1 by laws as it relates to that and certainly  
 2 keeping in mind our fiduciary duties.  
 3 Q Do you or any other board members, do you feel as  
 4 if there is someone you report to in your service  
 5 on the board?  
 6 A No.  
 7 MR. KILPATRICK: Objection to the  
 8 extent it calls for speculation about what  
 9 other board members believe or think.  
 10 Q To the extent that you know.  
 11 A Please ask the question again.  
 12 Q Do the board members report to anybody?  
 13 A Do the board members? You're not asking me  
 14 specifically? Not that I know of.  
 15 Q And you mentioned that GIB meets quarterly?  
 16 A I believe so. I'm thinking typically February --  
 17 is it February, April, July, August, maybe  
 18 November. Once in awhile there are some special  
 19 meetings, but they're pretty well -- the meetings  
 20 are always scheduled a year in advance for the  
 21 most part.  
 22 Q And if there is a special meeting, you receive  
 23 ample notice --  
 24 A Yes.  
 25 Q -- that there is going to be one?

Page 17

1 A Yes, yes.  
 2 Q How much time approximately would you say you  
 3 spend on GIB business in any given month?  
 4 A Participation in the meeting when it would happen,  
 5 and they range anywhere from three hours to  
 6 probably six hours maybe. Most of them are  
 7 mornings. Preparation for the meetings, there is  
 8 a large packet of information that comes out. I  
 9 would say several hours. And that would be pretty  
 10 much the extent of it, I would say.  
 11 Q So when you're doing the preparation and reviewing  
 12 the materials that are given to you, do you ever  
 13 do any of your own research, any outside work on  
 14 the materials, anything like that?  
 15 A Generally, no.  
 16 Q Have you ever?  
 17 A Not that I recall.  
 18 Q Okay. Are you paid for your services as a board  
 19 member?  
 20 A No. We do get our mileage reimbursed, but no.  
 21 Q Do you know who reimburses your mileage?  
 22 A I can't tell you specifically, no. I know I  
 23 submit a form, but no.  
 24 Q That's okay. This is another sort of umbrella  
 25 question. Can you tell me the role that GIB has

Page 18

1 in determining health insurance benefits for state  
 2 employees?  
 3 A I have to think. Ultimately I think there are  
 4 recommendations brought from the ETF and from any  
 5 study groups that might be looking at benefit  
 6 changes, benefit revisions, whatever, and then  
 7 ultimately the GIB will take action on those  
 8 recommendations and establish certainly the  
 9 benefits for a particular year or contract year.  
 10 Q And those benefit changes are considered annually?  
 11 A Yes.  
 12 Q That's not at every meeting?  
 13 A Yes. Yes.  
 14 Q We talked about this a little bit, but ETF  
 15 provides the recommendations; right?  
 16 A I believe it's through the ETF, yes.  
 17 Q Okay. And you receive those materials from ETF  
 18 ahead of time?  
 19 A Yes.  
 20 Q Prior to the meeting where the changes are being  
 21 considered?  
 22 A Correct.  
 23 Q And if you have questions on the materials that  
 24 you receive, do you reach out to anybody?  
 25 A Typically, I've not had to. But we certainly

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1 could do that if we needed to, I'm sure, either  
 2 whether it was through Mr. Conlin or through the  
 3 board liaison who sends the materials to us.  
 4 Q So the questions would be directed back to ETF?  
 5 A Correct. Correct.  
 6 Q Do you ever talk to other Group Insurance Board  
 7 members when you receive material prior to a  
 8 meeting?  
 9 A No. No.  
 10 Q Have you ever?  
 11 A Not that I recall.  
 12 Q Okay. So you would say that you primarily work  
 13 with members of ETF and other board members when  
 14 handling GIB business?  
 15 A Correct.  
 16 Q So I assume you're familiar with the issues in  
 17 this case, so I would like to ask you a couple of  
 18 background questions just in terms of your  
 19 familiarity with transgender individuals. Okay?  
 20 A Okay.  
 21 Q So are you familiar with the term transgender?  
 22 A Yes.  
 23 Q And what's your understanding of the meaning of  
 24 that term?  
 25 A My understanding is that it deals with a person

Page 20

1 who might have been born a particular sex but  
 2 chooses for whatever reason or feels they are not  
 3 that sex and might desire to go through whatever  
 4 process to become the sex they feel most  
 5 comfortable with.  
 6 Q And how did you come to that understanding of that  
 7 term?  
 8 A I guess just through anything I might have read or  
 9 heard on the news or whatever.  
 10 Q Did you ever do any research of your own about the  
 11 term itself or --  
 12 A Other than through a dictionary or whatever to  
 13 make sure that I'm -- yeah.  
 14 Q Okay. Are you familiar with the term gender  
 15 dysphoria?  
 16 A Not to any extent, no.  
 17 Q Okay. How about gender confirmation or sex  
 18 reassignment surgery?  
 19 A Yes.  
 20 Q And what is your understanding of those terms?  
 21 A Basically what I said before, that sex  
 22 reassignment I'm assuming would be from one to  
 23 another.  
 24 Q Okay. Are you familiar with the term hormone  
 25 therapy?

Page 21

1 A Yes.  
2 Q And what is your understanding of that term?  
3 A Just therapy that you would get through -- to deal  
4 with the hormone issues. I don't have a great  
5 knowledge of it.  
6 Q Sure. Okay. So I'm going to use the term  
7 exclusion moving forward from here, and I would  
8 like to just get a definition in place before we  
9 ask these questions and talk about this.  
10 A All right.  
11 Q So the exclusion that I'm referring to when we  
12 talk about this is the blanket ban on state  
13 employee health insurance coverage for procedures,  
14 services, and supplies related to surgery and sex  
15 hormones associated with gender reassignment.  
16 Okay?  
17 A Okay.  
18 Q So do you have an understanding of what is meant  
19 by procedures, services, and supplies related to  
20 surgery and sex hormones associated with gender  
21 reassignment?  
22 A I believe so. And what's that understanding, I  
23 suppose.  
24 Q And what's that.  
25 A So, please rephrase again.

Page 22

1 Q Sure. Can you tell me what your understanding of  
2 procedures or services or supplies related to  
3 surgery and sex reassignment is?  
4 A My understanding would be if somebody chooses to  
5 go that route, whatever process they would need to  
6 go through, whatever drugs or services they would  
7 need either in preparing for that or transitioning  
8 and whatever might be needed following that.  
9 Q Is it your understanding that these procedures and  
10 services are ever medically necessary?  
11 A Yes.  
12 Q Do you know when this exclusion came into the  
13 plans that we're talking about?  
14 A Oh, when it came into the plans? No, I do not.  
15 No. I'm sorry.  
16 Q As far as you know, has it always been there?  
17 A As far as I know.  
18 Q Okay. Do you have any sense of other services  
19 that are excluded, apart from surgeries and  
20 procedures related to gender reassignment?  
21 A Are you asking as far as are there any other  
22 services, whether it might be related to heart  
23 attacks or anything? Are you asking that?  
24 Q Yes.  
25 A So ask it once more, please.

Page 23

1 Q Are there other services that you know that are  
2 excluded from the health insurance plans?  
3 A I can't specifically say what they are, but I'm  
4 certain that there are because they're --  
5 Q Okay. Sure. So I'm going to have you take a look  
6 at a document.  
7 A Okay.  
8 (Exhibit No. 1 marked for  
9 identification)  
10 Q So you'll see at the bottom right-hand corner  
11 there is a number written. I've written that  
12 down, and that's the state document identification  
13 number that was given to us in discovery, and  
14 you'll also note that it says excerpt underneath.  
15 So this is a much larger document, but I've taken  
16 some relevant portions out and put them together.  
17 A Okay.  
18 Q Do you recognize this? Have you seen this before?  
19 A Yes.  
20 Q And what is it?  
21 A Well, it's a listing of the benefits and the  
22 exclusions and anything related to the particular  
23 services that might be available.  
24 Q So is this a good representation of what the  
25 uniform benefits looked like for the 2016 benefit

Page 24

1 year?  
2 A I don't specifically recall that.  
3 Q So I'll ask you to just look at the cover sheet  
4 there.  
5 A That's what it says.  
6 Q Is that fair?  
7 A Uh-huh.  
8 Q All right. So if you could turn to the page at  
9 the bottom, it's noted 4-28.  
10 A Okay.  
11 Q And in the very first paragraph it reads, "The  
12 benefits and services which the health plan and  
13 PBM agree to provide to participants, or make  
14 arrangements for, are those set forth below." Is  
15 that fair?  
16 A Yes.  
17 Q Okay. So then if you could flip to the next page.  
18 You see toward the bottom it says number 3,  
19 Surgical Services.  
20 A Okay.  
21 Q Could you just take a look at that first paragraph.  
22 A Okay.  
23 Q And can you tell me what you get from that? What  
24 is that saying?  
25 A It says it does not include -- that the surgical

Page 25

1 procedures do not provide oral surgical procedures  
 2 because they're covered elsewhere and that  
 3 surgical procedures would be covered if they're  
 4 needed to care for an illness or an injury and  
 5 then it specifies that it includes those  
 6 procedures that would be before the surgery, as  
 7 well as care after the surgery and any needed  
 8 services of additional people.  
 9 Q So would you read that to be saying that surgical  
 10 services are provided when needed to care for an  
 11 illness or an injury?  
 12 A Yes.  
 13 Q Okay. So can you flip to the next page, please.  
 14 It should be titled Exclusions and Limitations.  
 15 A Yes.  
 16 Q And you see subsection A. there says Exclusions?  
 17 A Yes.  
 18 Q And then A.1.a., specifically relates to what  
 19 we're talking about today; right?  
 20 A Okay. Yes.  
 21 Q Okay. So is it your view that this section on  
 22 exclusions and limitations is meant to describe  
 23 what is specifically excluded from the uniform  
 24 benefits?  
 25 A Please rephrase.

Page 26

1 Q Sure. Does this page list out what is excluded  
 2 from the uniform benefits?  
 3 A Let me just take a glance a minute.  
 4 Q Sure.  
 5 A So, again, your question being?  
 6 Q This section lists out what is excluded from the  
 7 uniform benefits?  
 8 A Yes.  
 9 Q Okay. And so if we can refer back to the page  
 10 prior that we just looked at.  
 11 A Are we talking 4-29?  
 12 Q That's correct.  
 13 A Okay.  
 14 Q So I just want to confirm that section 3, Surgical  
 15 Services, says that surgical procedures when  
 16 needed to care for an illness or injury are  
 17 covered or will be covered and those that are not  
 18 are listed on the next page in the exclusions and  
 19 limitations page. Is that fair?  
 20 A Yes.  
 21 Q Okay. You can set that aside for now.  
 22 A Okay.  
 23 Q So can you tell me from your recollection when the  
 24 Group Insurance Board started to consider removing  
 25 the exclusion?

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1 A My recollection would be it was in 2016, probably  
 2 in April, May, June, July, someplace in there.  
 3 Q Okay. And we're going to talk about the July  
 4 meeting in a bit.  
 5 A Okay.  
 6 Q We'll come back to that. How about reinstating  
 7 the exclusion, when did that first come up?  
 8 A I have to think here. Well, it was reinstated --  
 9 just a minute. I'm thinking it started around  
 10 July of '16, but --  
 11 Q Discussions about reinstating?  
 12 A Yes. Yes. That's my recollection.  
 13 Q Okay. Do you remember how that came up?  
 14 A My recollection is that there was a recommendation  
 15 to consider that because of -- to be sure that the  
 16 group would remain in compliance with state and  
 17 federal regulations as far as determinations with  
 18 the Affordable Care Act.  
 19 Q Sure. Do you remember who made that recommendation?  
 20 A My recollection is it would have been from the ETF.  
 21 Q Okay. I'm going to show you another document.  
 22 (Exhibit No. 2 marked for  
 23 identification)  
 24 Q I'm showing you what's been marked as Exhibit 2.  
 25 So this email is not to you and you were not

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1 copied on it at all, so I wouldn't expect you to  
 2 recognize it. But I'd like you to look at the  
 3 sort of third box down from the top, if you can.  
 4 Do you see where it says "This was actually"? Do  
 5 you see that?  
 6 A "This was actually," yes.  
 7 Q So it says, "This was actually pushed by J.P.  
 8 every step of the way, and I'm not sure that DOJ  
 9 would appreciate being framed as the owner." And  
 10 I'd say just for the record we're discussing  
 11 earlier on in the email it says, "However, since  
 12 the State of Wisconsin is a participant in the  
 13 federal lawsuit challenging this requirement, the  
 14 Wisconsin Department of Justice urged the board to  
 15 reinstate the exclusion." Does any of this sort  
 16 of jog your memory about how the -- how  
 17 reinstating the exclusion came before the board?  
 18 A Not specifically.  
 19 Q Okay.  
 20 A Because I know I didn't see this.  
 21 Q Sure. Do you know who J.P. is?  
 22 A Yes.  
 23 Q Okay. Who is that?  
 24 A Well, I don't know his specific title but he's  
 25 insurance commissioner or something, J.P. Wieske,

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1 or something like that.  
 2 Q Is he a member of the Group Insurance Board?  
 3 A Yes.  
 4 Q And how long has he been on the board?  
 5 A I don't recall specifically, but I would say at  
 6 least several years. But I don't recall.  
 7 Q Okay. You can set that aside for now.  
 8 A Okay.  
 9 Q Thank you. So do you know if anyone outside of  
 10 the Department of Employee Trust Funds provided  
 11 the board with information on transition-related  
 12 healthcare?  
 13 A When you say provided information, what do you  
 14 mean?  
 15 Q Anything that you can remember, whether it be  
 16 memos, presentations, conversations, did the board  
 17 receive information from any source outside of the  
 18 Department of Employee Trust Funds on transition-  
 19 related healthcare?  
 20 A Outside of memos, you're saying, or are you  
 21 including memos?  
 22 Q Including memos. Anything.  
 23 A I think there probably would have been some things  
 24 from the Department of Justice, but I --  
 25 Q Okay. Anyone else?

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1 A Not that -- well, there may have been  
 2 correspondence letters over this issue that  
 3 participants would have submitted.  
 4 Q Participants in the state health insurance plan?  
 5 A Yes.  
 6 Q How about individual board member?  
 7 A How about individual board members what?  
 8 Q Do you remember individual board members ever  
 9 bringing in additional sources, information,  
 10 documents, anything of the like to talk to the  
 11 board about transition-related healthcare?  
 12 A Not that I recall.  
 13 Q Okay. So I'm going to sort of go through the GIB  
 14 meetings for 2016, and we're going to start in  
 15 May.  
 16 A Okay.  
 17 Q Okay.  
 18 (Exhibit No. 3 marked for  
 19 identification)  
 20 Q I'll show you what's marked as Exhibit 3. So  
 21 these are the May 18, 2016, GIB meeting minutes;  
 22 is that right?  
 23 A Okay.  
 24 Q Were you present at this meeting?  
 25 A Yes, I was.

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1 Q And to your knowledge did the exclusion come up at  
 2 this meeting? If you need some time to review the  
 3 minutes, please do so.  
 4 A I don't see it specifically reflected on here  
 5 other than on page 4 where it talks about the  
 6 guidelines and the uniform benefit changes, but it  
 7 makes no specific indication that that issue was  
 8 mentioned.  
 9 Q And you don't remember it ever being brought up?  
 10 A No.  
 11 Q Okay. You can set that aside. Thanks. We'll  
 12 move on to the next meeting.  
 13 (Exhibit No. 4 marked for  
 14 identification)  
 15 Q This is Exhibit 4. This is the July 12 minutes --  
 16 July 12, 2016, minutes for the meeting of the  
 17 Group Insurance Board. Were you present at this  
 18 meeting?  
 19 A Yes, I was.  
 20 Q I'll give you a chance to review them.  
 21 A Okay.  
 22 Q So do you remember the exclusion being discussed  
 23 at this meeting?  
 24 A Yes.  
 25 Q Okay. And what do you remember about that?

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1 A Just basically that's what's reflected here, that  
 2 it was discussed, that it was recommended that it  
 3 be removed to keep us into compliance with the  
 4 final regulations as they were released.  
 5 Q And how did removing the exclusion come up? Was  
 6 it just presented by ETF or --  
 7 A I really don't recall, but I'm assuming it was --  
 8 it would have been under one of our agenda items,  
 9 guidelines and benefit changes, and there would  
 10 have been a presentation then.  
 11 Q Do you remember receiving any materials in advance  
 12 of this meeting about this issue?  
 13 A Not in -- oh. Let me think. I don't recall  
 14 whether there would have been additional, because  
 15 there was a memo, they referred the board to the  
 16 memo, so there must have been a memo that came  
 17 out, yes, but I don't recall specifically.  
 18 Q Okay. And it's reflected here that ETF  
 19 recommended removing the exclusion; right?  
 20 A Yes.  
 21 Q Okay. So can you tell me how once that  
 22 recommendation is made the board responds to that?  
 23 A Typically the board, as with any decision, will  
 24 discuss, ask questions if they have questions  
 25 about the whys, wherefores, clarification prior to

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1 any decision that's made.  
2 Q Do you remember any of those discussions? What  
3 was asked, things like that?  
4 A No. I don't recall specifics.  
5 Q Did you take any notes about the discussion?  
6 A I do not recall that either. I know that  
7 typically as a board member, because I'm used to  
8 doing that for other boards, I will jot down who  
9 makes motions, who seconds, whatever, and the  
10 vote. But whether there were any other notes  
11 taken, I cannot tell you that.  
12 Q Would it have been your practice to jot down  
13 questions that were asked, maybe answers, things  
14 like that?  
15 A Not necessarily, no.  
16 Q But it's possible that maybe you jotted down a  
17 question or two, if you had questions even?  
18 A There could have been. If I had questions after I  
19 read the memo, I might have jotted a question,  
20 here is something I want to ask, but I don't  
21 recall if that was the case.  
22 Q Okay. So do you remember, apart from what's  
23 reflected here in the minutes, reasons that were  
24 given for removing the exclusion discussed between  
25 board members?

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1 A No, other than I think board members were, as  
2 always, very concerned to remain in compliance  
3 with state and federal regulations. But other  
4 than that, no, I don't recall specifics.  
5 Q Was there any discussion between board members or  
6 between the presentation -- the presenter I think  
7 is Ms. Pray here and the board about the actual  
8 procedures that are a part of the exclusion?  
9 A I don't recall that, no.  
10 Q Any discussion on cost?  
11 A Only from the standpoint I think that if it was,  
12 and I don't recall if it was, that typically if  
13 there are any changes made to the benefits it's  
14 always to make sure that the premium does not  
15 increase.  
16 Q Do you remember taking an active role in the  
17 discussion that the board had about this issue at  
18 this particular meeting?  
19 A At this particular meeting?  
20 Q Yes.  
21 A No. I don't recall that.  
22 Q Okay. So during this meeting, we were just  
23 discussing that the board will talk about costs as  
24 it relates to premium increases?  
25 A Correct.

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1 Q And there was a determination that there would be  
2 no premium increase at the time?  
3 A I don't know if it was at this meeting, but I know  
4 there was a report from the actuary, Segal, that  
5 indicated -- my recollection is that it indicated,  
6 I don't remember the percentage or anything, but a  
7 very minor potential increase that there could  
8 have been, but it was nothing major.  
9 Q So the board voted at the July meeting unanimously  
10 to remove the exclusion; is that right?  
11 A Yes.  
12 Q So at that time there would have been agreement  
13 between the board members that the cost was not an  
14 issue?  
15 MR. KILPATRICK: Objection. Calls  
16 for speculation.  
17 Q To the extent that you know.  
18 A To the extent I know, yes.  
19 Q Do you recall if anybody raised the governor's  
20 position on this issue at this meeting?  
21 A I do not recall that.  
22 Q How about any other government officials or  
23 agencies, did anyone else have an opinion?  
24 A Not that I recall.  
25 Q Do you know if anybody requested a cost estimate

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1 at the July meeting?  
2 A I do not recall that.  
3 Q You mentioned the actuary, Segal. Is that  
4 typically where the GIB gets their cost estimates  
5 from?  
6 A Yes, whoever happens to be the actuary at the  
7 time.  
8 Q And that comes through ETF?  
9 A Yes.  
10 Q Okay. Has the board ever been presented with cost  
11 estimates from someone else other than ETF or its  
12 consulting actuary at the time?  
13 A Not that I recall.  
14 Q We sort of already touched on this, but I just  
15 want to follow up. In your view why did the board  
16 decide to remove the exclusion?  
17 MR. KILPATRICK: Objection to the  
18 extent it calls for speculation.  
19 Q You can answer.  
20 A Again, it would be my view, my speculation, that  
21 it was primarily, if not totally, at least  
22 primarily because in fulfilling their fiduciary  
23 duties they wanted to make sure they were in  
24 compliance with state and federal regulations.  
25 Q And while the vote sort of speaks for itself, do

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1 you remember anyone speaking against removal of  
 2 the exclusion?  
 3 A I do not recall that.  
 4 Q How about any discussion on the safety of the  
 5 procedures at issue?  
 6 MR. KILPATRICK: Objection. Asked  
 7 and answered. She answered that there was no  
 8 discussion about the procedures. You can  
 9 answer.  
 10 A I don't recall any discussion of the safety of the  
 11 procedures, no.  
 12 Q Nothing about the effectiveness of the procedure  
 13 either?  
 14 A No. Not that I recall.  
 15 Q Okay. You can set that aside.  
 16 A Okay.  
 17 (Exhibit No. 5 marked for  
 18 identification)  
 19 Q This is Exhibit 5. Do you recognize this? Have  
 20 you ever seen this before?  
 21 A I don't specifically remember seeing this, no.  
 22 Q Okay. So this is a correspondence memorandum that  
 23 Secretary Conlin sent to the ETF board. In your  
 24 time on the board, you've received correspondence  
 25 like this from the secretary?

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1 A On my time on the GIB board.  
 2 Q On the ETF board.  
 3 A I'm sure, but he was not the secretary at that  
 4 time.  
 5 Q Sure. Sure. But you are familiar with this sort  
 6 of process?  
 7 A Yes.  
 8 Q Okay. If you could flip to page 2.  
 9 A Okay.  
 10 Q And about the last paragraph underneath the Group  
 11 Insurance Board heading.  
 12 A Okay.  
 13 Q It reads that after the July meeting, the July GIB  
 14 meeting, the Wisconsin Department of Justice asked  
 15 the GIB to reconsider its position, and then a  
 16 little bit further down it says, "The GIB deferred  
 17 action." Do you remember how the request from the  
 18 Wisconsin Department of Justice to reconsider came  
 19 before the board?  
 20 A Not specifically, no.  
 21 Q Do you remember when after the August meeting --  
 22 excuse me, after the July meeting and prior to the  
 23 August meeting the request to reconsider came  
 24 before the board?  
 25 A Was there an August meeting?

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1 Q Yes.  
 2 A Okay. You know, I'm trying to -- okay. So ask  
 3 your question again, please.  
 4 Q Do you remember when in between the July meeting  
 5 and the August meeting the request from the  
 6 Department of Justice to reconsider came before  
 7 the board?  
 8 A No.  
 9 Q Okay. Did you have any conversations with GIB  
 10 members between the July and August meeting about  
 11 the exclusion, as far as you remember?  
 12 A No. No, not that I recall.  
 13 Q You can set that aside for now.  
 14 (Exhibit No. 6 marked for  
 15 identification)  
 16 Q Okay. So this is Exhibit 6. And this is also,  
 17 you'll note at the bottom it's previously marked  
 18 Farrell Exhibit 15, I believe, though there is a  
 19 little scribble there.  
 20 A Correct.  
 21 Q Exhibit 6, okay. So these are the August 16,  
 22 2016, GIB meeting minutes. Is that right?  
 23 A Okay. Yes.  
 24 Q And you were present at this meeting?  
 25 A Yes, I was.

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1 Q Can you tell me what you remember about this  
 2 meeting, if anything?  
 3 A Not specifically without looking at this. That  
 4 was a year and a half ago.  
 5 Q Sure. Sure. So on page 6, if you could flip to  
 6 page 6.  
 7 A Okay.  
 8 Q Underneath operational updates.  
 9 A Okay.  
 10 Q If you could just take a look at that.  
 11 A Okay.  
 12 Q Does that sort of jog your memory about anything  
 13 in terms of discussing the exclusion at this  
 14 meeting?  
 15 A No. Not specifically.  
 16 Q Do you remember any reasons being given at this  
 17 meeting for why the GIB should reconsider the July  
 18 vote?  
 19 A I don't know if it was at this meeting. Somewhere  
 20 down the road or someplace I think there was a  
 21 concern expressed, I don't recall by whom, whether  
 22 the federal government or whomever had the ability  
 23 to impact or direct the state in its  
 24 implementation of its benefits. So I think there  
 25 was a question on whether the regulation -- the

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1 interpretation that came out from the regulations  
 2 was -- Constitutional isn't the right word, but  
 3 valid, I guess.  
 4 Q Okay. Apart from those regulations, were there  
 5 any other reasons that reconsideration would have  
 6 been warranted?  
 7 A Not that I recall.  
 8 Q Any discussions on cost at this meeting?  
 9 A Not that I recall.  
 10 Q Do you recall anything about -- well, let's start  
 11 with you. What was your response or reaction to  
 12 the Wisconsin Department of Justice asking the  
 13 board to reconsider a decision?  
 14 A I don't think I specifically made a response. It  
 15 would have just been as a person I would have  
 16 wanted to know why and I would have -- the  
 17 rationale for it.  
 18 Q Did you have a personal opinion on this request?  
 19 A I don't know if at that point. I don't recall.  
 20 Q Was it unusual?  
 21 A Is what unusual?  
 22 Q That the Department of Justice would ask the GIB  
 23 to reconsider a decision it had made in a previous  
 24 meeting?  
 25 A I don't ever recall that happening before, but I

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1 can't say if it's unusual or not.  
 2 Q So the minutes here indicate that ETF reviewed the  
 3 DOJ memo and provided additional information for  
 4 board consideration. Do you remember ever  
 5 receiving a copy of that memo?  
 6 A I believe so, but I can't specifically say so.  
 7 But typically we get all of those memos, yes.  
 8 Q So you would have reviewed it in advance of the  
 9 August meeting or at the meeting?  
 10 A Correct.  
 11 Q And you don't recall the substance of that memo?  
 12 A Not in detail, no.  
 13 Q I'm going to show you --  
 14 A The memo?  
 15 Q Yes.  
 16 A So I can put this one away?  
 17 Q I would hold onto it for now.  
 18 A Okay.  
 19 (Exhibit No. 7 marked for  
 20 identification)  
 21 Q This is Exhibit 7. I'll say the cover sheet  
 22 here -- The memos that we're about to talk about  
 23 are an attachment, so the cover sheet is just an  
 24 email from J.P. Wieske to Jennifer Stegall and  
 25 it's attached to the GIB 7/12/16 correspondence

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1 which is the same memorandum presented at the  
 2 August 16 meeting. So you can ignore the cover  
 3 sheet for now.  
 4 A Okay.  
 5 Q Okay. So do you see the correspondence memo  
 6 attached to this page?  
 7 A Did I see?  
 8 Q You see it now?  
 9 A Yes, I see it.  
 10 Q Okay. And is it your sense that this was the memo  
 11 that was presented to the board on August 16?  
 12 A Let me review. And are you asking specifically  
 13 about the first pages or also the pages from  
 14 Mr. Nispel?  
 15 Q Yes. So the August 10 memo from Andy Cook, Deputy  
 16 Attorney General, and then also the August 11 memo  
 17 from David Nispel and Diana Felsmann. Do you  
 18 recognize both of them?  
 19 A I know I for certain remember the first one. I  
 20 can't say for a fact that I remember the second  
 21 one. But I would assume it was there.  
 22 Q And is this something you would have made notes  
 23 about upon receiving it?  
 24 A No. I don't believe so.  
 25 Q So if you could turn to page 4 of the Cook memo,

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1 the first one.  
 2 A Okay.  
 3 Q You'll see the second paragraph from the top, it  
 4 starts with, "ETF can easily clear that low bar"?  
 5 A Yes.  
 6 Q It says, "For instance, it can point to the high  
 7 costs the state must bear for covering services  
 8 and procedures related to gender transition." Do  
 9 you remember this conversation happening at the  
 10 August 16 meeting, any conversation on costs?  
 11 A No. I do not recall that.  
 12 Q So apart from this memo, as far as you know, there  
 13 were no discussions about costs, high or low?  
 14 A Other than perhaps a reference to the Segal study  
 15 that would have been done, but no.  
 16 Q And I'm sure you know this is coming, but I'll ask  
 17 anyway. Anything about safety of the procedures  
 18 at the August 16 meeting?  
 19 A I do not recall that, no. I see it's stated here  
 20 in the memo, but I don't recall a discussion.  
 21 Q Was anyone from the Department of Justice at that  
 22 meeting?  
 23 A My recollection is yes, but I don't know that for  
 24 a fact.  
 25 Q Okay. So if you could look at Exhibit 6 again on

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1 the front page there of the minutes and just  
2 review who was there and see if that helps at all.  
3 A I may have missed it, but I don't -- oh, I don't  
4 know who Daniel Hayes is necessarily, but that  
5 must be from ETF. So, no, I don't see any listing  
6 of anybody there.  
7 Q Okay. Do you recall either at the August meeting  
8 or after what the Department of Employee Trust  
9 Funds' position was on reconsidering the July vote?  
10 MR. KILPATRICK: Objection. Vague  
11 as to time with regard to the term after.  
12 Q How about August?  
13 A Okay. Ask your question again, please.  
14 Q Sure. Do you recall if the ETF had a position on  
15 the GIB reconsidering the July vote in August, at  
16 the August meeting?  
17 A I do not specifically recall that.  
18 Q Okay. Can you take a look at the second memo  
19 that's attached to Exhibit -- this is Exhibit 7, I  
20 believe.  
21 A 7.  
22 Q Yes, 7. Thank you. From David Nispel and Diana  
23 Felsmann.  
24 A Okay.  
25 Q And can you just review that briefly.

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1 A Okay. So yes.  
2 Q I want to direct your attention to page 5 of that  
3 memo.  
4 A Okay.  
5 Q And do you see the recommendations going forward?  
6 A Yes.  
7 Q The first one is ETF does not recommend the GIB  
8 reconsider its July 12th, 2016, decision; is that  
9 right?  
10 A Correct.  
11 Q So do you have a sense of -- Strike that.  
12 Do you consider this two conflicting opinions  
13 on what the GIB should do about the July 12, 2016,  
14 decision?  
15 A Are you saying ETF versus DOJ?  
16 Q Correct. In these two memos.  
17 A Potentially they could be considered contradictory.  
18 Q And do you know if that's something that the board  
19 addressed at the August 16 meeting, that they had  
20 received two contradictory opinions on what to do?  
21 A I don't recall that.  
22 Q Okay. Do you recall having concerns about that?  
23 A I don't specifically recall that.  
24 Q Could you turn to page 4 of the Cook memo. Still  
25 in the same exhibit.

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1 A And that's the earlier one; correct?  
2 Q That's right, the August 10.  
3 A Okay.  
4 Q And in that same paragraph we were talking about  
5 earlier, that ETF can easily clear the low bar,  
6 there is a sentence about four lines down, three  
7 or four lines down that says, "For instance, it  
8 can point to the high costs the state must bear,  
9 or to medical research suggesting that such  
10 procedures (especially sex transformation  
11 surgeries) may in fact harm patients." Do you see  
12 that?  
13 A Yes.  
14 Q Okay. Do you know if the Department of Justice  
15 ever explained the basis for the assertion that  
16 this treatment is potentially harmful?  
17 A I do not know that.  
18 Q Do you know if they ever consulted with medical  
19 experts?  
20 A I do not know that.  
21 Q After receiving this, do you know if the Group  
22 Insurance Board ever raised concerns about that?  
23 A I do not recall that.  
24 Q Did the DOJ tell the GIB what the basis for the  
25 assertion that the treatment is potentially

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1 harmful was?  
2 A Please once more.  
3 Q Did the Department of Justice or anyone who was  
4 there for the department tell the Group Insurance  
5 Board why they thought that treatment was harmful?  
6 A I don't recall that, no.  
7 Q So you can set this aside for right now. We may  
8 come back to it, though.  
9 A Both 6 and 7?  
10 Q Yes.  
11 A Okay.  
12 Q Thank you. So before we sort of move on from  
13 August, I just want to make sure. After that  
14 meeting concluded, do you have any recollection of  
15 conversations with other board members about what  
16 had happened during the meeting?  
17 A No.  
18 Q Okay. So there was no concern at that point that  
19 you needed to schedule another meeting to  
20 reconsider or anything like that? It was just  
21 sort of business as usual?  
22 A I don't recall. I think so, but I don't recall.  
23 Q Okay. I'll show you something else.  
24 (Exhibit No. 8 marked for  
25 identification)

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1 Q So this is Exhibit 8. So, again, this is an email  
2 that you were not copied on so you wouldn't have  
3 received it. But it's from J.P. Wieske to Bonnie  
4 Cyganek. Do you know who Bonnie Cyganek is?  
5 A Yes.  
6 Q Who is that?  
7 A She used to -- I don't know what her current  
8 position is, but she used to serve on the GIB in a  
9 capacity and now she's not on there anymore but  
10 she does attend meetings yet.  
11 Q Do you know in what capacity she served?  
12 A No. I don't remember her specific role.  
13 Q Okay. So it says, "Bonnie, I wanted to reach out.  
14 I think there are a number of folks looking to the  
15 DOJ memo on transgender issues and wondering about  
16 scheduling a follow-up meeting." Do you know  
17 anything about that?  
18 A I'm sorry?  
19 Q Do you know anything about that, who the number of  
20 folks might be that were looking at that?  
21 A No, no.  
22 Q You weren't one of them?  
23 A No.  
24 Q Okay. Had you heard that other members on the  
25 board were going to request a follow-up with DOJ?

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1 A No. I don't recall that.  
2 Q Okay.  
3 A And I'm wondering whether Bonnie was the chair at  
4 that point, but I don't recall.  
5 Q The chair of?  
6 A Of the GIB, but I don't recall that.  
7 Q Okay. If you'll refer to Exhibit 6, the August 16  
8 minutes and the list of board members there, I  
9 think it notes that --  
10 A She was the vice chair. Okay.  
11 Q Okay. Is Ms. Cyganek affiliated with the DOJ at  
12 all, do you know?  
13 A I don't believe so, but I don't know.  
14 Q Okay. Do you remember anyone talking or bringing  
15 up the governor's office in the August 16 meeting?  
16 A In what respect?  
17 Q In respect to the exclusion.  
18 A No, but, I mean, when you say bringing up the  
19 governor's office, what do you mean by that?  
20 Q Sure. So did anyone discuss the governor's  
21 position during the meeting on the exclusion?  
22 A Not that I recall.  
23 Q Did anyone mention that the DOJ memo that was  
24 presented to the board was authored at the behest  
25 of the governor?

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1 A I don't recall that, if it was mentioned.  
2 Q Okay. Was it your understanding that the DOJ memo  
3 was drafted at the behest of the governor?  
4 A I don't recall that.  
5 Q Just briefly I want to address this. You can set  
6 the other exhibit aside.  
7 A I did.  
8 (Exhibit No. 9 marked for  
9 identification)  
10 Q Okay. So this is the minutes from the  
11 November 30, 2016, Group Insurance Board meeting.  
12 Were you present?  
13 A No, I was not.  
14 Q Okay. Why didn't you attend this meeting?  
15 A Because I was out of state attending a national  
16 CESA convention.  
17 Q Did you receive an update after this meeting from  
18 anybody?  
19 A Not that I recall.  
20 Q And you didn't reach out to anyone to ask what had  
21 happened at the meeting?  
22 A No.  
23 Q Okay. You can set that aside.  
24 (Exhibit No. 10 marked for  
25 identification)

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1 Q So we are looking at Exhibit 10. And these are  
2 the minutes from the December 13, 2016, Group  
3 Insurance Board meeting; right?  
4 A Correct.  
5 Q Okay. And you were present at this meeting?  
6 A Yes, I was.  
7 Q Great. So I'm going to have you turn toward the  
8 very back, page 8. And you'll see at the very  
9 bottom discussion and consideration of 2017  
10 uniform benefits.  
11 A Yes.  
12 Q And it says that the item was added to the  
13 December 13 meeting agenda at the request of a  
14 board member. Do you know who made that request?  
15 A No, I don't.  
16 Q And after that it says, "The Wisconsin Department  
17 of Justice indicated the intent to send  
18 representation to the board meeting to discuss the  
19 issue." Right?  
20 A Okay.  
21 Q Do you remember who from DOJ was at the meeting,  
22 if anyone?  
23 A No, I don't.  
24 Q Were you aware in advance that someone from DOJ  
25 was going to be at the December 13 meeting? Did

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1 you receive any materials ahead of time?  
2 A I don't recall that.  
3 Q Okay. If we could turn to the next page, page 9.  
4 At the very top it says, "Mr. Potter stated that  
5 the August 10, 2016, memorandum was authored by  
6 the DOJ at the request of the governor's office  
7 for the benefit of the board." Right?  
8 A Okay.  
9 Q At that point did you know anything about why the  
10 governor had asked the DOJ to write this memo?  
11 A No.  
12 Q Nobody discussed that issue?  
13 A Not that I recall.  
14 Q Okay. Was there any conversation about the  
15 governor's office at the December 13 meeting?  
16 A I do not recall that.  
17 Q Do you recall if anyone from the governor's office  
18 was at the meeting?  
19 A I'd have to look at the list of others present. I  
20 don't recall that.  
21 Q You can take a look at the list of members.  
22 A And I don't know. Will it say if they're  
23 representing the governor's office?  
24 Q It may not, but if there is a name that sticks out  
25 to you that you recall may have had some

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1 affiliation with the governor's office, that might  
2 help.  
3 A I see there are some names of some people from the  
4 legislature, from their offices. But other than  
5 that, no, I don't. I don't recall.  
6 Q Okay. So you see back on page 9, it's about the  
7 third paragraph down, it says, "Mr. Potter stated  
8 that the DOJ recommends the board follow the law  
9 as it currently stands." Do you remember that  
10 being the recommendation at that meeting?  
11 A Yes.  
12 Q And what did you take that to mean?  
13 A That the DOJ was recommending that, based on the  
14 law at that time, that it should be followed by  
15 the board, and then it further goes on to say that  
16 what the board had done back on July 12 was in  
17 compliance.  
18 Q And do you recall if -- when Mr. Potter made this  
19 recommendation if anyone or yourself from the  
20 board asked him about why in August the DOJ  
21 representative had asked them to reconsider the  
22 decision, asked you all to reconsider the decision?  
23 A I don't recall that.  
24 Q Nobody raised that issue?  
25 A I can't say they didn't. I don't recall whether

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1 they did.  
2 Q And is that something that you maybe would have  
3 made a note about? Is it possible?  
4 A I doubt it, but I can't say that for a fact. But  
5 I doubt it.  
6 Q Okay. This was a regularly scheduled GIB meeting;  
7 correct?  
8 A Correct.  
9 Q And --  
10 A I believe it was, yes. I'm sure it was.  
11 Q Okay. I'll ask again, do you know if anyone  
12 discussed costs about the exclusion at this meeting?  
13 A I do not recall that specifically.  
14 Q Did you ask any questions about the exclusion at  
15 that meeting or the DOJ's position about the  
16 exclusion?  
17 A I don't recall if I specifically did, no.  
18 Q Anything about the efficacy of these procedures?  
19 A Of the procedures --  
20 Q In the exclusion, yes.  
21 A Okay.  
22 Q Any discussion about that?  
23 A No. I don't recall that.  
24 Q And any discussion about safety?  
25 A I don't recall that, no.

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1 Q Back to page 9, or still on page 9.  
2 A Okay.  
3 Q You see in the second paragraph there it says,  
4 "Mr. Potter noted the state of Wisconsin has  
5 joined a federal lawsuit in Texas challenging the  
6 federal Department of Health and Human Services  
7 final regulations." What do you remember about  
8 that, if anything?  
9 A What do I remember about what?  
10 Q Was there any discussion about this after  
11 Mr. Potter noted that the state of Wisconsin had  
12 joined the federal lawsuit in Texas?  
13 A I don't remember any specific discussion, no,  
14 other than --  
15 Q Do you remember if there was a discussion?  
16 A No. I don't recall that.  
17 Q Do you remember if Mr. Potter, when discussing the  
18 state of Wisconsin joining the federal lawsuit,  
19 said anything about wanting the GIB to be  
20 consistent with the state's position in this  
21 lawsuit?  
22 A No, I do not recall that.  
23 Q Okay. You can set that aside.  
24 MR. DUPUIS: Can we go off the  
25 record, please?

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1 (Recess)  
2 Q So we left off at the December 13 meeting, so  
3 we're going to pick back up with the next meeting.  
4 A Okay.  
5 Q All right.  
6 (Exhibit No. 11 marked for  
7 identification)  
8 Q So I'm showing you Exhibit 11, which are the  
9 December 30 minutes. Were you at this meeting?  
10 A I was via telephone.  
11 Q Okay. Was this a regularly scheduled meeting?  
12 A No. I don't believe so. I believe it was a  
13 special called meeting.  
14 Q Do you know why?  
15 A Not specifically, although I think it was for the  
16 purpose of potentially changing the decision that  
17 might have been made earlier. But I don't recall.  
18 Q Okay. Did you have any reaction -- actually, let  
19 me back up. When did you receive notice that this  
20 meeting was going to happen?  
21 A I don't recall.  
22 Q Okay.  
23 A I don't recall.  
24 Q Do you remember it being short notice at all?  
25 A And short defined as how?

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1 Q I think you mentioned earlier that the regularly  
2 scheduled GIB meetings happen -- you know that  
3 they're going to be scheduled about a year in  
4 advance. Shorter than that?  
5 A Oh, yes.  
6 Q Okay. And you were attending via telephone,  
7 presumably because it was close to the holidays.  
8 A Probably. And I may have been even baby-sitting.  
9 I don't recall where I was at the time.  
10 Q All right. So you had no reaction to the notice  
11 you received about this specially called meeting?  
12 A No.  
13 Q Okay. And you don't remember when you were  
14 notified?  
15 A No, I do not.  
16 Q Do you remember hearing at any point between  
17 December 13 and the 30th that another meeting  
18 might have been possible?  
19 A I don't specifically recall that.  
20 Q So if you'd take a look at these minutes and  
21 review them.  
22 A Okay.  
23 Q So it looks like a lot of this meeting happened in  
24 closed session; is that right?  
25 A Correct.

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1 Q Can you tell me what you remember from the open  
2 session, if anything?  
3 A I do not recall anything.  
4 Q Okay. So we know that the board went into closed  
5 session. Can you tell me why?  
6 A It would have been whatever the call of the  
7 statutory meeting or the reason was, and I'm  
8 looking to see if it's -- 19.85(1)(g). Okay.  
9 Q So you don't remember anything from the open  
10 session being talked about apart from this  
11 statutory section about why the board was going  
12 into closed session, any reasons discussed about  
13 that?  
14 A No, I do not recall that.  
15 Q Do you remember who was in the closed session?  
16 A No. Other than who might be listed here, no.  
17 Q Do you remember any individuals specifically who  
18 spoke during the closed session?  
19 A I don't recall that.  
20 Q You can set that aside.  
21 A To the side, did you say?  
22 Q To the side, yes. Thank you.  
23 (Exhibit No. 12 marked for  
24 identification)  
25 Q This is Exhibit 12. So these are the minutes from

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1 the December 30, 2016, meeting, the closed  
2 session. Okay?  
3 A Okay.  
4 Q Can you tell us what happened that led to the  
5 exclusion being reinstated and what you remember?  
6 MR. KILPATRICK: This is where I'm  
7 going to object. Yesterday the Court ruled  
8 on a motion to compel brought by the  
9 plaintiffs, and it is my understanding that  
10 the Court ruled that deponents, witnesses in  
11 depositions, are not required to reveal  
12 attorney-client privileged communications  
13 which the Court said were legal discussions  
14 or recommendations by the attorney who was  
15 present. That includes Attorney Kevin Potter  
16 from the Attorney General's office. And also  
17 witnesses are not required to disclose  
18 discussion or questions directed to or  
19 involving Attorney Potter.  
20 So what I'm going to do is raise a  
21 standing objection, a direct objection to  
22 this question and any other questions about  
23 the closed session to the extent that the  
24 answer would reveal attorney-client  
25 privileged communication and I also would

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1 direct the witness not to answer the question  
2 to the extent your answer would reveal  
3 attorney-client privileged communication.  
4 THE WITNESS: Okay.  
5 MR. KILPATRICK: If that is okay  
6 with you, opposing counsel, let me know. Let  
7 me know either way.  
8 MR. DUPUIS: Okay. So -- do you --  
9 MS. KADRI: Go ahead.  
10 MR. DUPUIS: Do you want to do it?  
11 Or do you want me to do it?  
12 MS. KADRI: You can do it.  
13 MR. DUPUIS: Okay. Our position is  
14 that that is basically correct but we can ask  
15 if Attorney Potter directed or relayed to the  
16 board how the board should vote.  
17 MR. KILPATRICK: I agree.  
18 MR. DUPUIS: And we can also ask,  
19 and I believe this is more clear from the  
20 transcript than from the order, that if  
21 Mr. Potter -- I mean, in general I think the  
22 way we would like to do this is ask questions  
23 sort of setting aside anything that was a  
24 communication between Mr. Potter and board  
25 members and then go back and ask that

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1 question and then ask another question that I  
2 think is permitted which is did Mr. Potter  
3 give non -- advice that was not legal in  
4 nature that did not deal with compliance with  
5 the law. So basically policy advice. And  
6 that would be permissible as well.  
7 MR. KILPATRICK: I agree.  
8 MR. DUPUIS: Okay. So we're going  
9 to try to do that in a way that will help  
10 you, and we're going -- I assume opposing  
11 counsel will help us help you understand, but  
12 bear with us. We just learned about this  
13 yesterday.  
14 THE WITNESS: Okay.  
15 MR. DUPUIS: Thank you.  
16 MR. KILPATRICK: So I can't  
17 remember. I think there was a question on  
18 the table.  
19 Q Yes.  
20 A I don't remember what it was.  
21 Q Let me go back. The question was if you could  
22 tell us what happened that led to the exclusion  
23 being reinstated.  
24 MR. KILPATRICK: Same objection.  
25 The same directive that we just discussed.

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1 Not to reveal attorney-client privileged  
2 communication.  
3 A I don't specifically recall.  
4 (Exhibit No. 13 marked for  
5 identification)  
6 Q Before actually we get to Exhibit 12, let me ask  
7 one more question.  
8 A This is 13.  
9 Q 13. I keep doing that. 13. Thank you. So just  
10 hold off on that for a moment.  
11 A Okay.  
12 Q With counsel's directive in mind, do you recall  
13 any reasons that board members gave for  
14 reinstating the exclusion?  
15 A My only recollection is I believe some board  
16 members might have felt or stated that the  
17 decision -- let me think about this. Ask your  
18 question once more, please.  
19 Q Do you remember what reasons board members gave  
20 for reinstating the exclusion?  
21 A I don't remember specific reasons. I think there  
22 might have been discussion as far as an  
23 uncertainty as far as whether anything had been  
24 decided legally or not. But I don't remember any  
25 specifics, no.

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1 Q Anything about costs?  
2 A I don't recall that, no.  
3 Q Efficacy about the procedures?  
4 A I don't recall that, no.  
5 Q Or safety?  
6 A No, I don't recall that.  
7 Q Okay. Thank you. So we can turn our attention to  
8 Exhibit 13.  
9 A Okay.  
10 Q So this is another email that you were not copied  
11 on. However, if you could take a look at the  
12 attachment to this email. So it should be the  
13 very last page.  
14 A Okay.  
15 Q It says, "Clarification: GIB Action Related to  
16 Health Coverage Based on Gender Identity." Do you  
17 recall seeing this at all at any point?  
18 A No, I do not recall it. But I can't say I didn't.  
19 But, no, I don't recall that.  
20 Q Okay. About part way down you see where it says,  
21 "However, the GIB voted to reinstate the exclusion  
22 if all of the following were to occur," and then  
23 it has a list, 1, 2, 3, 4?  
24 A Yes.  
25 Q Do those look familiar to you, that list?

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1 A Yes.  
2 Q What is it? What are those?  
3 A Those were that the vote was to reinstate the  
4 exclusion contingent on all of these four things  
5 happening.  
6 Q Okay. So if you can answer without revealing any  
7 communications between Attorney Potter and GIB  
8 members about compliance with the legal  
9 requirements, can you tell me about the discussion  
10 on these contingencies, surrounding these  
11 contingencies, if any?  
12 MR. KILPATRICK: Again I'll just  
13 for the record make the same objection and  
14 directive as I said before. Objection as to  
15 the revelation of attorney-client privilege  
16 and direct you not to answer if your answer  
17 would reveal attorney-client privilege. But  
18 otherwise, you may answer the question.  
19 A I don't recall specific discussion.  
20 Q Do you remember any discussion about these  
21 contingencies between board members?  
22 A Not specifically regarding the contingency. I  
23 think the discussion that I recall, if there was  
24 any, was whether the reinstatement should occur or  
25 not.

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1 Q Can you tell me about that?  
2 A Well, I can only speak from my perspective, I  
3 guess.  
4 Q Sure.  
5 A I was concerned reinstating it this late in the  
6 game, which was a day or two days before January 1  
7 when the benefits were supposed to -- had  
8 originally been planned to take effect, and my  
9 concern or my personal feeling was that it just  
10 didn't seem ethical or fair to in a sense change  
11 the game that late in the day when people might  
12 have made decisions, might have started things  
13 under the assumption it was going to be covered  
14 only to potentially find out, guess what, it isn't.  
15 Q Did you express that to board members during the  
16 closed session?  
17 A I believe I did. But what I said, I don't  
18 specifically recall. But I'm sure I did, because,  
19 as you see, I voted no.  
20 Q Did anyone else raise similar concerns?  
21 A I believe at least one other person. I think  
22 Mr. Day raised some concerns about it. I don't  
23 remember if there were any others, no.  
24 Q Okay. Do you recall if there were any responses  
25 to the concerns that were raised by you or Mr. Day?

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1 MR. KILPATRICK: And, again, same  
2 objection and directive.  
3 A I don't recall that, no.  
4 Q I'm going to try this. So, again, if you can  
5 answer without revealing communications about  
6 legal compliance, do you recall if the Department  
7 of Justice encouraged the board to discuss policy  
8 implications of this decision?  
9 A I do not recall that.  
10 Q Okay. How about policy implications of the  
11 contingencies?  
12 A I do not recall that.  
13 Q Do you know if Mr. Potter was an active part of  
14 the policy discussions the board had?  
15 A I don't recall that. I don't believe so, but I do  
16 not recall that.  
17 Q Okay. Did Mr. Potter give the board any nonlegal  
18 reasons to consider reinstating the exclusion at  
19 the meeting?  
20 A Not that I recall.  
21 Q Do you know if contingencies have ever been used  
22 as a means to discuss or determine policy change  
23 in the past?  
24 A I do not know that. I don't recall that, but I do  
25 not know that for a fact.

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1 Q How about in your time on the board, has that  
2 ever --  
3 A I don't recall that, but I can't say that didn't  
4 happen. You forget things, but I don't recall  
5 that, no.  
6 Q Okay. And is that something you maybe would have  
7 made notes about?  
8 A As far as whether this was typical or as far as  
9 the exclusions themselves?  
10 Q Anything about the contingencies and what we're  
11 talking about.  
12 A Other than to probably jot down what they were,  
13 but that would have been all.  
14 Q Okay. Do you recall prior to the board taking its  
15 vote, did Attorney Potter ever direct the board to  
16 vote in a certain way?  
17 A Not that I recall.  
18 Q How about any direction -- Let me start over. Did  
19 Attorney Potter ever relay any directions from  
20 anyone else about how the board should vote?  
21 A Not that I recall.  
22 Q Do you remember if he ever mentioned the  
23 governor's office or any connections with the  
24 governor's office during that meeting?  
25 A I do not recall that.

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1 Q Do you remember if there were documents presented  
 2 to the board during the closed session other than  
 3 memos, the memos that we've talked about, for  
 4 consideration?  
 5 A Once more. I'm sorry.  
 6 Q Were there any documents presented to the board  
 7 other than the memos we've talked about during the  
 8 closed session?  
 9 A And I need to clarify. We're talking the closed  
 10 session for the December 30 meeting? Now, again,  
 11 I was via telephone, so if anything was presented  
 12 at that meeting, I wouldn't have --  
 13 Q And that's not something someone would have said  
 14 over the phone there is a document being  
 15 presented, something like that?  
 16 A I'm sure they would have, and I don't recall that  
 17 happening, no.  
 18 Q Okay. So we know that you and Mr. Day expressed  
 19 disagreement with reinstating the exclusion and  
 20 you've kind of given me a sense of where your  
 21 disagreement came from. Were there any other  
 22 reasons presented during that meeting that you  
 23 disagreed with about the reinstatement of the  
 24 exclusion?  
 25 MR. KILPATRICK: And, again, same

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1 objection as before and directive.  
 2 A Reasons against reinstating?  
 3 Q No, no. Were there any reasons that were given  
 4 supporting reinstating the exclusion that you  
 5 disagreed with that we haven't talked about?  
 6 A Not that I recall. If I know what you're asking,  
 7 not that I recall.  
 8 Q Did anyone talk about costs during that meeting?  
 9 A Not that I recall.  
 10 Q Do you know if there was other information -- or  
 11 information from other sources other than ETF and  
 12 the Department of Justice --  
 13 A Okay.  
 14 Q -- presented during the December 30 meeting for  
 15 consideration?  
 16 A Not that I recall.  
 17 Q During the closed session, did anybody talk about  
 18 the procedures in the exclusion or the services in  
 19 the exclusion in detail?  
 20 A Not that I recall.  
 21 Q So nobody discussed anything about the  
 22 effectiveness of these procedures in closed  
 23 session?  
 24 A Not that I recall.  
 25 MR. KILPATRICK: Objection. It

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1 mischaracterizes the witness's statement.  
 2 She said she didn't recall.  
 3 Q Did anyone discuss anything about the safety of  
 4 the procedures during the closed session?  
 5 A Not that I recall.  
 6 Q Not between board members or --  
 7 A Not that I recall, no.  
 8 Q Do you remember how long the discussions went on  
 9 during the closed session?  
 10 A This is the December 30 meeting; correct?  
 11 Q Correct.  
 12 A I don't specifically remember. For some reason  
 13 I'm thinking it was about three hours that the  
 14 meeting lasted from beginning to end. Is that  
 15 accurate? I should look. The minutes would  
 16 relate probably.  
 17 Q Yeah. If we refer back to Exhibit 12, which is  
 18 the confidential closed session meeting minutes?  
 19 A 6:24.  
 20 Q So about three hours?  
 21 A Yeah. I just remember it was a long time on the  
 22 phone.  
 23 Q Who did most of the talking during that three-hour  
 24 period?  
 25 A I don't recall. A variety, I guess. I don't

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1 recall.  
 2 Q So do you recall it being an active sort of  
 3 discussion?  
 4 A Yes. Yes.  
 5 Q Okay.  
 6 A But, yeah.  
 7 Q Do you remember if there was any particular board  
 8 member who was more vocal than the others or  
 9 anything like that?  
 10 A No. No. I know Mr. Day did present some  
 11 concerns, and I'm sure I presented some concerns,  
 12 and those who favored reinstating I'm sure  
 13 likewise presented their reasons, but I don't  
 14 specifically recall.  
 15 Q And I'm sure I know the answer, but I'm going to  
 16 ask anyway. Since you were on the phone and  
 17 members were presenting their opinions over the  
 18 phone for you, would you have been taking notes  
 19 about this meeting?  
 20 A Probably. I can't say for sure, but probably just  
 21 for my own to be able to follow the discussion.  
 22 Q Sure. That's sometimes easier when you're not in  
 23 person. I get that. Do you remember Mr. Wieske  
 24 taking a position on this issue during the closed  
 25 session?

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1 A I can't specifically say I remember it. I think  
2 he probably favored the reinstatement, but I can't  
3 say that for a fact.  
4 Q How about Mr. Farrell, the chairman?  
5 A I don't recall specifically, and usually the  
6 chairperson doesn't necessarily give a position  
7 early on or anything. I don't recall him doing  
8 that, no.  
9 Q Okay. So I'm sure you've figured out by now, I'm  
10 trying to get a sense of how these conversations  
11 typically occur. And so what I would like to  
12 understand is does the board when debating a  
13 policy change, do you guys have a standard  
14 procedure for that? How does that work?  
15 A Basically Robert's rules. If you want to say  
16 something, a board member would raise their hand  
17 or so indicate. The chairperson would call on  
18 that person. That person would indicate whatever,  
19 and sometimes it's longer than others, sometimes  
20 shorter, but just basic procedure like that.  
21 Q So there isn't too much back-and-forth once a  
22 member has presented their opinion or their view?  
23 A Oh, they can speak again. Certainly somebody  
24 might say, well, I didn't understand what you  
25 meant or whatever, but it isn't "unregulated," in

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1 the sense it isn't that just people are speaking  
2 all over the place or whatever, no.  
3 Q And do you remember anybody responding to your  
4 concerns?  
5 A I don't specifically recall that.  
6 Q Or asking any questions following up about your  
7 concerns?  
8 A No. I don't specifically recall that.  
9 Q Or Mr. Day's?  
10 A No, I don't specifically recall that.  
11 Q Okay. So you can set this aside for now.  
12 A Okay.  
13 Q So I know we've talked a lot about the actual  
14 details of what was presented and what you  
15 remember. But I'd like to talk about if you  
16 considered the cost of the procedures that we're  
17 talking about as maybe one of the reasons that the  
18 GIB reinstated the exclusion or voted to reinstate  
19 the exclusion?  
20 A Are you asking me to speculate whether I thought  
21 that's what -- why they were asking for that?  
22 Q I'm asking if you remember if that was one of the  
23 reasons you thought the GIB voted to reinstate the  
24 exclusion, that cost was one of the reasons.  
25 A I don't recall that, no.

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1 Q Do you consider safety to be a reason to -- that  
2 the GIB voted to reinstate this exclusion?  
3 MR. KILPATRICK: I'll object to the  
4 extent it calls for speculation.  
5 A Yeah, I have --  
6 Q Just to the extent that you know.  
7 A Not that I know. Now, ask the question once more.  
8 I'm not sure I remember.  
9 Q Do you consider safety of these procedures to be a  
10 reason why the GIB reinstated this exclusion?  
11 A I don't recall that as being a major factor, no.  
12 Q Do you consider the effectiveness of these  
13 procedures as one of the reasons the board voted  
14 to reinstate the exclusion?  
15 A I don't recall that either, no.  
16 Q Okay. Thank you.  
17 MR. KILPATRICK: Same objection.  
18 Q Okay. We're going to turn to a meeting from 2017.  
19 A Okay.  
20 Q We'll move out of 2016 now.  
21 A Okay.  
22 (Exhibit No. 14 marked for  
23 identification)  
24 Q Exhibit 14?  
25 A Yes.

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1 MR. KILPATRICK: Yes.  
2 Q I'm traumatized to have to ask. If we could turn  
3 to page 5 of this -- let me first ask, you were at  
4 this meeting in February of 2017?  
5 A Yes, I was.  
6 Q Okay. So you'll see about maybe four paragraphs  
7 down it starts with, "Mr. Day stated."  
8 A Okay.  
9 Q "Mr. Day stated that in his opinion, reinstating  
10 the exclusion Could potentially increase the  
11 board's risk of liability for breach of fiduciary  
12 duty." What do you understand that to mean?  
13 A I understand that he was raising the issue of  
14 whether the board would be breaching their  
15 fiduciary duty should that injunction be lifted.  
16 Q What's your understanding of the nature of the  
17 fiduciary duty held by the board?  
18 A To ensure that in making its decisions that  
19 they're in compliance with state and federal  
20 regulations.  
21 Q Are there any other aspects of the board's  
22 fiduciary duty that you can think of?  
23 A Well, I would think certainly there is an issue of  
24 finances, I suppose, if you're being prudent as  
25 far as the benefits. But I would say that's the

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1 primary one, to be in compliance.  
2 Q Does the fiduciary duty held by the board, is it  
3 owed to members of the state health insurance plan  
4 as well?  
5 MR. KILPATRICK: Objection to the  
6 extent it calls for a legal conclusion.  
7 Q You can answer.  
8 A I can answer?  
9 MR. KILPATRICK: Yes.  
10 A I'm not a lawyer. Please once more.  
11 Q Sure. Is it your view that the fiduciary duty  
12 held by the board is also owed to members of the  
13 state health insurance plan?  
14 A Yes.  
15 Q Were you concerned at all about whether you would  
16 breach fiduciary duty by reinstating this exclusion?  
17 A Of course.  
18 Q Can you tell me why?  
19 A Because I think in doing that a person could take  
20 on some personal liability, which I didn't want to  
21 do.  
22 Q And by personal, you mean individual board  
23 members?  
24 A Correct. Correct.  
25 Q Okay. Did you have other concerns?

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1 A Other concerns?  
2 Q Regarding the breach of fiduciary duty, potential  
3 breach of fiduciary duty?  
4 A For the members as well. So, you know, as far as  
5 whether the board was acting in the best interests  
6 of them as well.  
7 Q Do you remember when you, you personally, first  
8 thought that there might be an issue on breach of  
9 fiduciary duty?  
10 A I would say that was when it was first mentioned  
11 when the -- back in 2016 when the exclusion was  
12 initially taken out or recommended to be taken out.  
13 Q Okay. And do you remember any discussions with  
14 individual board members or the board together  
15 between July from when you first thought about the  
16 breach of fiduciary duty, at any point after that?  
17 MR. KILPATRICK: Objection to the  
18 extent it would reveal attorney-client  
19 privileged communications regarding fiduciary  
20 duty.  
21 Q Apart from that.  
22 A So once more your question, please.  
23 Q Do you remember having discussions with individual  
24 board members or the board at large apart from  
25 those discussed during the attorney-client

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1 privileged discussions about the breach of  
2 fiduciary duty?  
3 A I don't recall that, no.  
4 Q I apologize. That was a difficult question.  
5 Okay. We're ready to move on.  
6 (Exhibit No. 15 marked for  
7 identification)  
8 Q Okay. So you're looking at Exhibit 15. This is  
9 another chain of emails that you were not a party  
10 to, but they are between GIB board member Herschel  
11 Day and someone named Christine Larson. I'd like  
12 for you to flip to the second page, if you could.  
13 And all the way at the bottom, it's a message  
14 from Mr. Day responding to Christine Larson, and  
15 he says -- and they're discussing the  
16 reinstatement of the exclusion, and the date on  
17 this is March 19, 2017. And Mr. Day says, "I  
18 voted against the reinstatement of the exclusion  
19 for transgender services and voiced my opposition  
20 throughout the closed session on the matter." And  
21 you previously testified that you also voiced your  
22 opposition during closed session? That's right?  
23 A Correct.  
24 Q All right. If you look at the next sentence, it  
25 says, "In the last GIB meeting, I also tried to

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1 bring up challenges to the notion that all the  
2 requirements for the reinstatement had been met."  
3 Do you remember that?  
4 A I don't specifically recall that, but I think  
5 there may have been a question as far as whether  
6 the fiduciary liability had been satisfactorily  
7 answered.  
8 Q And that likely would be the meeting we were just  
9 talking about, the February 8, 2017, meeting?  
10 A Correct.  
11 Q Okay. And so he says that. Then he goes on to  
12 say, "But, I don't think that my," if you turn to  
13 the next page, "my questions properly addressed  
14 the core of the issue." What is your  
15 understanding of what the core of the issue is  
16 that Mr. Day is referring to?  
17 MR. KILPATRICK: Objection.  
18 Speculation.  
19 A I can't --  
20 Q To the extent that you know.  
21 A I really couldn't answer that, I don't think.  
22 Q From this short except that we've just read, do  
23 you have an opinion on what you think he meant by  
24 that?  
25 A Let me read it again, please. No. I'm sorry. I

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1 don't recall and wouldn't have -- it would be  
2 total speculation.  
3 Q Do you know if -- Let me put it this way. Do you  
4 know if there is any reason why the Group  
5 Insurance Board couldn't choose to provide this  
6 coverage?  
7 A No. I'm not aware of any reason.  
8 Q There is nothing in state law that forbids them  
9 from doing so?  
10 A Not that I'm aware of.  
11 Q And nothing in federal law either?  
12 A Not that I'm aware of.  
13 Q Do you remember that point ever being raised in  
14 the Group Insurance Board meetings, that they  
15 could so choose to provide these benefits?  
16 A I don't remember that specifically, no.  
17 Q How about outside of meetings, in between  
18 meetings, anything like that?  
19 MR. KILPATRICK: Objection. Vague.  
20 A Yeah, I don't recall.  
21 Q Can the board still vote to remove the exclusion?  
22 A Are you asking for right now could they still  
23 vote?  
24 Q Yes.  
25 A I'm not 100 percent sure, but I think they

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1 probably could because they do have -- I believe  
2 the GIB has the ability to modify -- add to,  
3 modify benefits keeping that premium differential  
4 in mind. But doing it in midstream I think would  
5 be difficult.  
6 Q What do you mean by midstream?  
7 A During a contract year. If the information had  
8 gone out to participants, here is what the  
9 benefits are for next year and people have made  
10 and then six months later find out those benefits  
11 had been changed, I think that would be difficult.  
12 Q Kind of like what happened in 2016?  
13 A Yes. Yes.  
14 Q Okay. Okay.  
15 A But certainly benefits can be changed between  
16 contract -- or between contracting periods, and  
17 that's why we always get information on possible  
18 updates or suggestions for changes.  
19 Q Do you recall after the December 30, 2016, meeting  
20 if there ever was a motion made to revisit the  
21 exclusion?  
22 A I believe there was. I don't know if the  
23 motion -- yes. I believe there was, and I think I  
24 may have seconded that motion.  
25 Q Do you remember when that was?

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1 A February maybe of '17. I'm not sure, but I'm  
2 thinking maybe.  
3 Q Let's look back at Exhibit 14 and see if that  
4 helps. So you see on page 5, three-quarters of  
5 the way down Mr. Farrell noted that the board's  
6 December 30, 2016, decision can be revisited at  
7 any date in the future as desired by the board; is  
8 that right?  
9 A Okay. Uh-huh.  
10 Q Do you see anything about a motion being made?  
11 A No, I do not.  
12 Q So it likely would have happened at a subsequent  
13 meeting, then?  
14 A If it did, yes. I don't know.  
15 Q But you do recall there being a motion made?  
16 A I can't say that for sure. I think there was  
17 interest. Whether it came to a motion, I don't  
18 know.  
19 MS. KADRI: Okay. Can we go off  
20 the record, please.  
21 (Recess)  
22 Q I only have a couple more questions.  
23 A All right.  
24 MR. DUPUIS: Famous last words.  
25 Q Okay. So I just want to ask, and we're done with

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1 documents for now, has the GIB ever heard from  
2 insurers directly about any concerns or issues  
3 that they might have?  
4 A Not that I'm aware of.  
5 Q Okay. So in your time on the board, you haven't  
6 received any correspondence from insurers  
7 directly?  
8 A Regarding this particular issue, correct?  
9 Q Correct.  
10 A Not that I recall.  
11 Q Any other issues that you can remember?  
12 A Not that I recall, no.  
13 Q Okay. So usually through ETF?  
14 A Uh-huh. Uh-huh. Yes.  
15 Q So from the information that's been presented to  
16 the board and to you, do you think that there is a  
17 persuasive fiscal argument for this exclusion?  
18 A Do I personally think?  
19 Q Yes.  
20 A A persuasive fiscal argument for the exclusion.  
21 No.  
22 MR. KILPATRICK: Objection to the  
23 extent it calls for a legal conclusion.  
24 A Okay. But if I have to answer it, no.  
25 Q Okay. How about a persuasive safety reason for

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1 this exclusion?  
2 MR. KILPATRICK: Same objection.  
3 A No.  
4 Q And a persuasive efficacy reason for this  
5 exclusion?  
6 MR. KILPATRICK: Same objection.  
7 A No, but I guess I would need more data, you know,  
8 information. But not that I'm aware of.  
9 Q So if not cost, safety, or efficacy, in your  
10 opinion what do you think the underlying reason  
11 for this exclusion is?  
12 MR. KILPATRICK: Objection.  
13 Speculation.  
14 A I do not know. I could not say.  
15 Q In your opinion, why do you think the GIB  
16 reinstated the exclusion?  
17 MR. KILPATRICK: Objection.  
18 Speculation.  
19 Q In your opinion. Your personal opinion.  
20 A Reinstated the exclusion. Because I think based  
21 on the -- again, only my opinion. Based on the  
22 motion that passed to reinstate with the  
23 contingencies, I think they felt that that covered  
24 the concerns that they had.  
25 Q And who is they that you're referring to?

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1 A The GIB.  
2 Q The GIB.  
3 A The members who voted to reinstate it.  
4 Q And can you tell me what concerns you're talking  
5 about there? That voting to reinstate covered the  
6 concerns, what are the concerns?  
7 A The contingencies that have been identified that  
8 they felt, okay, if these were met, we're okay  
9 with reinstating it. Because I think there was --  
10 at the time they were reinstated, if I remember  
11 correctly, there had been no decision on that  
12 legal, with the Texas. I think there was a Texas  
13 case, or someplace there was a case, and there had  
14 been no decision on that and I think they felt  
15 comfortable. But I can't speculate as far as each  
16 person's motivation.  
17 Q Do you recall if there was more discussion around  
18 the Texas case as opposed to the other contingencies?  
19 A No.  
20 MR. KILPATRICK: Objection to the  
21 extent it would reveal attorney-client  
22 privileged communication.  
23 Q So to clarify, the contingencies sound like  
24 reasons why the board could justify reinstating  
25 the exclusion but not the underlying reason for

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1 why they wanted to. What is your opinion about  
2 the underlying reason for why they wanted to  
3 reinstate the exclusion, not the reasons that  
4 would justify it?  
5 MR. KILPATRICK: And, again,  
6 objection, speculation, but you can answer.  
7 A I don't know. I can't speak to --  
8 Q No personal opinion on that at all?  
9 A No. No.  
10 MS. KADRI: Okay. I think we're  
11 done.  
12 MR. KILPATRICK: So we agree that  
13 at a later agreed upon date and time we will  
14 reopen the deposition after we provide you  
15 with notes by Ms. Thompson that were taken at  
16 various GIB board meetings that would be  
17 responsive to previously propounded discovery.  
18 MS. KADRI: Okay. Yes.  
19 MR. DUPUIS: Okay. Thank you.  
20 THE WITNESS: You're welcome.  
21 MR. KILPATRICK: Okay.  
22 (Adjourning at 12:17 p.m.)  
23  
24  
25

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1 STATE OF WISCONSIN )  
2 COUNTY OF DANE ) ss.  
3  
4 I, Peggy S. Christensen, Registered Professional  
5 Reporter and Notary Public in and for the State of  
6 Wisconsin, do hereby certify that the foregoing  
7 deposition of NANCY L. THOMPSON was taken before me  
8 on May 25, 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 29th day of May 2019.  
20  
21  
22  
23 Notary Public, State of Wisconsin  
24 My Commission Expires August 7, 2020  
25

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