

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALINA BOYDEN and SHANNON ANDREWS,

Plaintiffs,

-vs-

Case No. 17-CV-264-WMC

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

Madison, Wisconsin
October 9, 2018
1:34 p.m.

Defendants.

STENOGRAPHIC TRANSCRIPT OF FIRST DAY OF JURY TRIAL
(AFTERNOON SESSION)
HELD BEFORE U.S. DISTRICT JUDGE WILLIAM M. CONLEY

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1 (On the record at 1:34 p.m.)

2 THE COURT: I am delighted to report that Mr. Manley is
3 as sharp as a tack, and we'll bring him and the rest of the jury
4 out at this time.

5 (Jury enters the courtroom at 1:34 p.m.)

6 THE CLERK: This Honorable Court is again in session.
7 Please be seated and come to order.

8 THE COURT: Members of the jury, welcome back. We will
9 continue with the direct testimony of Ms. Andrews, and you may
10 proceed, Counsel.

11 MR. FAIRWEATHER: Thank you, Your Honor.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. FAIRWEATHER:

14 Q Shannon, when we broke for lunch, you were testifying about
15 your first meeting with Dr. Biondi, and I think you provided
16 testimony about how you found him. Do you recall that?

17 A Yes, I do.

18 Q How long did you see Dr. Biondi -- Mr. Biondi? Excuse me.

19 A I saw him from 2012 to the summer of 2015, although there
20 was a year gap in 2012 where I was unemployed until 2013 when I
21 didn't see him because I was afraid I couldn't pay.

22 Q I'm sorry. You were unable to pay for it? Is that --

23 A Correct. There was a year gap.

24 Q Okay. Did you at any time during your sessions with
25 Mr. Biondi discuss insurance coverage for any of the medical

1 interventions for transition?

2 A Yeah, we did. He was the one who told me that the
3 exclusion existed. I knew before then that, of course, Dean
4 didn't cover care, but I was unaware that it was a wider
5 statewide thing until I talked to him.

6 Q So you began your full-time employment with the Carbone
7 Center in 2014; is that correct?

8 A Correct.

9 Q Did Mr. Biondi inform you of the exclusion prior to that
10 time?

11 A He did.

12 Q And what was the context of that if you were not yet
13 employed with the state?

14 A I asked him basically -- and we had a couple of
15 conversations about this, but at various times I asked him if
16 there was any kind of insurance that would pay for trans-related
17 care or if there was some kind of supplemental insurance I could
18 get or if I could, like, you know, move to a different area of
19 Wisconsin or something, and he said, "Well, it's the same
20 everywhere."

21 THE COURT: I'm going to ask you to move forward or
22 move the mic toward you, one way or the other. Close the
23 difference.

24 THE WITNESS: Is this good?

25 THE COURT: Perfect. Thank you.

1 BY MR. FAIRWEATHER:

2 Q At the time that Mr. Biondi told you about the exclusion,
3 had you been experiencing symptoms related to gender dysphoria?

4 A Yes.

5 Q And what were you experiencing at that time prior to having
6 any medical intervention?

7 A Depression and anxiety and suicidal thoughts.

8 Q Can you describe some of the other emotions that you felt
9 prior to -- immediately prior to having medical intervention for
10 your transition?

11 A I think there was a fair mixture of both desperation, in a
12 sense of being eager to get, you know, moving towards having
13 some sort of care and being able to live my life, and fear that
14 if I didn't get the kinds of care I needed, that I could get
15 stuck in a way where I wouldn't be able to participate in
16 society.

17 Q And what was the first piece of medical intervention you
18 had for your transition?

19 A In 2012 after my postdoctoral fellowship ran out, I started
20 doing electrolysis, which is hair removal on my face.

21 Q And how long did you do that?

22 A About weekly for several years up through 2015.

23 Q And how did you pay for it?

24 A Out of pocket.

25 Q Now, after electrolysis, what did you do next with respect

1 to any medical intervention?

2 A I was seeing a therapist, and from his advice I found out
3 that if I went to Illinois, I could get hormone replacement
4 therapy under informed consent, and so in October of 2013 I did
5 that.

6 Q And what's your understanding of what hormone therapy is?

7 A Well, for trans women like me, it involves two medications.
8 One is an antiandrogen that suppresses testosterone, and one is
9 an estrogen supplement that brings estrogen levels up to what
10 would be normal for a woman of my age.

11 Q And your testimony was that you began that hormone therapy
12 in October of 2013; is that right?

13 A Correct.

14 Q Are you still taking hormones?

15 A Yes.

16 Q How did you pay for the treatment beginning in fall of
17 2013?

18 A I was unemployed at the time, and they were a clinic that
19 served low-income populations, so I paid out of pocket on a
20 sliding scale, which was about \$5.

21 Q Now, prior to starting the hormone therapy, can you
22 describe for the jury what your mental health state was like?

23 A It was, you know, frequently suicidal. I think the main
24 thing that kept me going was just the thought that I was going
25 to have treatment, and, you know, that was kind of a lifeline.

1 Q Now, ultimately you began your employment, as you testified
2 earlier, in March of 2014 with Carbone; is that right?

3 A Yes.

4 Q And following the electrolysis and hormone therapy, did you
5 start to investigate other potential medical interventions?

6 A Well, I had spoken with my therapist in 2012 saying that
7 surgery was my ultimate goal and something that I wanted, so,
8 you know, in 2014 when I landed my job, I made sure that saving
9 up for that was my first priority.

10 Q And when did you start saving for that procedure?

11 A Well, I had been saving for it for a long time. I had, you
12 know, kind of had some funds in a Roth IRA that were intended
13 for retirement but that I knew I could liquidate. You know, I
14 had kind of been putting money away since grad school in small
15 and large ways.

16 Q Did you ultimately have the surgery?

17 A I did.

18 Q And where did the surgery take place?

19 A Pennsylvania, New Hope.

20 Q And was the surgeon also -- you found a surgeon in
21 Pennsylvania; is that accurate?

22 A Correct.

23 Q And why did you select a surgeon in Pennsylvania?

24 A At the time there was no one in Wisconsin who could perform
25 that surgery. That's since changed. Now there's someone at the

1 UW Hospital, but that wasn't true at the time.

2 Q Do you recall when you had the surgery?

3 A It was late October of 2015.

4 Q So at that time you were a full-time employee of the
5 Carbone Cancer Center, correct?

6 A Correct.

7 Q Did you submit the claim to your insurer at that point?

8 A I had attempted to contact WPS before I had surgery. You
9 know, I knew from Mr. Biondi that they had the exclusion, but I
10 called them on the phone anyway, and I said, "Well, you know, I
11 know the Affordable Care Act is going into effect soon and that
12 there's this nondiscrimination clause, so, you know, presumably
13 this law is going to change at some point," and I wondered if
14 they could tell me, you know, if I waited, would there be
15 coverage later or, you know, could we kind of work something out
16 where I could get pre-approved, and they didn't want to talk to
17 me about that. They just said, "Well, we don't do transgender
18 health care," and that was the end of that conversation. And so
19 I decided, since I didn't know if things were ever going to get
20 better, I was just going to go ahead and pay out of pocket.

21 Q So is that what you did?

22 A Yes.

23 Q And do you recall how much you paid out of pocket for the
24 surgery?

25 A \$21,500.

1 Q Do you see the document there in front of you?

2 A I do.

3 Q And it's a four-page document. I'll represent that to you.
4 You can't obviously tell from your screen. Do you recognize the
5 first page?

6 A I do. This was the initial denial I got -- this was the
7 initial denial I got from WPS.

8 MR. FAIRWEATHER: Your Honor, I'd like to go through
9 all four pages before I move their admission. Is that
10 acceptable to the Court?

11 THE COURT: Well, because the jury can't see it, I
12 think it would make more sense for you to admit it if you
13 want -- if you want the jury to see this exhibit.

14 MR. FAIRWEATHER: Sure. I'll move the admission of
15 Exhibit 11.

16 THE COURT: The only open question was a handwriting,
17 and has that been removed or --

18 MR. FAIRWEATHER: Yes, we've redacted all the
19 handwriting.

20 THE COURT: All right. Then that's fine. Then it is
21 admitted.

22 BY MR. FAIRWEATHER:

23 Q So your testimony, if I understood, was that the first page
24 at least was the denial from WPS; is that right?

25 A Correct.

1 Q Okay.

2 THE COURT: It should be on the jury's screen now as
3 well.

4 Counsel, do we need a sidebar? Otherwise I'd ask you to
5 proceed.

6 MR. FAIRWEATHER: Okay. Thank you.

7 BY MR. FAIRWEATHER:

8 Q Shannon, I'll have you look at the very top of the first
9 page, Exhibit 11. Do you see where it says *Explanation of*
10 *Benefits*?

11 UNIDENTIFIED JUROR: We don't have anything on our
12 screen here.

13 THE WITNESS: I do.

14 THE COURT: I'm sorry?

15 MR. FAIRWEATHER: We don't have it on the screen.

16 THE COURT: Your screen is not coming on?

17 UNIDENTIFIED JUROR: No, none of them are.

18 THE COURT: Let me try one more time. Nothing?

19 UNIDENTIFIED JURORS: No.

20 THE COURT: I don't think I've ever had a problem with
21 this. There shouldn't be a monitor for turning them on or off,
22 but you might want to just check to see. Does anyone see it at
23 all, any of the jury members? We'll address that -- I guess
24 we'll be proceeding without them having it. You will have a
25 copy of it for deliberations, and I'll make arrangements to have

1 someone from IT come in and address it. Sorry.

2 You may proceed, Counsel.

3 MR. FAIRWEATHER: Thank you.

4 BY MR. FAIRWEATHER:

5 Q Shannon, I'm going to show you what's page 2 of that
6 document.

7 THE COURT: Are you seeing -- it's still not on your
8 screens?

9 JUROR MANLEY: Nothing at all.

10 THE COURT: I apologize. You may proceed.

11 BY MR. FAIRWEATHER:

12 Q I'm going to zoom in a little bit on that for you. Do you
13 recognize this page, which is marked PL000594?

14 A I do.

15 Q And what is this?

16 A It's a receipt from Lower Bucks County Hospital, which is
17 where the surgery was performed.

18 Q Does it identify "Payment Amount"?

19 A It does.

20 Q What is that payment amount?

21 A \$4,900.

22 Q Page 3 of Exhibit 11 is in front of you. Do you recognize
23 that page?

24 A I do.

25 Q What is this page?

1 A I think that this was a bill that Lower Bucks County
2 Hospital submitted to my insurance company after I asked them if
3 they could do that.

4 Q And how did you -- how was it that you received a copy of
5 this bill?

6 A I received it when I asked WPS for some of the documents
7 related to my denial of coverage.

8 Q And the final page, which is marked PL000596, do you
9 recognize this page, page 4 of Exhibit 11?

10 A I do.

11 Q And what is this?

12 A This was a receipt or an invoice directly from the
13 surgeon's office.

14 Q You testified that prior to having the procedure done, you
15 sought preapproval from WPS; is that right?

16 A I did.

17 Q After paying out of pocket, did you submit the claim back
18 to WPS?

19 A I did.

20 Q And what was the response you received?

21 A I received basically just a pro forma denial that said the
22 plan covers zero dollars.

23 Q Now, the money that you paid out of pocket, how did you
24 come up with that?

25 A I had a Roth IRA fund that I liquidated early to -- you

1 know, I had a little bit of a penalty to pay for that, and the
2 rest came out of my personal savings.

3 Q Do you recall what the penalty was?

4 A About 10 to 20 percent. I don't remember more precisely.

5 Q Now, after you received the correspondence from WPS stating
6 they weren't going to cover any of it, did you appeal that
7 decision somehow?

8 A I did.

9 Q And to whom did you appeal the decision?

10 A To WPS's grievance board.

11 Q Did you appear in front of the grievance board?

12 A I did.

13 Q Do you recall when that was?

14 A That was in either April or May of 2016.

15 Q Was that here in Madison?

16 A It was.

17 Q And do you recall who was on the board at the time that you
18 appeared?

19 A No, I don't remember their names.

20 Q Can you describe for the jury what happened at that hearing
21 in front of the board?

22 A Yeah. So basically after getting this denial, I wanted to
23 try to talk to WPS and see if I could convince them that my
24 medical care was medically necessary and that they should cover
25 it, and so I kind of drew on some of my expertise as a medical

1 researcher, and I got together all of the research that I could
2 find, or at least what I thought was a representative sampling
3 of it, and, you know, I wrote them saying, well, you know, if I
4 didn't get this treatment, if I had to stay on the
5 antiandrogens, I would be facing potential health problems like
6 heart failure, kidney failure, liver problems, all of which
7 would be much more expensive to treat than it would be to just
8 cover the surgery, and, you know, additionally that I was
9 suffering all this anxiety and depression and that, you know,
10 having treatment had helped a lot, and so I hoped that I could
11 convince them of the medical necessity and that it was both, you
12 know, a moral thing to do, that it was a financially smart thing
13 to do because it was cheap compared to the alternatives, and
14 that, you know, because of the nondiscrimination clause in the
15 ACA, that it was also, you know, the legally correct thing to
16 do.

17 MR. ROTH: Objection, the witness isn't --

18 THE COURT: The objection is calls for a narrative, and
19 it's sustained, and you should strike that last testimony and
20 not consider it until a proper question and answer is given.

21 And you may ask another question.

22 BY MR. FAIRWEATHER:

23 Q Shannon, after you presented your case and the evidence you
24 brought, did you get a response from that board as to your
25 appeal?

1 A Yes, I did.

2 Q And was that response given to you at the meeting or at the
3 hearing of the board?

4 A Well, I received an informal response at the hearing and
5 then a formal one by mail a few days later.

6 Q Let's start with the informal. What happened? Who talked
7 to you and what was said to you?

8 A I talked to the guy who was representing WPS in that
9 hearing, and he was, you know, friendly, but he just kind of
10 said to me, "Well, this is kind of above our pay grade, and, you
11 know, because of the exclusion, we can't really debate this with
12 you."

13 MR. ROTH: Objection. Hearsay.

14 THE COURT: I'll sustain that objection to this extent:
15 You can consider it as to the state of mind or what the reaction
16 of the witness was to the statement, but the fact of what -- why
17 WPS did what they did is not properly before you because that is
18 hearsay.

19 And you may proceed.

20 BY MR. FAIRWEATHER:

21 Q And after you heard from WPS informally, how did it make
22 you feel?

23 A Frustrated. I guess I felt like the State had
24 inappropriately inserted itself between me and my doctors, and I
25 was upset about that.

1 Q And you testified that you received a formal denial as
2 well?

3 A I did.

4 Q When did you receive that as related to the time that you
5 appeared at the board?

6 A Within a couple of days of talking to the board.

7 Q And how did you feel after receiving that formal denial?

8 A Well, given what had been said to me earlier, I wasn't
9 surprised, but I was upset. I had thought they would perhaps
10 meet me halfway, and they didn't.

11 Q Now, the surgery that you received, how long was the
12 recovery period?

13 A I was out of work for about two months, but full recovery
14 took a year.

15 Q And is this surgical intervention what we've been referring
16 to as gender confirmation surgery?

17 A Yes, that's correct.

18 Q Can you describe for the jury what it felt like to have
19 finally gotten gender confirmation surgery?

20 A It was kind of like waking up from a nightmare or healing
21 from a wound that you'd had so long that you couldn't remember
22 what it was like to be healthy. I felt a tremendous release of
23 stress and anxiety. I had co-workers and friends say to me that
24 I seemed less anxious and less stressed out.

25 THE COURT: We're going to break for just a second. If

1 you want to come forward, Josh, and just -- for some reason the
2 video in the jury box is not working. We're just going to go
3 off the record for a moment.

4 (Pause in proceedings.)

5 THE COURT: I don't know what you did, but it worked.
6 Thank you very much.

7 We'll go back on the record, Counsel.

8 Thank you very much.

9 MR. FAIRWEATHER: Thank you.

10 BY MR. FAIRWEATHER:

11 Q Now, Shannon, you mentioned that there was a mention of an
12 exclusion at this hearing; is that right?

13 A Correct.

14 Q And were you told where the source of this exclusion was?

15 MR. ROTH: Objection. Calls for hearsay.

16 THE COURT: I'll sustain that.

17 BY MR. FAIRWEATHER:

18 Q Now, after you received gender confirmation surgery, your
19 testimony was that you felt somewhat relieved; is that right?

20 A Correct.

21 Q The symptoms that you described earlier of gender
22 dysphoria, how did those change, if at all, after your recovery?

23 A I felt a substantial reduction in anxiety and depression.

24 I felt, you know, more like I could start kind of living my
25 life. There was still difficulties, but I felt like one major

1 problem was resolved.

2 Q Have you had any other surgical interventions as part of
3 your transition?

4 A One other.

5 Q And what is that?

6 A What's commonly called facial feminization surgery, which
7 is really kind of a collection of surgeries.

8 Q And when did you have that surgery?

9 A February of this year.

10 Q Did you seek preauthorization from your insurance provider
11 at that time?

12 A No, I didn't bother.

13 Q And why not?

14 A Because they had -- well, first of all, WPS had already
15 denied me, and I knew that Dean had already denied other
16 transgender people.

17 MR. ROTH: Objection. Foundation.

18 THE COURT: Again, it's only relevant as to what this
19 witness did and the impact on her. As to the truth of the
20 matter, whether or not Dean had denied other transgender people,
21 that is not evidence through this witness. That is hearsay.

22 And you may proceed, Counsel.

23 BY MR. FAIRWEATHER:

24 Q So you ultimately had facial feminization surgery; is that
25 right?

1 A Correct.

2 Q And how did you pay for it?

3 A My savings, what I had managed to save up since the last
4 surgery, combined with some money that I had borrowed from my
5 parents.

6 Q Do you recall the exact amount that you paid for facial
7 feminization surgery?

8 A Slightly less than \$50,000.

9 MR. FAIRWEATHER: Judge, I just want to assure that the
10 jury is not going to see this. I want to use something to
11 refresh memory.

12 THE COURT: And that's where you -- there you are.

13 MR. FAIRWEATHER: Okay. Thank you.

14 BY MR. FAIRWEATHER:

15 Q Shannon, I'm going to show you a document that you can look
16 at, first page there. Do you recognize that?

17 A I do.

18 Q And what is that document?

19 A This is a receipt that I received from my surgeon's office
20 for facial surgery.

21 Q And what is the amount on that?

22 THE COURT: Counsel, that's why it's not admitted. You
23 can ask her what she paid --

24 MR. FAIRWEATHER: Sure.

25 THE COURT: -- but you can't ask her to read something

1 that's not admitted into evidence.

2 BY MR. FAIRWEATHER:

3 Q What did you pay for the facial feminization surgery?

4 A 49,500-some dollars.

5 Q Okay.

6 THE COURT: And that's the total you paid, 49
7 something?

8 THE WITNESS: Yes. There was also a deposit.

9 BY MR. FAIRWEATHER:

10 Q You've testified about an exclusion of coverage here today.
11 How is it that you know about the exclusion?

12 A Well, I first learned about it from my therapist,
13 Dr. Biondi.

14 Q And have you obtained additional information about it at
15 any point since then?

16 A I was told about it by WPS, and when I started talking to
17 lawyers, which I did around the time I had my appeal to WPS --

18 MR. ROTH: I'm going to object on hearsay grounds
19 again.

20 MR. FAIRWEATHER: Judge --

21 THE COURT: Counsel, there's no need for -- I
22 understand the objection, and the instruction is the same. At
23 this point you're hearing the descriptions of this witness, how
24 she learned about the exclusion. You can consider it with
25 respect to the witness and the impact on the witness of the

1 exclusion.

2 And you may proceed, Counsel.

3 BY MR. FAIRWEATHER:

4 Q And how has the exclusion made you feel?

5 A If you'll permit me to be a little bit longer, angry and
6 depressed, and, you know, I sort of felt like, well, I had done
7 all this stuff throughout my life to try to, you know, provide
8 health care in Wisconsin, to work in medical research, and it
9 felt like the State was telling me that I was good enough to
10 give medical care to other people but not good enough to get it,
11 that I could come and devote my life to research and to medical
12 research and pour out my last drop of blood, and it wouldn't be
13 enough.

14 Q Now, you've given testimony about the total amount that
15 you've paid out of pocket for medical intervention related to
16 your transition as of -- well, starting in March of 2014; is
17 that right?

18 A Correct.

19 Q Had you had health insurance coverage through the State
20 Uniform Benefits, would you have gotten that treatment sooner?

21 A Yes.

22 Q When would you have gotten it?

23 A Well, I had made another attempt in 2012, so if there had
24 been someone on staff who was capable of treating me, I would
25 have jumped at that. I mean, really, if there had been anyone

1 at any point previous in my life who had said, "Yeah, we know
2 what's going on with you, and we're going to treat you," I would
3 say, "Sign me up."

4 MR. FAIRWEATHER: Your Honor, I have nothing further
5 subject to redirect.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. ROTH:

9 Q Good afternoon, Ms. Andrews. You probably remember me from
10 a few weeks ago when we had a deposition, but, again, I'm Colin
11 Roth from the Wisconsin Department of Justice here representing
12 the defendants, and I'm going to ask you a few questions.

13 So during your testimony earlier today, you talked about
14 some of the distress that you've experienced since March 2014;
15 is that correct?

16 A Yes.

17 Q But it's true that you have experienced symptoms from
18 gender dysphoria the majority of your life, right?

19 A Yes.

20 Q And you told the jury that you've identified as a female
21 since you were 4 or around 5 years old; is that right?

22 A Yes, with various changes in my understanding.

23 Q And you had some symptoms of gender dysphoria before you
24 went through puberty, but then they got worse after puberty; is
25 that correct?

1 A That's correct.

2 Q And in middle school is it true that you sometimes did feel
3 suicidal because of your desire to live as a woman?

4 A Yes.

5 Q And you were also very depressed in high school because of
6 your desire to live as a woman; is that correct?

7 A Yes.

8 Q And in college you didn't receive any treatment for gender
9 dysphoria; is that right?

10 A Correct.

11 Q And none of your fellow students or roommates knew that you
12 were transgender?

13 A I didn't have any, no roommates and no students I talked
14 to.

15 Q When you went to grad school, your distress from the gender
16 dysphoria got worse; is that correct?

17 A Correct.

18 Q And a few years after you got your Ph.D., sometime around
19 2011, you were again extremely depressed and suicidal; is that
20 correct?

21 A Correct.

22 Q I just want to be clear, all of that happened before March
23 2014, which is the damages period in this case; is that correct?

24 A Correct.

25 Q I'd like to talk just very briefly about your employment

1 history. You talked a bit about some jobs that you've had
2 before starting at the Carbone Center at the University of
3 Wisconsin; is that right? Do you remember that testimony?

4 A I do.

5 Q I believe you testified that in 2012 and 2013 you worked
6 with a Dr. Yin; is that correct?

7 A I worked with him from 2010 to 2012.

8 Q 2010 to 2012. And then I think you testified that your job
9 after that was at the Carbone Center starting in March 2014; is
10 that correct?

11 A That's correct.

12 Q Correct me if I'm wrong, but I don't recall you mentioning
13 any jobs between those two; is that right?

14 A No.

15 Q But it's true that you did have another job in the fall of
16 2013, correct?

17 A I did, briefly.

18 Q And that was at the Morgridge Center, which is an entity
19 affiliated with the university; is that right?

20 A Morgridge Discovery Institute. Morgridge was the
21 commercial half, and Discovery Institute is the public half.

22 Q And you only had that job for two months; is that right,
23 about two months?

24 A That's correct.

25 Q And you lost that job because you were fired; is that

1 correct?

2 A That's correct.

3 Q And did you get fired because you weren't present enough at
4 work and your supervisor didn't like the results of your
5 experiment that you were working on?

6 A That's correct.

7 Q And, again, that was before March 2014, which is the
8 damages period in this case, correct?

9 A That's correct.

10 Q So you testified that after March 2014, which is the
11 relevant period here, the coverage exclusion that we've been
12 discussing prevented you from getting relief from your gender
13 dysphoria symptoms; is that right?

14 A Correct.

15 Q But it's correct that you did experience some relief from
16 your symptoms from treatments and other decisions you made aside
17 from gender reassignment surgery; is that right?

18 A I'm sorry. Could you repeat that question?

19 Q Sure. You did experience some relief in your distress from
20 gender dysphoria from things other than the surgery you
21 ultimately had; is that right?

22 A It's possible that I may have, but I'm struggling to recall
23 any specific instance.

24 Q Okay. I think you testified in September 2012 you began
25 seeing a therapist to address your gender dysphoria for the

1 first time; is that right?

2 A That's correct.

3 Q Is it true that those early sessions went very well?

4 A That's correct.

5 Q And you stopped seeing him after a couple sessions in 2012,
6 started back up in 2013; is that right?

7 A That's correct.

8 Q And we'll come back to those 2013 sessions in a bit. For a
9 moment I'd like to turn to the hormone replacement therapy that
10 you talked about a little bit earlier. It's correct that you
11 started the hormone replacement therapy in October of 2013 or
12 thereabouts, right?

13 A Correct.

14 Q Do you recall going in for a checkup about six months later
15 with your provider who prescribed those hormones, around April
16 2014?

17 A I do.

18 Q And that is after, obviously, March 2014 when our damages
19 period begins; is that right?

20 A Correct. I think that would have been in April.

21 Q Do you recall telling your doctor at that April 2014
22 meeting that your problems with depression had been resolved?

23 A I don't recall it, but I do remember seeing it in the
24 records you showed me.

25 Q Was that accurate at the time?

1 A I felt substantial relief, yes.

2 Q So also in April 2014 or around then, you had recently
3 transitioned to presenting as a woman to your social groups and
4 had come out to your family; is that correct?

5 A Yes, outside of work, yes.

6 Q Right. And you had just started a new job at UW at the
7 Carbone Center, correct?

8 A Correct.

9 Q About in April 2014, somewhere around there?

10 A March, yes.

11 Q Is it true that those events together with starting hormone
12 replacement therapy had you feeling pretty good in the spring of
13 2014?

14 A Not about gender dysphoria, but generally, yes.

15 Q So generally you were feeling pretty good?

16 A Yes.

17 Q Is it true that you weren't experiencing much depression at
18 this time?

19 A I had bad days, but I think it was an improvement over what
20 I had experienced previously.

21 Q So is that a yes?

22 A Yes.

23 Q Were you happy to have successfully come out to your
24 friends and family recently?

25 A Very.

1 Q And were you happy to have found gainful employment?

2 A Very.

3 Q Is it true that you didn't have any concerns about
4 insurance coverage in the spring of 2014?

5 A Insurance coverage related to SRS or insurance coverage in
6 general?

7 Q In general.

8 A I was happy to have insurance through my work, yes.

9 Q So you didn't have any concerns; is that correct?

10 A I don't think it's accurate to say I had no concerns. I
11 was aware of the exclusion, and I was dealing with it on the
12 basis that it existed.

13 Q So you remember our deposition a few weeks ago when I asked
14 you questions and you gave me answers?

15 A I do.

16 Q And you answered those questions truthfully?

17 A I did.

18 Q Do you recognize this document that I'm showing you?

19 A I do.

20 Q I'd like to direct your attention to page 166, Line No. 7.

21 I asked you whether you had any concerns about insurance
22 coverage at this time --

23 THE COURT: Counsel --

24 MR. ROTH: -- and you said no.

25 THE COURT: It's page 166, line --

1 MR. ROTH: 7.

2 THE COURT: Line 7.

3 MR. ROTH: Line 7.

4 THE COURT: And you don't get to paraphrase the
5 question. You get to read the question and the answer. So you
6 could start again.

7 BY MR. ROTH:

8 Q I asked you whether -- I asked you: "No concerns about
9 insurance coverage at this time?"

10 And you said, "No."

11 Is that right?

12 A That was in reference to an appointment I had with
13 Mr. Biondi, yes.

14 Q Are you sure it's not an appointment -- in reference to an
15 appointment you had with your hormone therapy provider in
16 April of --

17 A Can you move the page a little bit to the right so that I
18 can see what's on the previous page? Is that 155 there?

19 THE COURT: Yes, it's -- above it is 165, directly
20 above it.

21 THE WITNESS: Oh, directly above it on that side.
22 Okay. Can I have a moment to read this?

23 THE COURT: You may.

24 THE WITNESS: Yes. This was in reference to a call I
25 had made to the Howard Brown Health Center.

1 BY MR. ROTH:

2 Q Sometime around April 2014; is that right?

3 A That's correct.

4 Q Okay. I'd like to talk a little bit about your experience
5 at work after you started at the Carbone Cancer Center. You
6 testified that, again after March 2014, that's where your new
7 job was; is that right?

8 A Correct.

9 Q And you came out as transgender to your co-workers at the
10 Carbone Cancer Center in June 2014; is that right?

11 A That's correct.

12 Q And after you came out to your co-workers in June 2014,
13 there were no major parts of your life in which you were hiding
14 your transgender status; is that right?

15 A Correct.

16 Q And coming out as transgender in all aspects of your life,
17 that substantially reduced your level of social distress; is
18 that correct?

19 A Correct.

20 Q And for about the next two years after April 2014, is it
21 true that you were experiencing a lot of reduction in your
22 gender dysphoria-related distress?

23 A Yes.

24 Q And for about those next two years, you were in pretty high
25 spirits and experiencing fairly little distress; is that

1 correct?

2 A On average, yes.

3 Q And just to be clear, that two years that we're talking
4 about all came after the start of the damages period in this
5 case; is that correct?

6 A Correct.

7 Q I'd like to return to your therapy sessions that you had
8 with Mr. Biondi. You restarted those in late 2013; is that
9 right?

10 A Correct.

11 Q So in June 2014, which, again, is after you had come out at
12 work, do you recall telling your therapist that you felt good
13 about presenting as a female at work and that things were
14 finally starting to feel aligned?

15 A Yes.

16 Q Was that accurate?

17 A Yes.

18 Q And I think that's consistent with your earlier testimony
19 that after coming out your mood improved significantly?

20 A Correct.

21 Q In July 2014, do you recall telling your therapist that
22 things were going much better and that overall you felt much
23 better and that people were being very supportive?

24 A Yes.

25 Q Was that accurate?

1 A Yes.

2 Q In September of 2014, do you recall telling your therapist
3 that you were feeling much better since living full time as a
4 woman?

5 A Yes.

6 Q Was that accurate?

7 A Yes.

8 Q In October of 2014, do you recall telling your therapist
9 that overall things were going much better than you would have
10 thought possible?

11 A Yes, I do.

12 Q Is that accurate?

13 A Yes.

14 Q In July of 2015, do you recall telling your therapist that
15 you had a lot of hope for your future and that you felt like you
16 were just beginning to live your life?

17 A Yes.

18 Q Was that accurate?

19 A Yes.

20 Q And this is all after the March 2014 damages period,
21 correct?

22 A Correct.

23 Q You stopped going to therapy in July of 2015; is that
24 right?

25 A Correct. I did have a couple therapist appointments with

1 doctors who were not Mr. Biondi after that, but that was my last
2 appointment with him since he moved.

3 Q Do you recognize this document, Ms. Andrews?

4 A I saw it at the deposition.

5 Q And what does it appear to be?

6 A Looks like Mr. Biondi's notes.

7 MR. ROTH: I'm going to move to admit and publish it to
8 the jury.

9 THE COURT: That would be fine, Counsel, if you gave it
10 a number.

11 MR. ROTH: I do have a number on the front, but I can
12 put another sticker on this page.

13 THE COURT: It's more important -- have counsel agreed
14 on what number this will be?

15 MR. ROTH: It's a segment of 514. I can put a 514A
16 sticker on it.

17 THE COURT: We're going to have a brief sidebar. This
18 was to have been discussed ahead of time, but that's fine. This
19 will take a moment.

20 (Discussion held at sidebar at 2:13 p.m.)

21 THE COURT: All right. So I know that it was
22 originally 514. That was all the documents. I told you either
23 assign a specific number or an A, B, or C.

24 MR. ROTH: Okay.

25 THE COURT: Is this the only part that's going to be

1 introduced, one page?

2 MR. ROTH: No. With this particular document, I'm
3 going to introduce probably every single page. I just haven't
4 gotten there yet.

5 THE COURT: So then it's Exhibit 514 that you're moving
6 admission of, and as I understand it, there's no objection any
7 longer.

8 MR. FAIRWEATHER: Right.

9 THE COURT: So I will accept it as Exhibit 514, and
10 then you should proceed to identify the page by Bates number or
11 some other way that it will be clear for the record.

12 MR. ROTH: Very good. Very good.

13 THE COURT: Step back.

14 (Sidebar discussion ends at 2:14 p.m.)

15 THE COURT: All right. I am admitting Exhibit 514,
16 which is a series of medical records from -- is it Mr. Biondi?

17 THE WITNESS: Yes. He did not have a Ph.D.

18 THE COURT: That's fine. Then Mr. Biondi it is, and
19 514 is admitted, and you may proceed, Counsel.

20 BY MR. ROTH:

21 Q So we're on page -- if you look in the lower right-hand
22 corner, is that page PL000550, correct?

23 A Yes.

24 MR. ROTH: And permission to publish? I think I
25 have --

1 THE COURT: It's been admitted, so you may.

2 MR. ROTH: All right.

3 THE COURT: And your question is, Counsel?

4 BY MR. ROTH:

5 Q I'd like to direct your attention to the paragraph where
6 I'm pointing. The document reads "Shannon has made" -- sorry.
7 Before I do that -- never mind. It says, "Shannon has made" --

8 THE COURT: Typically I wouldn't have you read it. Are
9 you going to read in just a sentence or are you going to read
10 the paragraph? I don't understand.

11 MR. ROTH: I'm going to read the sentence and ask her
12 if it's accurate.

13 THE COURT: All right. You may proceed.

14 BY MR. ROTH:

15 Q Ms. Andrews, do you see where it reads, "Shannon has made
16 tremendous progress over the past two years"?

17 A Yes.

18 Q Is that accurate?

19 A Yes. I feel it is.

20 Q Your therapist wrote that, "She," that's you, "came in
21 feeling hopeless and suicidal and is now living a full and
22 vibrant life." Is that accurate?

23 A Yes.

24 Q Your therapist wrote that, "She is out living as a woman in
25 all aspects of her life. She has a good job, support of friends

1 and family, and a supportive partner." Is that all accurate?

2 A Yes.

3 Q And at this time you had not received genital
4 reconstruction surgery or facial feminization surgery; is that
5 correct?

6 A This final appointment was the one where I received a
7 letter for genital reconstruction, yes.

8 Q But you hadn't yet received those treatments, correct?

9 A Correct.

10 Q So at about this time, June 2015, your therapist wrote you
11 a letter of recommendation for gender reassignment surgery; is
12 that correct?

13 A That's correct.

14 Q I'd like to turn your attention to page 554 in the lower
15 right-hand corner. Does this appear to be your therapist's
16 letter of recommendation for you?

17 A Yes.

18 Q I'd like to turn your attention to the sentence that begins
19 with "Like many trans people." It reads, "Like many trans
20 people, Shannon feared what transition would mean for her
21 personal and professional life and delayed it for several
22 years." Is that accurate?

23 A That's correct.

24 Q He writes, "Once she decided to come out and begin her
25 medical transition, she found that she was accepted by friends,

1 family, and co-workers." Is that accurate?

2 A That's accurate.

3 Q Your therapist wrote in this letter of recommendation that,
4 "Her depression and anxiety have almost disappeared as a result
5 of her transition, and overall things are going very well for
6 her." Is that accurate?

7 A Yes.

8 Q He also wrote a little farther down the page, "Shannon
9 occasionally still experiences minor depression and anxiety, but
10 it is not substantial enough to warrant medication at this
11 time." Is that correct?

12 A Yes.

13 Q And was that accurate?

14 A Yes.

15 Q And again, to be clear, at this point, which is June 2015,
16 you had only received hormone therapy, therapy with Mr. Biondi,
17 voice therapy, and some electrolysis as treatment; is that
18 correct?

19 A That's correct.

20 Q No surgery of any kind.

21 THE COURT: You've asked and answered that three times,
22 Counsel. We can move on.

23 BY MR. ROTH:

24 Q I believe you testified also earlier that you had discussed
25 insurance coverage with Mr. Biondi and, more specifically, the

1 lack thereof for the surgery you wanted; is that correct?

2 A That's correct.

3 Q Do you know if any of the records of those therapy sessions
4 mention your concern over lack of insurance coverage?

5 A I doubt that they do.

6 Q Do you know if they do?

7 A No, I don't know.

8 Q This is 524. Does this appear to be a note summarizing an
9 encounter you had with Dr. Biondi on November 19th, 2013?

10 THE COURT: And, again, we're on Exhibit 514, but
11 you're referring to page Bates range ending in 51 -- I'm sorry,
12 554?

13 MR. ROTH: 524, Your Honor.

14 THE COURT: 524. Thank you. You may pose your
15 question now.

16 BY MR. ROTH:

17 Q Does this appear to be a note summarizing a therapy session
18 you had with Mr. Biondi on November 19th, 2013?

19 A Yes.

20 Q Does it mention concern over insurance coverage anywhere?
21 And I'll give you a moment to review it.

22 A No.

23 THE COURT: And you understand we're not going to go
24 through page by page, Counsel. She's already testified she
25 doesn't think it's in any of the notes, but she doesn't know,

1 and if you want to prove that through some means, you're not
2 going to do it by going page by page through the document.

3 BY MR. ROTH:

4 Q Let's talk a little bit about your decision to have gender
5 reassignment surgery. It wasn't -- and I think you testified
6 earlier that you had that surgery when you did because of the
7 exclusion; is that correct?

8 A In part, yes.

9 Q So it wasn't just the exclusion that delayed your surgery;
10 is that right?

11 A No, the exclusion was part of the delay. The decision to
12 have surgery was made a long time ago when I was very young.

13 Q But in terms of the timing, it wasn't just the exclusion
14 that led you to wait until October 2015; is that correct?

15 A No, that's correct.

16 Q So your goal of obtaining -- and again, just to be clear,
17 I'm going to call it sex reassignment surgery. Is that okay? I
18 think that's your terminology?

19 A I think that we decided to use gender confirmation surgery
20 for consistency's sake in these hearings.

21 Q And that refers to the genital reconstruction procedures
22 that you had?

23 A That's correct.

24 Q So your goal of obtaining gender confirmation surgery, was
25 that complicated by the fact that you were afraid of what

1 transition would bring to your life in terms of social
2 consequences?

3 A Correct.

4 Q Is it true that you feared that if you transitioned to
5 living as a woman you would lose your career?

6 A Correct.

7 Q You understood that there were certain prerequisites to
8 receiving gender confirmation surgery; is that right?

9 A Yes.

10 Q And one such requirement was two letters from your
11 therapist of recommendation, two letters of recommendation?

12 A Correct.

13 Q And another requirement was one year of presenting socially
14 as a female?

15 A Correct.

16 Q It's true that you did not begin living -- fully living and
17 presenting as a woman until June 2014; is that right?

18 A Correct.

19 Q And that's after you came out to your co-workers at the
20 Carbone Center?

21 A Correct.

22 Q So it was your understanding that you could not receive
23 gender confirmation surgery until at least June 2015 since you
24 hadn't lived and presented as a woman for a year until that
25 time?

1 A Correct.

2 Q You didn't get your first letter of recommendation from a
3 therapist until June 2015; is that right?

4 A Correct.

5 Q And you didn't get the second letter until July 2015; is
6 that right?

7 A Correct.

8 Q And so you couldn't get the surgery until you had those two
9 letters; is that right?

10 A Correct, not from that surgeon.

11 Q Not to belabor the point, but that's all after March 2014,
12 the damages --

13 THE COURT: You are belaboring the point, Counsel, and
14 you should ask your next question.

15 BY MR. ROTH:

16 Q I'd like to talk a little bit about the out-of-pocket costs
17 that you testified you incurred to pay for the gender
18 confirmation surgery. I believe you testified that your gender
19 confirmation surgery in 2015 cost you around 20, \$21,000; is
20 that right?

21 A \$21,500, yes.

22 Q It's true that in 2014 -- you had that surgery in October
23 of 2015, right?

24 A Yes, late October.

25 Q In 2014, the year before, you had around \$30,000 available

1 to you in various savings accounts, right?

2 A That sounds about right.

3 Q And so once you were able to meet the prerequisites that we
4 just talked about to getting surgery in 2015, you were able to
5 pay for it yourself out of pocket, right?

6 A Correct.

7 Q And you ultimately did pay for it yourself out of pocket?

8 A I did.

9 Q But you also had enough money to pay for it out of pocket
10 in -- during March 2014, right?

11 A If I had spent everything I had, yes.

12 Q So that's a yes, you had enough?

13 A Yes.

14 Q So your gender confirmation surgery involved a penile
15 inversion procedure; is that right?

16 A That's correct.

17 Q And that procedure involves using skin from the shaft of
18 the penis to create the vaginal area and skin from the scrotum
19 to create a vulva; is that correct?

20 A That's correct.

21 Q So essentially it uses penis tissue to create a vagina; is
22 that right?

23 A Yes, analogous tissues.

24 Q Now, on a scale of one to ten, is it true that your level
25 of emotional distress -- ten being the worst -- was about a two

1 after having gender confirmation surgery?

2 A I recall that I said some things about that scale, but can
3 you show me the page? I have no reason to doubt that that's
4 correct according to the deposition, so if you want to accept
5 it --

6 THE COURT: The real question is not whether that was
7 your answer then but what your answer would be now. Maybe you
8 could rephrase.

9 THE WITNESS: Yeah, could you ask that question again?

10 THE COURT: What are you asking the witness now?

11 BY MR. ROTH:

12 Q Sure. I'm asking the witness now, on a scale of one to
13 ten, is it accurate that your level of distress after having
14 gender confirmation surgery was about a two?

15 A Substantially reduced, yes.

16 Q About a two out of ten?

17 A I guess, sure.

18 Q Is that a yes?

19 A Yes.

20 Q I believe you testified that about a year after having
21 gender confirmation surgery in October 2015, so we're about at
22 the end of 2016, your distress increased; is that right?

23 A Can you restate the time period again?

24 Q We're at about the end of 2016. Your distress went up?

25 A Yes, that's correct.

1 Q And partly that was because you were still getting over a
2 really lengthy surgical recovery from the gender confirmation
3 surgery?

4 A I had been over it for several months at that point.

5 Q Was part of your distress at the time caused by the
6 political situation after the presidential election?

7 A I feared that health care was going to be taken away from
8 me, yes.

9 Q Is that a yes?

10 A Yes.

11 Q Was part of your distress at that time -- did part of your
12 distress at the time involve the political situation in terms of
13 potentially getting rid of the nondiscrimination section of the
14 Affordable Care Act?

15 A Yes.

16 Q Was part of your distress at that time over the political
17 situation caused by general anti-transgender sentiment?

18 A Yes.

19 Q Was part of your distress at the time caused by talk of
20 potentially barring transgender people from the military?

21 A And other public institutions, yes.

22 Q Was part of your distress at the time caused by talk in
23 Wisconsin of a transgender bathroom bill that was similar to the
24 one that had been passed in North Carolina?

25 A Yes.

1 Q So you thought the political calculus had suddenly shifted
2 in Wisconsin after the presidential election?

3 A Yes.

4 Q Were you worried about whether you were going to have to
5 get arrested so you could challenge some kind of bathroom bill?

6 A I worried about that, yes.

7 Q Were you worried about negative changes that might happen
8 in the future, including hospitals not having adequate
9 transgender health care?

10 A Yes.

11 Q So part of your distress at that time was caused by anxiety
12 about negative changes that might happen in the future for
13 transgender people?

14 A Yes.

15 Q You had started taking mood stabilizing drugs in November
16 2016; is that right?

17 A Correct.

18 Q Is it true that your mood was much improved by February
19 2017?

20 A Yes.

21 Q But you decided you still needed to have facial
22 feminization surgery; is that right?

23 A Correct.

24 Q And you went back to Mr. Biondi for a recommendation --

25 A Ultimately, yes.

1 Q -- for that surgery?

2 THE COURT: Just let him finish his question before you
3 answer --

4 THE WITNESS: Sorry.

5 THE COURT: -- and you need to let her finish her
6 answer before you ask your next question, but I believe your
7 answer was ultimately yes?

8 THE WITNESS: I did, yes.

9 THE COURT: All right. Next question.

10 BY MR. ROTH:

11 Q He wrote you a recommendation for the surgery?

12 A He did.

13 Q So I'm showing the witness what's been marked as Exhibit
14 514, and I'm going to direct her to a page that ends in 555 at
15 the bottom. Does this appear to be the recommendation that
16 Mr. Biondi wrote for you for facial feminization surgery?

17 A Yes.

18 Q And this is dated December 24th, 2017?

19 A Yes.

20 Q So he was working on Christmas Eve. Did he write -- well,
21 you'll see that the second paragraph, that begins "Shannon knew
22 she was transgender for many years." I'll represent that's
23 essentially the same paragraph that we read from the last
24 recommendation that Mr. Biondi wrote to you. Is that paragraph
25 still accurate as of December 2017?

1 A Yes.

2 Q And it reads -- I won't read the whole thing. But in
3 relevant part it reads, "Her depression and anxiety dissipated
4 substantially as a result of her transition and overall has been
5 very pleased with her transition." Is that still accurate?

6 A Yes.

7 Q So you had plastic surgery procedures known as facial
8 feminization in February 2018; is that right?

9 A Yes.

10 Q Now, the goal of that plastic surgery is to make your face
11 more likely to be perceived as feminine than masculine; is that
12 right?

13 A Yes.

14 Q And one plastic surgery procedure you received was a
15 hairline advancement; is that right?

16 A Yes.

17 Q And you wanted that procedure performed because you had a
18 receding hairline or I think you called it a widow's peak; is
19 that right?

20 A Yes.

21 Q And hairline advancement surgery would bring your hairline
22 forward to fix that; is that right?

23 A That was my understanding.

24 Q You had received negative comments about your hairline; is
25 that right?

1 A Yes.

2 Q And those negative comments, those were from strangers
3 online after you posted pictures of yourself on Reddit, a social
4 media website?

5 A I posted a time line of my transition at one point to help
6 sort of encourage people who are around my age who were dealing
7 with transition, and I got comments from those. I also got a
8 lot of looks from people on the street and casual social
9 interactions --

10 Q Is your answer yes to my question?

11 A Yes.

12 Q Another plastic surgery procedure you received was a
13 rhinoplasty; is that right?

14 A That's correct.

15 Q And that's basically a nose job?

16 A Yes.

17 Q Did you tell your plastic surgeon that you wanted a
18 relatively straight nose?

19 A Yes.

20 Q And that's because you had a bump in your nose?

21 A Yes.

22 Q And so you weren't happy with how your nose looked?

23 A Correct.

24 Q Did you also receive plastic surgery on your jaw and your
25 chin?

1 A I had reconstructive surgery on those areas, yes.

2 Q And did you receive that procedure because your jaw was, in
3 your view, too thick and pronounced and made your face look too
4 broad?

5 A I felt that testosterone had masculinized those areas and
6 made them that way, yes.

7 Q So that's a yes?

8 A That's a yes.

9 Q So that procedure made your jaw feel like -- feel much like
10 what it was like when you were younger?

11 A Yes, before puberty.

12 Q Another plastic surgery you received was forehead
13 contouring; is that correct?

14 A Correct.

15 Q And that surgery addressed what you called your, quote,
16 "caveman brow ridge" that you used to have?

17 A That's correct.

18 Q Another plastic surgery you received was a trachea shave?

19 A That's correct.

20 Q And that essentially gets rid of your Adam's apple; is that
21 right?

22 A Correct.

23 Q And you wanted that partly because you didn't want to have
24 anxiety about somebody looking at your neck; is that right?

25 A Correct.

1 Q And you wanted that procedure because the knob on your neck
2 was upsetting to you?

3 A Correct.

4 Q Did you also consider plastic surgery called pan facial fat
5 grafting?

6 A It was offered to me, but I ultimately didn't want it.

7 Q So you considered it?

8 A I did.

9 Q And that procedure would modify the way your cheeks, lips,
10 and such look to give a softer, rounder profile to your face?

11 A Correct.

12 Q Did you also discuss surgical procedures to address your
13 gummy smile?

14 A No. It was mentioned to me, but I didn't feel it was a
15 concern.

16 Q So there was a discussion of that procedure?

17 A It was offered to me, but I didn't take it.

18 Q So the plastic surgery procedures that you did receive made
19 you more attractive, and they made your presentation appear
20 consistently female; is that correct?

21 A Yes. I stopped getting a lot of the looks I had gotten.

22 Q Is it true that there are other things you don't like about
23 your body?

24 A I expect many people have those, yes.

25 Q But you don't experience gender dysphoria because of those

1 issues?

2 A No, they're not gendered.

3 Q Is it true that after receiving the facial feminization
4 procedures that we just discussed, your level of distress, again
5 on a level of -- scale of one to ten, was about a one or a two?

6 A I might have said something like that, yes. You'd have to
7 show me the page in the deposition if you want me to quote a
8 number.

9 THE COURT: He's asking -- would you say that was true
10 today as you're sitting on the stand?

11 THE WITNESS: Could you ask the question again?

12 BY MR. ROTH:

13 Q Sure. So now after receiving the facial feminization
14 procedures that we just talked about, on a scale of one to ten,
15 your distress level is about at a one or a two; is that right?

16 A Yes.

17 Q And that's about the same as the two that you testified to
18 earlier after receiving genital reconstruction surgery; is that
19 right?

20 A It's the same number, yes.

21 Q I think you talked a little bit about the financial stress
22 that you experienced because you had to pay for these procedures
23 out of pocket. Do you remember that?

24 A Yes.

25 Q And that financial stress I think you testified came

1 after -- obviously after you paid for the procedures in October
2 2015 --

3 A Well, I was worried about it before I paid for it, of
4 course, because I knew how much it was going to cost, but, yes,
5 it got worse after I actually lost the money.

6 Q Fair enough. Were you supporting your girlfriend at that
7 time also?

8 A Can you say the time period again?

9 Q From 2014 until the end of 2016 or early 2017?

10 A I may have loaned her some money at one point, but that
11 would have been after surgery -- I mean before surgery. Sorry.

12 Q She was living with you during that period, right?

13 A Since 2011, yes.

14 Q And she was unemployed until the end of 2016 or 2017?

15 A I don't remember her exact dates of employment. She was a
16 part-time teacher for a while and then eventually got a
17 permanent paid position.

18 Q But she was unemployed for much of that time?

19 MR. FAIRWEATHER: Objection. Relevance.

20 THE COURT: You can answer the question. I'm going to
21 give you very limited leeway here, and we're going to get on
22 with this, but you can answer the question if she was living
23 with you.

24 THE WITNESS: Yes, she was living with me.

25 BY MR. ROTH:

1 Q She had a Ph.D., right?

2 A Correct.

3 Q And you were her sole means of support from the end of 2014
4 until she got a job?

5 A She was living -- she was living in the house that we
6 co-owned and had savings.

7 Q And so you supported her lifestyle with money that came out
8 of your surgery funds; is that right?

9 A Briefly, yes.

10 Q You testified that \$10,000 you spent toward facial
11 feminization procedure came from your parents; is that right?

12 A Correct.

13 Q And that didn't come out of your own savings?

14 A No.

15 Q You don't have a contractual arrangement to repay that
16 money to your parents, right?

17 A I promised that I would repay them back when I had the
18 means, but there's no contract.

19 Q They said if you didn't pay it back that was okay?

20 A If I wasn't able to pay it back, that they wouldn't hold it
21 against me, yes.

22 Q Your parents don't mention that loan to you?

23 A No.

24 Q I think you testified that you're worried about retirement
25 because you had to empty your IRA; is that right?

1 A That's correct.

2 Q But you were able to save about \$20,000 between 2015 and
3 the end of 2017, correct?

4 A Yes. I had a run of good fortune.

5 Q Did you get a new job during that time?

6 A No. I had no car repairs, no heaters blowing up, that sort
7 of thing.

8 THE COURT: And I would just encourage you, you've done
9 a tremendous job of answering the questions, and just keep doing
10 that, realizing that your counsel -- if they believe there's
11 something that needs to be expanded on --

12 THE WITNESS: Of course.

13 THE COURT: -- they will do that for you.

14 And you may ask your next question.

15 BY MR. ROTH:

16 Q You're trying to continue that level of savings, about
17 \$20,000 every two years?

18 A I would be very happy if I was able to.

19 Q You're 36 years old right now; is that right?

20 A Correct.

21 Q Has the idea of saving for retirement been a distant
22 concern for you?

23 A Often, yes. I wasn't always sure that I would make it to
24 retirement.

25 Q So it's been a distant concern for you?

1 A Yeah.

2 Q You believe that UW automatically contributes money toward
3 a pension account for you; is that right?

4 A The Wisconsin retirement system or fund. I think I have
5 heard of it.

6 Q And you think that you receive contributions toward that
7 pension fund from your employer, correct?

8 A I believe that I do, but I don't know how it works.

9 Q So after you came out to your family during -- around April
10 2014 during the damages period, they were supportive of your
11 decision?

12 A That's correct.

13 Q And they ultimately gave you \$10,000 for surgery; is that
14 right?

15 A That's correct.

16 THE COURT: Counsel, you've been asking the same
17 questions. If you have something new, this would be the time to
18 ask it.

19 BY MR. ROTH:

20 Q You say your performance at work has been of a very high
21 quality?

22 A Yes, I would.

23 MR. ROTH: I have no further questions.

24 THE COURT: All right. Redirect.

25 MR. FAIRWEATHER: Just a couple, Your Honor.

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MR. FAIRWEATHER:

4 Q Shannon, Mr. Roth asked you several questions about your
5 girlfriend. Do you recall those questions?

6 A Some of them, yes.

7 Q Would you have considered your girlfriend a dependent of
8 yours at any point?

9 A No. She was an equal participant.

10 Q Do you have any dependents?

11 A No, I don't.

12 Q Do you have any children?

13 A No, I don't.

14 Q Do you think that stated goal of saving \$20,000 every two
15 years is unrealistic given the lack of dependents?

16 A I hope that I could do that, yes. I mean, obviously, you
17 know, there's always a possibility that something catastrophic
18 could happen, but all things being equal, I hope I could.

19 Q Do you have student loan payments you have to make?

20 A No.

21 Q And you testified that the mortgage loan you have is split
22 with your girlfriend; is that right?

23 A That's correct.

24 Q There were several questions about a one-to-ten scale of
25 distress. Do you recall those?

1 A I do.

2 Q And Mr. Roth asked you to assign a number, one or two, to
3 the distress you felt after facial feminization surgery?

4 A That's correct.

5 MR. ROTH: Objection. I didn't ask that.

6 THE COURT: Counsel, the objection is mischaracterizes
7 past testimony.

8 MR. ROTH: Mischaracterizes testimony.

9 THE COURT: I'll sustain the objection. You can
10 rephrase it.

11 BY MR. FAIRWEATHER:

12 Q On more than one occasion, Mr. Roth asked you to assign a
13 number value to your distress at various points. Do you recall
14 that?

15 A I do.

16 Q And what is the -- how did you compare those two numbers
17 that you gave out?

18 A To be honest, during my deposition I was obliged to answer
19 those questions, so I gave a number, but I also recall saying
20 that I thought that the ten-point scale was nonsense because it
21 was encapsulating how I felt at a specific moment in time, and
22 most of those moments in time that I was asked to give a number
23 was right after I had received some treatment where I felt
24 better, after I had gotten surgery, after I had gotten FFS,
25 after I had started HRT or seen a therapist, and all those

1 things made me feel better, yeah, but there were still days when
2 I had a lot of, you know, suicidal episodes, depression.

3 Q And Mr. Roth's question, I believe, was today after you've
4 had FFS, what is your distress level. Do you recall that
5 question?

6 A Yes.

7 Q And how does that compare to the distress level or distress
8 you felt after your gender confirmation surgery three years ago?

9 A Yes.

10 Q How do they compare?

11 A Much less. I mean, as I said before, after gender
12 confirmation surgery, it was like one burden was lifted off me,
13 and it was a tremendous feeling of well-being, and then, you
14 know, I had seen a therapist about my issues with the way people
15 were looking at me and perceiving my face, so getting that taken
16 care of was another burden lifted off.

17 Q Mr. Roth asked you several questions about the specifics of
18 your facial feminization surgery procedures. Do you remember
19 those questions?

20 A In great detail.

21 Q What was the overall goal of undergoing the facial
22 feminization surgery procedures in total?

23 A Basically it was to get me to a point where I could go out
24 in public without having to be afraid of how I was going to be
25 perceived.

1 Q And was --

2 A And also to get me to a point where I could, you know, look
3 myself in the mirror and not feel that sense of dislocation. I
4 think I likened it at one point to looking at a -- I saw this
5 object of art once that was a number of poles attached to a wall
6 where if you looked at it from one angle, it would appear to be
7 a chair, and if you looked at it from a slightly shifted angle,
8 you would realize that it was just a bunch of poles stuck in a
9 wall, and before FFS, looking at my face was a lot like that.
10 There were certain angles where I could see myself clearly, but
11 looking at myself often from the profile or side on, that
12 illusion shattered, and, you know, I was kind of left with this
13 feeling of what's -- I don't recognize this person.

14 Q There were a couple of questions about a job that you held
15 for a very brief amount of time at the Morgridge Institute; do
16 you recall that?

17 A About two months, yes.

18 Q And I believe the question from Mr. Roth was related to
19 research that you had done at Morgridge; is that right?

20 A That's correct.

21 Q Is it your understanding that there are other reasons why
22 that employment ended so quickly?

23 A Yes.

24 Q And what were those?

25 A I had personality conflicts with my boss. At the time I

1 was -- had just started receiving HRT, and I was not out at
2 work. I was afraid that, if my employer became aware that I was
3 transgender, that I would be terminated, and I had just been
4 unemployed for a long time, so I used sick days to go to those
5 appointments in Illinois, but I didn't tell him what exactly
6 they were for, just that they were doctor visits.

7 MR. FAIRWEATHER: I have nothing further, Your Honor.
8 Thanks.

9 THE COURT: All right. You may step down then. Thank
10 you very much.

11 THE WITNESS: Yes.

12 (Witness excused at 2:45 p.m.)

13 THE COURT: And you may call your next witness. If you
14 could just indicate who your next witness is.

15 MR. KNIGHT: Plaintiffs are going to call Dr. Stephanie
16 Budge.

17 THE COURT: Dr. Budge, if you could come through that
18 gauntlet there.

19 MR. KNIGHT: I am sorry. Apparently I am turned
20 around. Plaintiffs are calling Alina Boyden.

21 THE COURT: All right. Very good. And if you could
22 come forward, Ms. Boyden, and if you would just stand before the
23 court reporter.

24 **ALINA BOYDEN, PLAINTIFFS' WITNESS, SWORN**

25

DIRECT EXAMINATION

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BY MR. KNIGHT:

Q Okay. Ms. Boyden, please state your name for the record.

A Alina Boyden.

Q And let's start with telling the jury a little bit about yourself. What do you do for a living?

A I'm a Ph.D. student and researcher at the University of Wisconsin-Madison.

Q And do you currently have health insurance coverage?

A I do, yes.

Q And why is that?

A As a Ph.D. student and researcher at the university, I'm considered a state employee, and, therefore, I have state health insurance benefits.

Q And where do you live now?

A I currently live in Madison, Wisconsin.

Q What are you doing at the moment? What's the status of your -- as a student? What is that now?

A Currently I am a dissertator, which means that I have completed all the coursework necessary for my Ph.D. and am conducting the research for my dissertation.

Q And where are you doing that research, Alina?

A My research centers on transgender rights activism in Pakistan.

Q Could you say a little bit more about the nature of the

1 research?

2 A Yes. In Pakistan they recently passed a transgender rights
3 bill from the Pakistani senate, which is interesting in a
4 country where homosexuality is illegal, and so investigating how
5 the transgender women living in Pakistan manage to obtain those
6 protections from their government in the face of a great deal of
7 discrimination was of academic interest to me as an
8 anthropologist.

9 Q Alina, where were you living before moving to Pakistan?

10 A I don't live in Pakistan.

11 Q I'm sorry. Before leaving to do -- over what period of
12 time were you doing the research?

13 A So my research has not commenced in Pakistan yet. He's a
14 little confused because I spent the last three months in India.

15 Q What were you doing in India?

16 A I was studying Urdu, the lingua franca of Pakistan and also
17 a major minority language in northern India.

18 Q And why were you learning that language?

19 A For several reasons. In the first place, to do
20 anthropology, cultural anthropology, you have to be able to talk
21 to the people that you want to meet with, and so you have to be
22 able to speak their language, and also Urdu is a language of
23 great national security interest to the United States, and so it
24 offers future employment opportunities.

25 Q Alina, what else have you done as a graduate student?

1 A As a graduate student, I have also worked in
2 paleoanthropology and archaeology, and I have also been a
3 teaching assistant.

4 Q How many years were you acting -- first of all, how many
5 years have you been working on your Ph.D.?

6 A So I actually switched my Ph.D. concentration from
7 archaeology to cultural anthropology at the beginning of this
8 last academic year. Prior to that I had been a Ph.D. student in
9 archaeology, and I had completed my master's degree in that, but
10 I decided that I wanted to have a career that was a little bit
11 more geared towards current affairs, and so I switched my
12 concentration. So it's been in total six -- this is my sixth
13 year, so five years total.

14 Q And did you come here to be a graduate student at the
15 University of Wisconsin?

16 A Yes, that's what I did.

17 Q I think you mentioned teaching. How many years have you
18 taught?

19 A So of the five years -- total years that I have been a
20 graduate student, I taught for three of them.

21 Q And can you tell the jury a little bit more about your
22 teaching?

23 A Sure. I was a teaching assistant at the University of
24 Wisconsin-Madison from the academic year 2014 until academic
25 year 2016-2017. So for those three years, or six semesters, I

1 taught sections, which are sort of small classes that are
2 divisions of a larger lecture course in order to give students
3 hands-on experiences with teachers in a small group environment.

4 Q And what was your role in -- can you say a little more
5 about your role in that job?

6 A Sure. So in the University of Wisconsin-Madison, because
7 it's a very large university, in introductory courses like the
8 ones that I taught, there's often 200 or more students in a
9 class, which makes it impossible for the teacher to give the
10 students individual attention. And so teaching assistants like
11 myself are tasked with teaching smaller classes of about 20 to
12 25 students, doing all of the grading, doing all of the test
13 preparations, doing all of the homework preparations, answering
14 all of their questions, as well as holding office hours and
15 meeting with students sometimes even for personal issues that
16 they have.

17 Q And is the -- and do you find this work satisfying?

18 A Very much so. I think the teaching was probably -- has
19 been the highlight of my academic career so far, and I'm hopeful
20 I'll get to do it again, though currently I'm focused on my
21 research.

22 Q So you mentioned research in Pakistan. When will that
23 research take place?

24 A As soon as this trial is over.

25 Q Okay. And over what period of time will you be doing that

1 research?

2 A It will be about 12 months out of the country.

3 Q And then do you have plans of coming back to Wisconsin?

4 A Yeah, absolutely. I'll be returning to Madison to write up
5 my dissertation, and from there I guess the job market is going
6 to dictate where I end up.

7 Q I'd like to talk to you more now about why we're sitting
8 here today, what led you to bring this lawsuit. What happened
9 that led to this?

10 A I was discriminated against because of the State's
11 exclusion.

12 MS. SCHMELZER: Objection. Foundation.

13 THE COURT: I guess as phrased I'll strike the last
14 answer as stated, but you can follow up, Counsel.

15 BY MR. KNIGHT:

16 Q So why don't we just turn -- we'll come back to this area
17 of questioning. Why don't we turn to the -- your being
18 transgender. Do you identify as transgender?

19 A Yes, I am transgender.

20 Q And what does that mean?

21 A In my understanding, a transgender person is anyone whose
22 gender identity, their inner-felt sense of self, is different
23 from the sex they were assigned at birth, so what the doctors
24 wrote on their birth certificate.

25 Q When did you begin to identify this way?

1 A So, like Shannon, I found that from a very early age, about
2 4 or 5, I had inklings of what was going on. I had feelings of
3 confusion relating to gender at that young age.

4 Q And what happened next? What did you do about that?

5 A Well, I didn't do anything about it. I was 4 or 5. But as
6 I got older, those feelings became much more intense, and I
7 became much more mentally aware of them because I was older and
8 my brain was better developed.

9 Q When did you -- where were you living at the time?

10 A I was born in Dallas, Texas, and I lived for the first 13
11 years of my life in north Texas.

12 Q And what happened in terms of your knowledge of yourself as
13 transgender after that?

14 A So at the time that I was living in Texas, it was a sort of
15 slow procession of feelings that took a long time to develop.
16 By the time I was about 11 years old, I knew the term
17 "transgender," and I knew at least on some level that that's
18 what I was.

19 Q Tell me a little bit about your family, you and your
20 family. You were with your family in Texas?

21 A That's right. I have my parents, and at the time I had an
22 older brother as well as a younger brother, and I was raised in
23 what I would describe as a very conservative household in north
24 Texas.

25 Q So what did you -- what did your understanding of yourself

1 as female -- how did that affect you at that time?

2 A We were quite religious, and I was concerned that my
3 existence was a sin, that I had done something wrong to cause
4 these feelings. I spent many years trying to "pray the gay
5 away," to use the modern term.

6 Q And how did that affect your life at school, for example?

7 A Well, I think that oftentimes people expect that our life
8 at school will be poor because we're depressed or because we
9 don't have friends, but actually the isolation of losing all of
10 the friends who were young girls because they don't want to play
11 with a boy made me devote myself more to academics. So for
12 elementary school and middle school and high school, I was
13 extremely successful and competitive academically.

14 Q Did you go -- finish school in Texas, in north Texas?

15 A No. I finished middle school in north Texas and then moved
16 to southern California because of my dad's job transfer.

17 Q When did you first start thinking about transitioning to
18 living as a girl?

19 A I suppose when I was in elementary school, and the feelings
20 became stronger in middle school, and by the time I was in high
21 school, I was -- it was something that I had -- that I actively
22 researched on a daily basis and that I thought about
23 continuously.

24 Q Did you live as a girl in any way at the time?

25 A I spent every -- so my family received the internet when I

1 was 11 back in 1994, and I immediately found out that you could
2 be a girl online and nobody could check it, so that was my
3 release is that I was just a girl online from the age of 11.

4 Q When did you first tell someone that you were transgender?

5 A Not until I was 18 years old.

6 Q So where -- and, I'm sorry, did you say where you graduated
7 from college?

8 A No.

9 Q Or from high school?

10 A I graduated from high school in Newbury Park, California,
11 at Newbury Park High School.

12 Q Okay. And what did you do after that?

13 A I went to the University of California-Santa Barbara for my
14 undergraduate studies.

15 Q And you said you saw someone when you were 18. Were you in
16 college when you saw someone about your knowledge that you're a
17 girl?

18 A Yes. This was early in my second year of university, yes.

19 Q Who did you see?

20 A I actually don't remember this person's name, the initial
21 contact. I was feeling very depressed, and I asked for an
22 appointment at counseling and career services, and it was just
23 luck of the draw who I ended up seeing, so it was a woman, but I
24 don't remember her name.

25 Q Did you continue with seeing that therapist?

1 A No. We only met one time.

2 Q And what happened next?

3 A Well, I told her. She was the first person I'd ever told
4 with my own voice that I was transgender, and she told me that
5 she didn't feel comfortable treating me, and so she sent me to a
6 therapist who felt comfortable treating me, who was Joe
7 Severino.

8 Q So what led you to finally getting to the point of reaching
9 out and asking for therapy?

10 A Absolute crushing desperation and depression.

11 Q And did that impact you in any other way?

12 A Yes. At the time it started to impact me negatively. The
13 feelings had become so strong and had been repressed for so long
14 and there was so much shame built up about it that I wasn't able
15 to function in school properly. I was hardly able to get out of
16 bed. It was a crushing depression.

17 Q So when you saw a therapist, what happened in that -- I'm
18 sorry. You mentioned a therapist, but did you eventually see a
19 therapist who was able to treat you?

20 A Yes, I did.

21 Q And who was that?

22 A That was Dr. -- sorry, Joe -- yes, Dr. Joe Severino.

23 Q And what happened when you spoke to him? What did you
24 learn from speaking to him?

25 A He informed me that the only medically appropriate

1 treatment for a transgender person such as myself was medical
2 transition to alleviate my symptoms of gender dysphoria.

3 Q And how did that make you feel?

4 A Afraid and ashamed. Like a lot of transgender people, I
5 was terrified at what my parents or my friends might do if I
6 came out and told them that I was a girl. I was really worried
7 that my parents, because they were religiously conservative,
8 would disown me. I was worried my extended family would stop
9 speaking to me. I was worried that I would lose all my friends,
10 and I was worried that my transition would ultimately not be
11 successful enough that I could ever be accepted in society.

12 Q Did you take any steps after that, after speaking to
13 Mr. Severino?

14 A We spoke in quite a few sessions, and eventually I realized
15 that it didn't matter what the future held because there wasn't
16 going to be a future if I didn't transition, and so I asked him
17 to direct me to a doctor who might be willing to treat me for my
18 gender dysphoria.

19 Q And who did you see at that point?

20 A I was sent at that point to Dr. Kevin Cook at University
21 Health Services at UCSB.

22 Q And what happened when you spoke to Mr. Cook?

23 A Dr. Cook prescribed --

24 Q I'm sorry.

25 A That's all right. He prescribed estrogen and

1 spironolactone, estrogen being the female hormone and
2 spironolactone a testosterone blocker to keep testosterone
3 levels to normal female range.

4 Q Did you take those medications?

5 A Yes.

6 Q And how long did you take those medications?

7 A I'm still taking those medications.

8 Q And how did that make you feel to start on these
9 medications?

10 A There is always an initial sense of relief, and I felt an
11 initial sense of relief, but transition is a very difficult
12 process with a lot of ups and downs as it unfolds. Overall
13 though it did a great deal to alleviate my symptoms of
14 dysphoria, which is why I'm still taking it 15 years later.

15 Q What other treatment did you receive at that time?

16 A From Dr. Cook?

17 Q Well, maybe I should ask it this way: What other steps did
18 you take related to your gender dysphoria at that time?

19 A Related to my transition, at the same time that I started
20 taking these hormones, I also started living and dressing as a
21 female. I changed all of my documentation, including my
22 driver's license and social security card and my university
23 information, and I also came out to my family.

24 Q How did that feel?

25 A It was a lot of change in a short period of time, so there

1 was a lot of trauma involved, especially in coming out to my
2 parents. That was extremely difficult so -- yeah.

3 Q Did your parents ultimately come around?

4 A Ultimately, yes.

5 Q And do you have other family members?

6 A Yes. I have a rather large extended family.

7 Q How did you pay for the hormones?

8 A It was covered under university health insurance at the
9 time.

10 Q Was there a co-pay for that?

11 A Yes, there was.

12 Q Did you consider surgery at that time?

13 A Yes, I did.

14 Q And why didn't you pursue surgery at that time?

15 A There were a number of reasons that held me back from
16 pursuing surgery at that time, one of which was cost. I was an
17 undergraduate, and I didn't have the money to pay for it.
18 Another reason was that my parents were having a very difficult
19 time coming to terms with my transition, especially early on,
20 and moving straight into surgery would have been extremely
21 difficult both for myself and for them, and I think -- yeah, so
22 it was one of those things where -- I'd also just lost all of my
23 friends. They stopped speaking to me, and my extended family
24 stopped speaking to me, so I didn't feel like I was in a kind of
25 mentally sound enough place to do it.

1 Q You mentioned cost. Was insurance coverage at the
2 university not provided for surgery?

3 A It was my understanding at the time, and I don't have their
4 plan information from 15 years ago, but I believe that it would
5 have been out of network, and, therefore, there would have been
6 a substantial out-of-network cost, but I'm not a hundred percent
7 sure.

8 THE COURT: In other words, there would have been --
9 the physician who would perform the surgery wasn't part of the
10 health care network.

11 THE WITNESS: That's correct.

12 THE COURT: So there was an additional cost if you had
13 to go outside for treatment.

14 THE WITNESS: Yeah. My understanding is that there
15 would have been a deductible, a co-pay, an out-of-network cost,
16 and, again, those things were not financially feasible for me at
17 the time.

18 BY MR. KNIGHT:

19 Q So -- but I believe what you're saying is that some
20 coverage was provided?

21 A Yes, I do believe that some coverage was provided for
22 surgery at the time.

23 Q What did you do after college?

24 A After college I worked as a tutor for K-through-12 students
25 for a year.

1 Q And -- I'm sorry. For how long did you do that?

2 A Just for one year.

3 Q Okay. And what did you do after that?

4 A Well, after that I moved to North Carolina, so I was
5 unemployed for a period of time from the summer of 2007 until
6 2009.

7 Q Why did you move to North Carolina?

8 A My older brother committed suicide, and my family decided
9 it would be better to move to North Carolina rather than remain
10 in the state where he killed himself.

11 Q I'm sorry about that. So what did you do when you moved to
12 North Carolina with your family?

13 A At that time it was the height of the financial crisis in
14 2008, and so finding work was quite difficult, but I eventually
15 managed to find a position with a nonprofit nature center that
16 dealt with wildlife education.

17 Q What was your life after -- like after you graduated and
18 were in North Carolina?

19 A I would say that it was -- it was a very difficult period
20 in my life because of my brother's recent suicide, and it
21 made -- and my younger brother was in Afghanistan at the time
22 too, and so he was just coming back from Afghanistan at that
23 time. So my family was in a lot of stress at that time, and so,
24 yeah, it was an emotionally difficult period.

25 Q Did you have health insurance after college?

1 A I did not until, I believe, 2008, 2009. I don't know the
2 exact year.

3 Q Did you eventually get work in North Carolina?

4 A Yes, I did.

5 Q And what was -- what were you doing there?

6 A I was working at a nonprofit nature center. Initially I
7 was training hawks, eagles, falcons, and owls for education
8 programs for children and adults, and then I was working as
9 their office manager, and after that I ran nature education
10 programs for children and adults.

11 Q And other than your work, was there any other unpaid work
12 that you did?

13 A Yes. Starting in late October 2011, I had made the
14 acquaintance of a paleoanthropology professor at Duke
15 University, and he had invited me to work in his laboratory on
16 paleoanthropology.

17 Q Did you do that?

18 A Yeah. I worked from late 2011 until I came to Wisconsin in
19 August 2013 in the paleoanthropology lab at Duke University.

20 Q What did you -- what -- what brought you to Wisconsin?

21 A So I had applied for graduate school for anthropology at
22 the recommendation of Dr. Steven Churchill, the professor with
23 whom I was working at Duke University, and he had warned me that
24 because of the way that Duke does its admissions, you have to
25 first gain admittance, and then you also have to have full

1 funding in order for them to accept you as a student, and he was
2 concerned that because he had a large number of students, he
3 might not be able to secure funding for me, so he advised me to
4 apply to other universities as well.

5 Q How did you ultimately choose the University of Wisconsin?

6 A I chose the University of Wisconsin on the basis of its
7 very strong anthropology department, a rapport that I had with a
8 professor, and also because it had a very clear
9 nondiscrimination policy saying that it would not discriminate
10 against employees on the basis of benefits -- or on the basis of
11 gender identity in benefits, and so I believed that coming to
12 Wisconsin I would have health insurance coverage for
13 transgender-related issues.

14 Q How were you paying for graduate school?

15 A Graduate school was being paid for by a university
16 fellowship and by my teaching assistantships.

17 Q And have you received any other fellowships related to your
18 graduate study?

19 A Yes. I have won two -- three scholarship awards. One was
20 a foreign language area studies scholarship over the summer to
21 study Urdu, which is funded by the U.S. government for the
22 purposes of national security, and the other was -- one was an
23 academic year and one was a summary year, and then the third was
24 a critical language scholarship from the U.S. State Department
25 from the same language to do that training in India this last

1 summer.

2 Q So I believe you've said already that you're receiving --
3 you have held insurance coverage as a graduate student. Did you
4 know prior to coming to the University of Wisconsin that they
5 did not cover transition-related care?

6 A No, I did not. I believed that they would.

7 Q And how did you learn about that?

8 A I learned about the exclusion through my plan book from
9 Dean in October 2013, a month after I arrived.

10 Q And do you know -- did you know where -- what the basis for
11 that exclusion was? Do you know where that exclusion came from?
12 Did you at some point learn that?

13 A I did at some point learn that. At the time I just knew it
14 was excluded in my health plan book.

15 Q What kind of medical care for gender dysphoria were you
16 receiving at the University of Wisconsin?

17 A Do you mean prior to the University of Wisconsin or --

18 Q No, at the University of Wisconsin.

19 A At the University of Wisconsin, I found a provider for my
20 hormone therapy.

21 Q And how did you find that provider?

22 A I went to general practitioners and asked if they were
23 willing to treat transgender patients without writing on their
24 records that they were transgender.

25 Q And why did you ask that?

1 A Because I believed that the exclusion included hormone
2 therapy, and I was afraid that if my transgender status became
3 known, my hormones would not be covered by insurance, and I
4 wouldn't be able to pay for them.

5 Q And why was that a problem?

6 A Because without the estrogen and spironolactone that I
7 take, the effects of male puberty would start a certain number
8 of months after that so --

9 Q And, I'm sorry, who actually was prescribing the hormone
10 therapy for you?

11 A My primary care physician, Dr. Brian Webster.

12 Q Was hormone therapy all that you needed to treat your
13 gender dysphoria?

14 A No.

15 Q What other kind of treatment did you need?

16 A I had always intended to have gender confirmation surgery.

17 Q And did you do anything about that?

18 A At the time when I came to Wisconsin I did not because I
19 was aware of the exclusion from October of 2013, and I was
20 afraid if I complained and asked for a surgery that was clearly
21 not covered, that not only would it flag me as transgender in
22 the records of the insurance company, but that it might lead to
23 me losing my hormone coverage, and I couldn't bear the thought
24 of that.

25 Q Did anything change that made you ask for coverage for

1 surgery?

2 A Yes.

3 Q What changed?

4 A In October of 2014, I had a spike in my testosterone levels
5 that my doctor, Brian Webster, identified, and we were concerned
6 about it because an unchecked spike in testosterone like that
7 one could lead to masculinizing changes. I could get a deep
8 voice. I could have facial hair. I could have brow ridges, a
9 change to my jaw, all these kinds of masculinizing features
10 which come from testosterone and which would present me to the
11 world as male rather than female.

12 Q And could you explain for the jury why that would be a
13 problem for you?

14 A Well, I don't think any woman wants to look like a man, but
15 for me I was fortunate in transitioning quite young. It's very
16 rare to transition as young as I did even today, and
17 transitioning young has the benefit of enabling me to have
18 what's called passing privilege. It means I can go through
19 life, and I've never had anyone mistake me for being male or
20 accuse me of being transgender or anything like that, and if I
21 had not transitioned young, that would not have been the case.

22 So if my hormones stopped working or if I stopped taking
23 them and I experienced those physical changes to my body, it
24 would affect my personal safety. It would affect my ability to
25 exist in society. It would affect my self-esteem. It would

1 affect my own feelings of how my own body feels, and the
2 dysphoria it would provoke would be tremendous.

3 Q So you learned about this spike. What did you do about it?

4 A Initially Dr. Webster decided to increase my spironolactone
5 dosage from 100 milligrams to 200 milligrams, which is the FDA
6 recommended limit per day for spironolactone.

7 Q And did that work?

8 A It did not.

9 Q And how do you know that?

10 A He told me that it didn't, and we looked at the -- every
11 few months I get hormone level checks, and we're able to see
12 what the reference range is for testosterone, so we could see
13 the spike. It was very clear in the records.

14 Q So what did you do -- what did Dr. Webster -- what did
15 you -- I should say what did you do at that point?

16 A Well, I consulted with Dr. Webster, and he told me that he
17 was very concerned by this hormone spike both because we had
18 medical records going back a substantial number of years in
19 which my testosterone levels had remained constant and also
20 because the spironolactone had not done anything to control it,
21 and so he was worried that there might be an underlying cause to
22 it, and his specific concern was that it might be cancer.

23 Q And did he do anything to check to see whether you had
24 cancer?

25 A He said that he didn't feel prepared to make that diagnosis

1 himself, and so he referred me to an endocrinologist to have it
2 checked out.

3 Q And did you see an endocrinologist?

4 A I called to make an appointment, and the endocrinology
5 office here in Madison told me "We don't treat transgenders
6 here."

7 Q So what did you do about that?

8 A I was really upset obviously, and I asked them what they
9 meant by that, and they told me that they were not willing to
10 treat any transgender patients there, and I said, "That's
11 ridiculous, you know. This isn't even necessarily because I'm
12 transgender. We don't know why this is happening, and I'd like
13 to see a doctor." And I had three phone calls with them that
14 all ended the same way, with them telling me they don't treat
15 transgender people there.

16 So finally I decided that I would go in person, and I
17 mentioned passing privilege, and I thought if I go there and
18 tell them I'm not transgender, they will probably just give me
19 the appointment, and so that's what I did, and that's what
20 happened.

21 Q And so you went to the doctor's office and you asked for an
22 appointment?

23 A Yes.

24 Q And did you ask in person or --

25 A In person with the person who was at the desk, yes.

1 Q And did you get an appointment?

2 A I did, yes.

3 Q And did you see an endocrinologist at that point?

4 A I did some weeks later after they had to schedule the
5 appointment, but yes.

6 Q What did you learn from the endocrinologist?

7 A So the initial intake with the endocrinologist was very
8 tense. She asked me what I was doing there, and I said that I
9 needed to have my hormone levels checked and we weren't sure why
10 I had had this testosterone spike, and she said, "It's because
11 you're a man." And I said that my doctor was concerned it might
12 be cancer and that I'd like to have it checked, and so she
13 agreed to have a blood panel done, and so a blood panel was
14 done.

15 Q And then what happened next with her? Did you learn
16 anything from her?

17 A I had a follow-up appointment with her to discuss the blood
18 panel, and the results she said showed that it wasn't cancerous.

19 Q And did she tell you anything else?

20 A I asked her what might be causing it, and she offered no
21 explanation other than the fact that I'm transgender.

22 Q Did you figure out -- did you ask her about the hormone
23 levels?

24 A Yeah. I asked her what could be done about the hormone
25 levels. I asked her if there were alternative treatments that I

1 could use, and she said that there were none.

2 Q And what else did you learn from her?

3 A She told me that -- well, I asked her what I could do to
4 lower my testosterone levels, and she said, "We could raise your
5 spironolactone levels."

6 And I said, "I'm already at the FDA recommended limit.
7 Wouldn't it be dangerous to go over that?"

8 And she said that it would be. And she said, "Well, we can
9 increase your estrogen levels."

10 And I said, "Well, I'm already taking 4 milligrams a day,"
11 which for people who are not transgender is about --

12 MS. SCHMELZER: Objection. Foundation.

13 THE COURT: I'll stop you at the hormone level that you
14 said you were taking.

15 THE WITNESS: Yes.

16 THE COURT: And you should ignore the remainder
17 which -- she didn't complete her answer, and I'll strike that
18 additional, and you may ask your next question.

19 BY MR. KNIGHT:

20 Q Did you ultimately figure out a plan to treat the high
21 hormone levels?

22 A Ultimately she decided -- she asked -- I asked the doctor.
23 I said, "Which option is less likely to kill me, increasing the
24 spironolactone or increasing the estrogen?"

25 And she said, "The spironolactone."

1 And I said, "Well, do that then," and so she doubled my dose
2 to twice the FDA recommended limit.

3 THE COURT: And this was the endocrinologist you were
4 seeing?

5 THE WITNESS: Yes, that's correct. That was
6 Dr. Clarisse Etheridge, the endocrinologist.

7 BY MR. KNIGHT:

8 Q Did you see your original doctor about this?

9 A Yes. We checked to see if that had controlled the hormone
10 spike.

11 Q And what did you find out?

12 A It had not.

13 Q And what did -- what happened next to address that?

14 A We had a discussion concerning what to do next. Obviously
15 the ultimate solution would have been surgery, but we both knew
16 that it was not allowed because of the State's exclusion, so he
17 referred me to a doctor in Sun Prairie, Dr. Gindlesberger, who
18 had greater expertise dealing with transgender patients.

19 Q And what did you learn from speaking to that doctor, Dr. --
20 I'm sorry --

21 A Gindlesberger.

22 Q Gindlesberger. What did you learn from speaking to her?

23 A When I spoke to Dr. Gindlesberger, I asked her if it was
24 true that there were no other options other than increasing my
25 estrogen and my spironolactone, and she said that that wasn't

1 true, there were many other drugs on the market I could take,
2 and so she recommended a drug called finasteride and prescribed
3 that.

4 Q And did you ever speak to -- again to Dr. Webster about
5 your need for surgery?

6 A I did, yes.

7 Q And what did you learn from speaking to Dr. Webster?

8 A Dr. Webster wrote a recommendation letter for me for
9 surgery because it was his medical opinion that it was the best
10 way to control my hormone levels in the future and to prevent me
11 from needing to take these very, very high levels of androgen
12 inhibitors.

13 Q And did he explain to you anything about why the high drug
14 levels that you were taking would be something that you should
15 stop taking?

16 A Yes.

17 MS. SCHMELZER: Objection, Your Honor. Foundation.

18 THE COURT: This is not to be considered as a statement
19 of fact or what was told to her as fact other than as it
20 informed how she felt about the exclusion or the damage from the
21 exclusion that is being claimed in this case. In other words,
22 what she was told is not evidence other than as it affects her.

23 And you may answer the question.

24 THE WITNESS: Yes. So Dr. Webster's opinion was that
25 the high levels of spironolactone might be dangerous because

1 spironolactone is, first and foremost, not meant to treat
2 testosterone levels. That's a side effect of what
3 spironolactone does. Spironolactone is both a blood pressure
4 medication and a diuretic, and so high levels
5 of spironolactone --

6 THE COURT: Maybe the short version, he was saying it
7 was dangerous?

8 THE WITNESS: Yes, sure.

9 THE COURT: Thank you. I appreciate it, just given
10 that it's -- the general point is the one that's really relevant
11 here for you.

12 THE WITNESS: Yes.

13 THE COURT: And you may ask your next question.

14 BY MR. KNIGHT:

15 Q Did you have any independent knowledge of reasons why the
16 drugs you were taking might be something that would be best to
17 stop?

18 A Spironolactone as a diuretic has a --

19 THE COURT: The question is whether you would have any
20 reason and what would that reason be.

21 THE WITNESS: The reason is that spironolactone is a
22 diuretic and --

23 THE COURT: No. How do you know all of this?

24 THE WITNESS: Because I have to go to the bathroom like
25 20 times a day.

1 THE COURT: Okay.

2 THE WITNESS: Yeah.

3 BY MR. KNIGHT:

4 Q And have you done any research yourself about whether --
5 about this problem with this issue?

6 A Yes, I have.

7 Q And what did you learn from your own research?

8 A That because spironolactone is a diuretic, it causes you to
9 have to go to the bathroom more often.

10 MS. SCHMELZER: Your Honor, foundation. It requires --

11 THE COURT: I'll sustain the objection, and you should
12 answer -- should disregard the last answer.

13 You may ask your next question.

14 Actually this seems like a good enough time as any to take
15 our afternoon break, so we'll break now. We'll reconvene at
16 quarter to 4:00, so 15 minutes to 4:00, and we'll see you at
17 that time.

18 Again, this is not the time to discuss the evidence but
19 rather to take a break from it, and we'll see you again at
20 quarter to 4:00. All rise for our jury, please.

21 (Jury exits the courtroom at 3:21 p.m.)

22 THE COURT: And, Ms. Boyden, you can step down. If
23 you'd just be back in that seat at quarter to.

24 If the parties would be seated. This is getting to be a
25 difficult line drawing, but generally I'll allow you to describe

1 what doctors told you, but both counsel and the witness should
2 be aware that there is a point at which it's no longer relevant
3 to how it impacts you and it's introduction of medical evidence
4 without a proper foundation. So that's why I drew the line
5 where I did, and I hope that both witness and attorney will hew
6 to that a little more closely.

7 THE WITNESS: What does that mean?

8 THE COURT: I think your counsel can help understand,
9 unless your counsel is not following what I'm saying, in which
10 case I'll try to expand.

11 THE WITNESS: Okay.

12 THE COURT: That was a question, Mr. Knight, more than
13 a --

14 MR. KNIGHT: Oh, I'm sorry, Your Honor.

15 THE COURT: You understand where the line is?

16 MR. KNIGHT: I do understand where you're going, and I
17 will speak to --

18 THE COURT: Very good. That's all I'm asking. We'll
19 reconvene -- unless there's something more for the plaintiffs?

20 MR. DUPUIS: One quick thing, Your Honor.

21 THE COURT: Yes.

22 MR. DUPUIS: Before we put on Dr. Budge, are you going
23 to read the narrative statement to the jury or --

24 THE COURT: I am. I will read the narrative statement
25 when she takes the stand.

1 MR. DUPUIS: Okay.

2 THE COURT: Anything else for the defendants?

3 MS. SCHMELZER: No, Your Honor.

4 THE COURT: All right. We'll take our break now and
5 reconvene at quarter to. You're free to move about as you wish.

6 (Recess at 3:23 p.m. until 3:46 p.m.)

7 THE COURT: For the Court's benefit, the Budge reports
8 appear at three different dockets, 89, 119, and 136. Is there
9 one report in particular you'll be eliciting opinions and bases
10 from or will it come from all three?

11 MR. DUPUIS: I have been using 89, 119, and 136.

12 THE COURT: So I guess that will mean it's coming from
13 all three. We can bring out our jury.

14 MR. DUPUIS: Probably mostly one but -- the first one.

15 THE COURT: Mostly from 89?

16 MR. DUPUIS: Yes.

17 THE COURT: Thank you.

18 (Jury enters the courtroom at 3:47 p.m.)

19 THE COURT: All right. Welcome back, and we'll
20 continue with the direct examination of Ms. Boyden.

21 You may proceed, Counsel.

22 BY MR. KNIGHT:

23 Q Ms. Boyden, let's see, I believe we were talking about
24 surgery.

25 A Possibly.

1 THE COURT: Dr. Webster having recommended surgery in
2 particular.

3 BY MR. KNIGHT:

4 Q Okay. And had you -- so I believe -- I guess maybe the way
5 to start here is did you take any steps to receive surgery?

6 A I did.

7 Q And why did you do that?

8 A Both because of the advice of my primary care physician to
9 reduce my issues with hormones and androgen inhibitors and also
10 because I had long-standing gender dysphoria surrounding that
11 part of my body and wanted to have treatment for it.

12 Q And I'd like to ask you whether -- actually, I guess the
13 way to do this is to ask you to take a look at a document that's
14 already been marked for -- as exhibit -- I'm sorry. It's
15 Exhibit 6. Okay. Can you see that?

16 A Yes, I can.

17 Q It looks like I'm --

18 THE COURT: You were doing fine until you moved it.

19 MR. KNIGHT: Until I pushed it. Maybe it's best if I
20 just move it --

21 THE COURT: You can zoom in and out. You can make it
22 as large or small as you want.

23 THE WITNESS: This is perfect for me.

24 THE COURT: Focus is --

25 BY MR. KNIGHT:

1 Q Okay. All right. So can you identify this document?

2 A Yes, I can.

3 Q And what is it?

4 A This is the letter that Dr. Webster sent in support of my
5 request for gender confirmation surgery.

6 THE COURT: All right. Exhibit 6 is admitted, and I'll
7 publish it to the jury.

8 And you may proceed, Counsel.

9 MR. KNIGHT: Okay.

10 BY MR. KNIGHT:

11 Q And I just would direct your attention to the letter
12 itself.

13 THE COURT: You may want to focus in then so that
14 everyone can read it more easily. Just press the bottom -- it's
15 up and down.

16 MR. KNIGHT: Press the bottom.

17 THE COURT: Great. Thank you.

18 BY MR. KNIGHT:

19 Q Okay. And I believe you had talked about your
20 understanding with respect to a need to address the medication,
21 the hormone level. Does Dr. Webster address that issue in this
22 letter?

23 A He does.

24 Q And he is talking about this as a reason why you really
25 need -- or why it would be important for you to have surgery?

1 A Yes, that's correct.

2 Q And this is that it would -- the high levels of
3 spironolactone that you're taking has some side effects?

4 A Yes. That was the reason that we chose to use in this
5 letter.

6 Q And were there other reasons why you sought out surgery?

7 A Yes, gender dysphoria, but we believed that due to the
8 State's exclusion, an argument for gender dysphoria would not be
9 approved.

10 Q Did you take any steps -- further steps other than speaking
11 to Dr. Webster to seek out surgery?

12 A Yes. I applied for preauthorization for surgery.

13 Q And who did you -- I'm sorry -- apply to -- or preapply to?

14 A Yes. I preapplied for surgery with Dr. Marci Bowers.

15 Q Who is Dr. Bowers?

16 A Dr. Bowers is a very well-regarded surgeon for gender
17 confirmation surgery.

18 Q And was there anything else that you did? Did you see a
19 therapist or anyone else about your need for surgery?

20 A I did. I did try to see a therapist to get the letter
21 that's required for preauthorization for Dr. Bowers.

22 Q And who did you see?

23 A I eventually saw Dr. Dan Goodnature.

24 Q And what did Dr. Goodnature tell you?

25 A He diagnosed me with gender dysphoria and recommended

1 surgery.

2 Q And did he support your need for surgery at that point?

3 A Yes, he did.

4 Q And what date was that?

5 A I don't know the exact date.

6 Q Ultimately, did you -- actually, there's something I think
7 I failed to ask at the beginning of your testimony. When did
8 your coverage -- state employee health insurance coverage become
9 effective?

10 A I believe that it became effective October 1st, 2013.

11 Q Was that when you first began as a graduate student?

12 A I first began as a graduate student in August 2013. I
13 believe that the date that I officially became a university
14 employee, the start date for my appointment, was the 24th of
15 October, 2013, but I'm not a hundred percent. It's typically
16 the 24th of October every year.

17 Q Did you -- and you mentioned Dr. Bowers. Did you meet with
18 Dr. Bowers?

19 A I did not meet with Dr. Bowers.

20 Q Did you have any interaction with her?

21 A Not with her personally, just with her surgical staff.

22 Q And did she make a decision -- or did she ultimately seek
23 preauthorization for the surgery?

24 A Dr. Bowers' staff did send out a preauthorization request.

25 Q And was that based -- as far as you know, was that based on

1 information from Dr. Bowers?

2 A As far as I know, they looked at the information packet
3 that I sent them and made a decision.

4 Q And they -- and she did seek -- the doctor, through her
5 staff, did seek preauthorization?

6 A Yes.

7 Q Why do you need this surgery?

8 A For me gender confirmation surgery represents a necessary
9 step to having a body that aligns with both my gender identity
10 and my gender presentation. I need it to finally resolve
11 symptoms of dysphoria that I felt for the entirety of my life.
12 I need it because it enables me to lead a fuller, more
13 productive life.

14 Q And can you tell me a little bit more about that? How does
15 it impact -- first of all, how does it -- how does the impact
16 you talked about with respect to your body affect you?

17 A So I experience a great deal of dysphoria related to that
18 part of my body, a great deal of shame. It's often been very
19 difficult for me to speak with people about it, much less
20 publicly. It's been very difficult to have physicals with
21 doctors, even because the idea of them touching that part of my
22 body is so deeply disgusting.

23 Q I think you -- were there any other reasons why you felt
24 you needed surgery at that point?

25 A Yes. I think in addition to the medical recommendations,

1 in addition to the dysphoria that I feel, it's had a negative
2 impact on my life in a number of ways socially.

3 Q And what ways are those?

4 A Well, it's very difficult to find a boyfriend when your
5 genitals don't match, you know, the gender on your Tinder
6 profile or whatever, you know.

7 Q Did it have -- and had you dated?

8 A Yes.

9 Q And -- but -- so how was it -- how had it been a problem
10 for you in terms of dating?

11 A It had been a problem for me in terms of the level of
12 rejections that I'd received in -- some of which were extremely
13 aggressive. I was -- I frequently think about how dangerous it
14 is to be a trans woman dating.

15 Q You've talked about -- were there any other ways other than
16 dating that this affected your life?

17 A Sure. It affects my life just even when we go through
18 security as trans women. For me in particular when I go through
19 the airport, I have to go through a body scanner, and there's
20 every chance that my body will be flagged as a -- you know, some
21 unknown object that has to be checked out by TSA. It's happened
22 to many people that are dear to me, and I am constantly worried
23 that it's going to happen to me, that I'll be publicly
24 humiliated in an airport, that I might be detained as a result
25 of it.

1 Q Has it ever happened to you?

2 A Not -- no.

3 Q Have you spoken to your medical providers about the
4 concerns that you've talked about?

5 A Yes.

6 Q And do they agree that those are reasons why you should
7 have the surgery?

8 A Yes.

9 Q Are there any other reasons that you haven't mentioned to
10 the jury?

11 A I think those are the most salient ones.

12 Q Could you afford to pay for the surgery yourself?

13 A No, I could not.

14 Q And why not?

15 A As a teaching assistant, my take-home pay is roughly \$1,100
16 a month, and when I'm on fellowship, I do make more, but it's
17 usually only around \$1,500 to \$2,000 a month, and at that level
18 of pay, there is simply no way that I could pay for surgery.

19 Q Did you ever have any other sources of funds to pay for the
20 surgery?

21 A No, I did not. I had other jobs, of course, in the past,
22 but none of them paid a sufficient amount to even save away for
23 surgery.

24 Q Did you speak to your family to see if your family would
25 support you?

1 A My family supports me, but my father had lost his job
2 around the time that I had started university and so -- sorry,
3 started at UW-Madison, and so asking him for money for surgery
4 when I was experiencing this health crisis was something that I
5 just really couldn't do.

6 Q How did this feel for you to know that you couldn't afford
7 the surgery?

8 A It was extremely depressing. It's always been something
9 that, you know, I've been willing to say to myself, "Well, you
10 know, when you get stable financially, when you get the money,
11 you can do it," but that's never happened.

12 Q After Dr. Webster recommended the surgery and you got the
13 request for preapproval, what happened next?

14 A The preapproval was sent to my health care provider, which
15 at the time was Dean Health Plan.

16 Q And what happened with respect to that?

17 A It was denied.

18 Q And how did you learn it was denied?

19 A They sent me a letter telling me it was denied because of
20 the State's exclusion.

21 Q And what did you do when you received that letter?

22 A When I received the letter, because it was medically
23 necessary care and because I had my physician's support and I
24 believed I had special circumstances owing to these issues with
25 my hormone levels, I petitioned -- I filed a grievance to have a

1 hearing to appeal that decision with Dean.

2 Q And what happened at that grievance -- with that grievance?

3 I'm sorry.

4 A Well, I went to a meeting, and I made my case, and then
5 they sent me a letter three or four days later denying it again,
6 again on the basis of the State's exclusion.

7 Q And did you do anything further after these two different
8 denials?

9 A After these two different denials, I then appealed the
10 denial of the appeal this time to the Employee Trust Funds,
11 which is the group that administers the state plan, I believe.

12 Q And what happened with the appeal to the Employee -- to --
13 I'm sorry, you're talking about the Department of Employee Trust
14 Funds?

15 A I suppose. It's ETF is how it is on the letters.

16 Q Okay. And what happened with that appeal to ETF?

17 A The appeal to ETF was denied on the basis of the State's
18 exclusion.

19 Q Okay. So, Ms. Boyden, I'd like to show you a document and
20 ask -- and, Your Honor, with agreement of counsel, we've
21 identified this as Exhibit 6 -- I'm sorry. I'm sorry. Exhibit
22 23, Exhibit 23.

23 THE COURT: So it's a new Exhibit 23?

24 MR. KNIGHT: It is a new Exhibit 23.

25 THE COURT: And no objection to --

1 MS. SCHMELZER: There is an objection to pages of this
2 exhibit, yes, Your Honor, and I was just given this today.

3 THE COURT: That's fine. So how do you want to
4 proceed?

5 MR. KNIGHT: I suppose for us to be able to -- we need
6 to have a sidebar or we need to do a break. It sounds like
7 that's what Your Honor would prefer.

8 THE COURT: No, what I would prefer is that you had
9 marked this properly before trial, and you should complete your
10 questioning of this witness.

11 MR. KNIGHT: Okay. Your Honor, I'm sorry --

12 THE COURT: We'll have a brief -- we will have a brief
13 sidebar.

14 (Discussion held at sidebar at 4:02 p.m.)

15 MR. KNIGHT: I apologize.

16 THE COURT: It isn't a matter of apologizing, Counsel.
17 I was quite clear that we weren't to have problems with exhibits
18 because you had raised them in advance of trial, so now I'm
19 presented with an exhibit --

20 MR. DUPUIS: These are the ones I tried to raise this
21 morning regarding -- that are in response to the ruling --

22 THE COURT: Okay. Then you should have raised it over
23 the lunch hour. That's why I asked is there anything more.

24 But in any event, you marked this Exhibit 23. What part are
25 you objecting to?

1 MS. SCHMELZER: We object to the letter that Ms. Boyden
2 wrote and the Dean documents, Your Honor.

3 THE COURT: All right. This is out, and the Dean
4 documents are the remainder?

5 MS. SCHMELZER: There's an ETF one in the beginning we
6 do not object to, the first two pages.

7 THE COURT: But you object to everything else?

8 MS. SCHMELZER: Yes.

9 THE COURT: You can -- you can ask the witness about
10 them, but I'm not going to admit them into evidence at this
11 point. We'll have to address it at a break. That's why we have
12 breaks.

13 MR. KNIGHT: Okay.

14 THE COURT: I don't understand why this would have been
15 presented to me with a witness on the stand.

16 MR. DUPUIS: We tried to do it this morning at 8:30.

17 THE COURT: Well, you should have raised it again. I
18 told you I would take it up, but this is not the time. You can
19 introduce the basic facts, talk about it with the witness, and
20 I'll reserve as to admission of the exhibit when we're not
21 wasting the jury's time. Thank you.

22 (Sidebar discussion ends at 4:03 p.m.)

23 THE COURT: What we're going to do is show you an
24 Exhibit 23. There may be a portion that -- the first two pages
25 that I'll allow the jury to see, but for now I'm reserving on

1 its admission based on objections and -- but you can certainly
2 answer questions about it without the jury seeing it.

3 And you may proceed, Counsel.

4 BY MR. KNIGHT:

5 Q Okay. Alina, so I'm showing you Exhibit 23, and do you
6 recognize this document?

7 A Yes. This is the rejection letter that I received from
8 Employee Trust Funds after my appeal to them.

9 Q And this is the appeal that you talked about earlier -- you
10 spoke about earlier?

11 A Yes, this is the -- after Dean denied, I appealed. They
12 denied that, and then the only option left, because the first
13 appeal was in -- within Dean, this was an appeal outside of Dean
14 to the Employee Trust Funds.

15 THE COURT: And, Counsel, if you'd just hold that
16 steady and don't touch it, I will accept Exhibit 23, page 1, and
17 so the jury has a general sense of what it looks like, you'll
18 have that in your deliberations. If you want to go on to page
19 2, you may.

20 BY MR. KNIGHT:

21 Q Okay. And --

22 THE COURT: Is that just a continuation of the letter?

23 MR. KNIGHT: Page 2 is a continuation of the letter.

24 THE COURT: I can't see it because you don't have the
25 correct version. Slide it down. Thank you. All right. So

1 Exhibit 2 is just the end of the same, and I will accept -- I'm
2 sorry, page 2 of Exhibit 23 is just an extension of that same
3 letter, and it is admitted. Now you may proceed to ask
4 questions regarding the others and perhaps identify them by
5 Bates number or by page number since I think it might have been
6 docketed or has some other -- whatever identifying numbers you
7 can use on Exhibit 23, that's how you should proceed with this
8 witness.

9 MR. KNIGHT: I'm sorry. I don't think we have
10 anything -- I don't think we have other identifying documents
11 with respect to this. I just have the --

12 THE COURT: Then you might want to hand write it as you
13 proceed, Counsel, but we're going to continue.

14 MR. KNIGHT: Okay. And, I'm sorry, Your Honor --

15 THE COURT: I've admitted page 1 and 2 of Exhibit 23.
16 If you want to move on and ask the witness about anything else,
17 you'll have to do it by handwriting those numbers on it, and
18 we're going to proceed, Counsel.

19 MR. KNIGHT: Okay.

20 BY MR. KNIGHT:

21 Q So I believe you said that this was the denial letter that
22 you received --

23 A Yes.

24 Q -- from ETF?

25 A That's correct.

1 Q And this was a result of your appeal of the denial of the
2 insurance coverage?

3 A That's correct.

4 Q And I would just like to -- let's see -- direct you to the
5 fourth paragraph of this document.

6 THE COURT: Again, on page 1 of Exhibit 23?

7 MR. KNIGHT: On page 1 of Exhibit 23. And this -- if
8 you could just read that paragraph --

9 THE WITNESS: The paragraph that begins "If you
10 continue to disagree"?

11 BY MR. KNIGHT:

12 Q No, the "As you noted in the letter."

13 A Oh, yes. "As you noted in the letter accompanying your
14 written complaint, for the contract year 2017, the Group
15 Insurance Board intends to remove this exclusion under Uniform
16 Benefits. Services covered and not covered under Uniform
17 Benefits can vary from year to year. For 2016, however, this
18 remains an excluded benefit."

19 Q Okay. And if you could also just read the second
20 paragraph of --

21 THE COURT: I would prefer you ask a question of the
22 witness. The jury will have this. You can argue about it in
23 closing, but you should get on to questions, please.

24 BY MR. KNIGHT:

25 Q So is your understanding -- what is your understanding of

1 the content of this letter, the overall content of this letter?

2 A My understanding of the overall content of this letter is
3 that ETF denied my appeal for coverage for gender confirmation
4 surgery on the basis of the State's Uniform Benefits exclusion.

5 Q And is it your understanding that not only ETF's but that
6 Dean's denial is also based on that?

7 A Yes.

8 Q And based on the State's exclusion?

9 A Yes. Dean's letter to me specifically cited the State's
10 exclusion.

11 Q I'm not going to ask you about that letter.

12 A Okay.

13 THE COURT: She can identify it for the record if
14 that's --

15 BY MR. KNIGHT:

16 Q Okay. If you could just, I guess, identify -- I'm sorry.

17 THE COURT: Never mind. If you're not going to do it
18 properly, let's just move on. Go ahead.

19 BY MR. KNIGHT:

20 Q Okay. Is it your understanding that the denial from Dean
21 was based on this State Uniform Benefit exclusion?

22 A Yes, it is.

23 Q What did you -- what did you do next about the surgery,
24 your need for surgery?

25 A As this letter notes, at the time that ETF issued its

1 denial, between the time that Dean had issued its final denial
2 and the time that I appealed to ETF, there had been an
3 announcement that the Group Insurance Board was changing the
4 Uniform Benefits policy so that beginning calendar year January
5 1st, 2017, this exclusion would be removed, and so I believed
6 that starting calendar year January 1st, 2017, that the
7 exclusion would be removed, which is why I had specifically
8 asked if ETF would make an exception in my case because the
9 exclusion was going to be removed, and they denied that.

10 Q So how did you -- how did you ask?

11 A Well, in the letter that I sent to them that this letter is
12 a response to, I said -- I noted that they had voted to remove
13 the exclusion and said in light of the decision to remove the
14 exclusion, would they be willing to make an exception in my
15 case.

16 Q And what did you learn?

17 A The letter said that they would not.

18 Q Did you do anything else about your need for surgery?

19 A Yes. As a result of the change in the policy, I had
20 decided that I would apply for gender confirmation surgery again
21 on January 1st, 2017, which would involve redoing the
22 preauthorization and everything that I had done before.

23 Q And what happened with that request for surgery?

24 A It was also denied.

25 Q And did you -- I'm sorry, and you had the same doctors --

1 you had the same support for your need for surgery?

2 A It was the same preauthorization packet that I had sent
3 previously.

4 Q And is it your understanding that the doctors and the
5 medical providers you spoke to agreed that this was medically
6 necessary care for you?

7 A Yes.

8 Q And so you reapplied. What steps -- how did you reapply?

9 A I sent in another request for preauthorization to
10 Dr. Bowers' office. They sent that preauthorization to Dean,
11 and then Dean issued its decision.

12 Q And did Dean ultimately deny your request for coverage?

13 A It did.

14 Q And do you know why they denied your coverage -- your
15 request for coverage?

16 A They cited the State's Uniform Benefits policy.

17 Q Was there anything else that they cited?

18 A They cited their belief that no transgender person needs
19 gender confirmation surgery.

20 Q Did you -- ultimately did you actually appeal that denial?

21 A I did, yes.

22 Q And how did that appeal -- was there a personal meeting as
23 a part of that appeal?

24 A Yes. For the appeal with Dean for both cases, I had to go
25 to a meeting wherein representatives from Dean listened to my

1 arguments for my case.

2 Q Did you bring proof to that meeting of your own need for
3 surgery?

4 A No, I did not.

5 Q And why not?

6 A I had called Dean's -- they have a number on the letters
7 that they send for their rejections, and I had called it and
8 asked if their contention with my case was that I personally
9 didn't medically need surgery or if no transgender person
10 medically needs surgery, and my understanding based on that
11 phone call was that their case was that no transgender person
12 needs surgery.

13 Q Okay. So as a result of that phone call, did you bring
14 proof of your need for surgery, the information from your
15 counselor and Dr. Webster?

16 A No, I did not, because I thought they already had that
17 information in their packet.

18 Q Okay. And what happened?

19 A I brought instead documents showing the need for surgery
20 for transgender people more broadly and attended the meeting.

21 Q And what was the result of that meeting?

22 A The meeting -- well, initially they don't tell you what
23 their decision is until you get a letter later, so after the
24 meeting I received a letter that I had been -- that it had been
25 denied.

1 Q And the -- was there anyone at that meeting who expressed
2 support for your need for surgery?

3 A Yes, there was.

4 Q And who was that?

5 A There was a medical doctor who had been hired by Dean to be
6 in the meeting and provide an outside medical opinion.

7 Q And what was your understanding of their position?

8 MS. SCHMELZER: Objection. Hearsay, Your Honor.

9 THE COURT: Well, I'm going to exclude it at this
10 point. We're going to have to have a discussion. I'm not sure
11 why it's relevant at this point.

12 BY MR. KNIGHT:

13 Q Are there any other -- how did that make you feel to have
14 these two different denials?

15 A I was really upset, especially after the second denial,
16 because the State had changed the policy, and I had believed
17 that I would receive coverage, or at least there was a chance
18 that I would. I was aware that the State had at the last minute
19 changed and added the exclusion again at the end of 2016, but I
20 believed that, because there was a narrow window of time that I
21 had applied in, that I would get coverage.

22 Q What was that window of time?

23 A It was from January 1st, 2017, until January 31st, 2017.

24 Q And, I'm sorry, just to be clear, what happened in -- on --
25 I think you mentioned December -- the end of December 2016.

1 What is your understanding of what happened at that point?

2 A What happened in December of 2016 was that the Group
3 Insurance Board voted on December -- I think it was December
4 31st late in the evening to reinstate the exclusion and deny
5 transgender health care benefits for the next year beginning
6 February 1st, 2017.

7 Q I believe you've talked about the way -- the reasons why
8 you need surgery. Is there anything else that you haven't
9 already mentioned to the jury about your need for surgery?

10 A I just think that for me the biggest thing has been the
11 terror I have experienced in having to worry about my body
12 mutating outside of my control. I really thought I had put my
13 transition behind me because I did it back in 2003, and so it
14 was a very long time ago, and to have it all coming back again
15 and to have the threat of having all these masculinizing
16 features again that I thought that I had avoided when I was a
17 teenager has been extremely distressing.

18 MR. KNIGHT: No further questions, Your Honor.

19 THE COURT: All right. Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. SCHMELZER:

22 Q Good afternoon, Ms. Boyden.

23 A Good afternoon.

24 Q You talked a little bit about your fellowship and how you
25 pay for grad school earlier. During a fellowship you're

1 considered a State of Wisconsin employee, correct?

2 A That's correct.

3 Q And they provide you a certain amount of money, a stipend?

4 A Yes, that's correct.

5 Q And every month that is what is disbursed to you,
6 throughout the academic year, correct?

7 A Yes, that's correct, throughout the academic year.

8 Q It's essentially a way to get paid to go to grad school,
9 correct?

10 A Yes, I get paid to go to graduate school.

11 Q And you said your dissertation is on the transnational
12 transgender rights movement in Pakistan and specifically looking
13 at how women in the Islamic Republic have managed to achieve
14 that legislation that gives them equal protections under the
15 law, right?

16 A That's my current research focus in cultural anthropology,
17 yes.

18 Q I know you talked a little bit about always passing as a
19 woman since your transition, correct?

20 A That's correct.

21 Q And nobody knowing sometimes that you're transgender,
22 correct?

23 A That's correct.

24 Q Before you went public with this case, you were also
25 engaged in some activist work regarding transgendered health

1 care rights, correct?

2 A Transgender health care rights, yes.

3 Q You met with faculty?

4 A That's correct.

5 Q Met with administrators at the university?

6 A That's correct.

7 Q Met with Title IX coordinators?

8 A Uh-huh, that's correct.

9 Q And members of the LGBT community?

10 A Yes, that's correct.

11 Q And you also served as a chair on the faculty shared
12 government committee, correct?

13 A Chair of the subcommittee of the committee, yes.

14 Q Okay. And there was a great deal of work that went on
15 behind the scenes to try and get this policy changed at the
16 university, correct?

17 A Yes. I was engaged in a lot of work.

18 Q And that was before filing your complaints in this case,
19 right?

20 A That's correct.

21 Q You were also -- I think you talked about some scholarships
22 that you received?

23 A Yes, that's correct.

24 Q You were awarded a \$500 scholarship by the university's
25 LGBT campus center, correct?

1 A That's correct.

2 Q And the basis of that scholarship was the work that you had
3 made towards transgendered health care rights?

4 A That's correct.

5 Q And it was basically because you filed a complaint against
6 the State in this case, correct?

7 A It was related to the behind-the-scenes work that I had
8 done in organizing the community around this issue, but one of
9 the organizing points was the complaint, yes.

10 Q You had an early interest in the law, didn't you?

11 A Um -- ish.

12 THE COURT: We're going to have a brief sidebar.

13 (Discussion held at sidebar at 4:20 p.m.)

14 THE COURT: I just wanted you to explain what the
15 relevance of all of this is.

16 MS. SCHMELZER: I think this goes towards credibility,
17 Your Honor --

18 THE COURT: How so?

19 MS. SCHMELZER: -- and the level of distress and why
20 the monetary damages for --

21 THE COURT: Because she was advocating for the
22 possibility of health care?

23 MS. SCHMELZER: Well, the claim is that she suffered a
24 lot of distress because of this exclusion.

25 THE COURT: Yes.

1 MS. SCHMELZER: Activating and being active --

2 THE COURT: To try to undo the exclusion, you want to
3 argue to this jury, is evidence that it doesn't -- it didn't
4 cause distress?

5 MS. SCHMELZER: I think so. The depression, the shame,
6 not having to come out to anyone, she actually was an activist
7 during this time.

8 THE COURT: You're going to have to keep it really
9 short, and we're going to move on.

10 (Sidebar discussion ends at 4:21 p.m.)

11 BY MS. SCHMELZER:

12 Q Ms. Boyden, you talked a little bit about when you first
13 started to transition in college, correct?

14 A Yes.

15 Q And that this was a time that was really a crisis for you
16 as far as your mental health goes, correct?

17 A Yes, that's correct.

18 Q And your mental health was steadily eroding at that age,
19 about 18, correct?

20 A That's correct.

21 Q You were becoming suicidally depressed?

22 A Yes.

23 Q And you thought about killing yourself all the time?

24 A Yes.

25 Q And this was back in 2003, correct?

1 A Yes. 2002, 2003, yes.

2 Q And this is when you stopped going to class and almost
3 flunked out of school, correct?

4 A That was actually 2004, but, yes.

5 Q And I think you testified that you had a lot of shame about
6 that and that you had suffered crushing depression at that time,
7 correct?

8 A Yeah. I was deeply ashamed of being transgender for a very
9 long time.

10 Q Over the course of your transition in college, you have
11 been prescribed -- or you had been prescribed several
12 antidepressants, correct?

13 A Yes, that's correct.

14 Q And other psychotropic medications?

15 A Antidepressants, yes.

16 Q And that time frame from 18 to 21 was when you had
17 experienced your most challenging mental health concerns,
18 correct?

19 A Yes, I would say that's correct.

20 Q You said that you had always wanted reassignment surgery?

21 A Yes, that's correct.

22 Q And you testified that you had even considered that in
23 college?

24 A Yes, that's correct.

25 Q But you didn't feel it was an option because you were

1 already -- it was hard to transition at that time, and you were
2 afraid of what your parents would say?

3 A That was -- those -- there were many reasons, but, yes,
4 those were some of them.

5 Q You saw Dr. Cook in January of 2016 at the University of
6 California-Santa Barbara clinic, correct?

7 A No. You must mean 2006?

8 Q 2006. Thank you.

9 A Yes.

10 Q I'm going to show you what's been marked as Exhibit 518.

11 A Right.

12 Q 518A. Can you see that okay or do you need me to zoom that
13 in?

14 A No, I can see it.

15 Q Okay. This is an appointment clinic note from Dr. Cook
16 dated January 27th, 2006, correct?

17 A Yes, that's correct.

18 Q And I want to direct your attention to the second paragraph
19 there.

20 THE COURT: And I'm just confused. You said this was
21 518A?

22 MS. SCHMELZER: Yes.

23 THE COURT: So is there now agreement there's no
24 objection to 518A?

25 MR. KNIGHT: There's no objection to 518A, Your Honor.

1 THE COURT: All right. Then I will admit 518A, which I
2 assume is what you wanted to do, Counsel.

3 MS. SCHMELZER: Yes, Your Honor. Thank you.

4 THE COURT: And I'll display it to the jury as
5 admitted, 518A.

6 BY MS. SCHMELZER:

7 Q And, actually, I'm going to direct your attention to the
8 assessment note at the bottom there.

9 A Yes.

10 Q I'll zoom that in for you. And according to Dr. Cook, he
11 states that "The transition she is trying to make, male to
12 female, is a tough one, and she at the moment does not have any
13 desire to progress on into what is called SRS or sexual
14 reassignment surgery." Is that what that says?

15 A It is what that says.

16 Q And then I'm going to show you what's been marked as 518B.
17 This is another note from Dr. Cook, correct?

18 A Yes, that's correct.

19 Q And it's dated June 1st, 2006?

20 A Yes, that's also correct.

21 THE COURT: Counsel, this is --

22 MS. SCHMELZER: We would move this one into evidence,
23 Your Honor.

24 THE COURT: If you're going to show it the witness and
25 it hasn't been admitted, then you need to make sure the light is

1 off. But I will admit 518B, and now I will show it to the
2 jury --

3 MS. SCHMELZER: Thank you, Your Honor.

4 THE COURT: -- but you can't do it before it's
5 admitted.

6 MS. SCHMELZER: Thank you, Your Honor.

7 BY MS. SCHMELZER:

8 Q I'm going to direct your attention to the middle paragraph
9 on this note. Can you see that, Ms. Boyden?

10 A I can see it.

11 Q And you and Dr. Cook had some discussions about
12 reassignment surgery, correct?

13 A Yes, we had many discussions about it.

14 Q And he talked about some of those discussions in this note,
15 correct?

16 A He summarized his thoughts on a meeting apparently.

17 Q And his thoughts were that -- in that second paragraph,
18 "She has no interest whatsoever in that," being sexual
19 reassignment surgery. "She does not anticipate having an
20 interest in that, not the least of the reasons being that it
21 costs about 30K. But more importantly, who she sees herself as
22 being and who she feels she is does not to her depend on
23 reconstruction of her genitalia," correct?

24 A Correct that it says that?

25 THE COURT: That's all you're being asked at this time.

1 THE WITNESS: Yes, it does say that.

2 MS. SCHMELZER: Thank you.

3 BY MS. SCHMELZER:

4 Q Dr. Cook also talked with you about how this decision would
5 affect your sexual functioning, correct?

6 A Um --

7 THE COURT: Do you recall whether or not he had those
8 discussions with you?

9 THE WITNESS: I don't recall those discussions. They
10 were, I guess, 12 years ago now.

11 BY MS. SCHMELZER:

12 Q He does note though that when he queried you on "the impact
13 of this kind of in-between status if you would" -- "if you will
14 on her sexual functioning and gratification, she says she has no
15 interest in sex," correct?

16 A That's what that says.

17 Q And "She doesn't think about it" --

18 THE COURT: But you don't recall that directly?

19 THE WITNESS: I recall the conversations that I had
20 with Dr. Cook, and there's a lot of context that I feel that she
21 probably doesn't want me to talk about right now.

22 THE COURT: But that specific question and your answer,
23 you don't recall whether you -- that happened or not.

24 THE WITNESS: I recall -- yes, I recall us having these
25 conversations, but his recollection is not my recollection.

1 THE COURT: Understood.

2 And, Counsel, if you're just going to read from the
3 document, then we're going to move on. If you have something
4 else, you can ask it.

5 MS. SCHMELZER: I'll move on, Your Honor.

6 BY MS. SCHMELZER:

7 Q In 2008, this was after you left college, correct?

8 A 2008, yes.

9 Q You were being followed by Dr. Mona Gupta for bipolar
10 disorder; is that correct?

11 A I don't recall that treatment.

12 Q I'm going to show you what's been marked as Exhibit 517.
13 Can you see that okay, Ms. Boyden?

14 A I can see this, yes.

15 Q And is this a document from the Wake International
16 [verbatim] Medicine Consultants, Inc.?

17 A Wake Internal Medicine Consultants, Inc., yes.

18 Q And you had received treatment from physicians at this
19 clinic?

20 A Yes. Dr. Sarah Hughes was my primary physician, and this
21 was her clinic.

22 MS. SCHMELZER: Permission to move 517 into evidence,
23 Your Honor.

24 THE COURT: This was objected to, and I sustained the
25 objection, so unless the parties have had their own private

1 discussion, I don't know what we're doing here.

2 MS. SCHMELZER: No, I believe this was not objected to.

3 MR. KNIGHT: Right. We're not objecting to this page,
4 Your Honor.

5 THE COURT: All right. Then I will admit it as 517.
6 Is this the only page --

7 MS. SCHMELZER: Yes, Your Honor.

8 THE COURT: -- of 517? All right. I will admit it.

9 BY MS. SCHMELZER:

10 Q And in the middle of that page --

11 May I publish, Your Honor?

12 THE COURT: You may.

13 BY MS. SCHMELZER:

14 Q In the middle of that page, it says, "Also suffers from
15 bipolar disorder, followed by psychiatrist Dr. Mona Gupta,"
16 correct?

17 A It says that.

18 Q And on the bottom of that page it says, "Bipolar - followed
19 by Mona Gupta, on Abilify since early 2008," correct?

20 A It does say that, yes.

21 Q You talked a little bit about the exclusion affecting you
22 because of you don't date, correct?

23 A Yes.

24 Q But you weren't sexually active in high school either,
25 correct?

1 A No, I was not.

2 Q And because you were transgendered, you felt dating even
3 back then was off limits to you?

4 A I felt that it was extremely difficult, yes.

5 Q And you've always had discomfort in things like locker
6 rooms and bathrooms and things like that, correct?

7 A When I was using male locker rooms and bathrooms, yes.

8 Q And you've always had an insurmountable conflict when it
9 comes to sexual activity, correct?

10 A No.

11 Q You've never really had a long-term relationship as a
12 result of having essentially the wrong genitals, correct?

13 A That's correct.

14 Q Even before May of 2015?

15 A Well, I was a university employee under the state health
16 insurance plan from August of 2013, but, yes, before 2013 as
17 well.

18 Q And you don't really know if those kind of barriers are
19 going to be removed even if you do have surgery?

20 A I mean, I can't predict the future, no.

21 Q Even before you had the surgery --

22 A I haven't had the surgery.

23 Q I mean even before you came under the exclusion -- sorry --
24 you knew that, when you began your transition, that it would be
25 difficult to get insurance coverage for things like hormone

1 therapy and surgery, correct?

2 A I'm sorry. Could you repeat that question?

3 Q Sure. Even in college when you began your transition, you
4 knew it would be difficult to get insurance coverage for things
5 like hormone therapy and surgery?

6 A No, I had insurance coverage for hormone therapy and
7 surgery in college as an undergraduate at University of
8 California-Santa Barbara.

9 Q You first obtained hormones through the internet though,
10 correct?

11 A That's correct, yes, but that wasn't because of insurance.

12 Q And after you moved to North Carolina, you got a job,
13 correct?

14 A That's correct.

15 Q And that was at the Piedmont Wildlife Center?

16 A That's correct.

17 Q And you did have an insurance plan at that job, correct?

18 A For two of the years that I worked there, yes.

19 Q And it did not include coverage for things like hormone
20 therapy and surgery, correct?

21 A I don't believe that it did, no.

22 Q And you were considering gender reassignment surgery at the
23 time, but you didn't think you could afford it, correct?

24 A That's correct.

25 Q In fact, after you left college in California, you had not

1 run into any plan or heard of any plans that covered
2 transgendered health care?

3 A I had not run into any. I had heard of some.

4 Q And you were operating under the assumption that most of
5 the time this wasn't going to be covered?

6 A Yes.

7 Q And the idea that you would have a plan that covered your
8 medical care was kind of difficult to imagine for you at that
9 point, correct?

10 A I mean, I had had a plan that covered it at the University
11 of California-Santa Barbara, but finding a private health
12 insurer that covered it was difficult.

13 Q And this caused you some distress even before coming to
14 Wisconsin, correct?

15 A Yes, it did cause some distress.

16 Q Because you were on hormone therapy at that time?

17 A I was on hormone therapy that was functioning at that time.

18 Q And wanted surgery as well?

19 A Yes, that's also correct.

20 Q I want to talk a little bit about that experience that you
21 had at the Dean Health Clinic with the endocrinologist.

22 A Okay.

23 Q That was in May of 2015, correct?

24 A That's correct.

25 Q And that was -- you were seeing her because of the spike in

1 your testosterone levels at that time, correct?

2 A Yes, that's correct, and the fear of cancer.

3 Q And Dr. Etheridge, she works for Dean Clinic, right, not
4 for ETF?

5 A She works for the endocrinology clinic in Madison, yeah.

6 Q And the nurse that wouldn't give you an appointment, she
7 also works for Dean, correct?

8 A Yeah, I believe so.

9 Q And it was Dean's refusal to see you about that scare that
10 you had that caused you to file an EEOC complaint, correct?

11 A Yes, initially.

12 Q And you weren't looking to see the endocrinologist at that
13 time -- that didn't concern transitioning. To you that was
14 about a cancer scare, correct?

15 A Yes, but the difficulty was it was hard to tell the two
16 apart.

17 Q And you were able to have your hormone levels monitored by
18 Dr. Webster before this time, correct?

19 A Yes, I was, by having him mark me as a woman.

20 Q And I think you testified that you do get them monitored
21 every couple of months, correct?

22 A I think it's every six months to one year at this point now
23 that the testosterone spike has been reduced.

24 Q And you have coverage for those types of -- that kind of
25 treatment, correct?

1 A Currently I do, yes.

2 Q And even under the exclusion you had coverage for that,
3 correct?

4 A I was -- it was approved even under the exclusion. I'm not
5 sure whether it was supposed to be or not.

6 Q Nobody at the Dean endocrinology clinic told you that they
7 don't treat transgender people because of the exclusion,
8 correct?

9 A That's correct.

10 Q And you eventually did see Dr. Etheridge, correct?

11 A Eventually, yes.

12 Q And she did look at your levels, monitor those -- do some
13 blood work on you, correct?

14 A She did do some blood work. I wouldn't call it monitoring.

15 Q And she did meet with you at another appointment, correct?

16 A Yes. We had two appointments in total.

17 Q And to tell you what your results were, correct?

18 A Yes.

19 Q And you also were able to see Dr. Gindlesberger through
20 Dean?

21 A Yes.

22 Q And your coverage for -- you were covered for those
23 appointments with Dr. Etheridge, correct?

24 A Yes.

25 Q And your appointments with Dr. Gindlesberger?

1 A Yes, because they were -- she's a general practitioner,
2 yeah.

3 Q And she also prescribed you finasteride, correct?

4 A That is correct.

5 Q And that brought down your testosterone levels?

6 A Eventually, yes.

7 Q So that spike that you had was resolved by some
8 prescriptions of some different medicines, correct?

9 A Technically my hormone levels are now in range.

10 Q And I know you said that you had worried about some
11 masculizing features that could have resulted from those -- that
12 spike, correct?

13 A Yes.

14 Q But you didn't think that your voice did ever change
15 because of that, correct?

16 A It's hard to know without -- I don't think that the change
17 was noticeable enough that I would go on the record saying that
18 it had, no.

19 Q And you don't think that you had any more facial hair as a
20 result of that?

21 A No, I don't believe so.

22 Q Eventually you actually came to learn that Dean does have a
23 plastic surgeon that provides reassignment surgery, correct?

24 A I was told that by Dean, but I haven't independently
25 verified it.

1 Q You also saw, you said, Dr. Goodnature?

2 A That's correct.

3 Q And you saw Dr. Goodnature to get a letter of
4 recommendation for surgery, correct?

5 A That's correct, a therapist letter and a diagnosis of
6 gender dysphoria, which are required.

7 Q Did you see Dr. Goodnature to provide therapy for you?

8 A No, I did not.

9 Q And, in fact, before -- or after you came to Wisconsin, you
10 have never sought treatment from a mental health professional
11 for your distress, correct?

12 A That's correct.

13 Q Because you didn't feel that you needed it?

14 A Yeah, and I think my experiences in undergrad have given me
15 kind of a deep distrust of psychiatrists.

16 Q And you felt that even though you weren't able to get the
17 surgery, you were able to cope and to do your work and that kind
18 of thing?

19 A Yeah. My functioning skills are better than they were when
20 I was an undergraduate.

21 Q I want to talk a little bit about that -- the process of
22 your prior authorizations and the denials that you received.

23 A All right.

24 Q And I'm going to jump to that third time that you submitted
25 a preapproval after the exclusion was gone for that one month

1 period.

2 A That was the second preapproval.

3 Q The second one, correct. Did you have a meeting at Dean to
4 discuss your appeal and that denial?

5 A Yes, I did.

6 Q And was that in February of 2017?

7 A That sounds about right.

8 Q And did Dean deny your appeal for -- on that occasion?

9 A They did, yes.

10 Q And what is your awareness as to why they denied your
11 appeal?

12 A My understanding from the letter that I received from Dean
13 is that they denied my appeal on the basis of the State's health
14 exclusion being reinstated and on the basis of Dean's policy for
15 policyholders which do not have a transgender health rider which
16 prohibits that surgery and on the basis of transgender -- gender
17 confirmation surgery being not medically necessary for any
18 person ever.

19 Q And that was -- the medical necessity denial, that was from
20 a plastic surgeon, correct?

21 A Yes.

22 Q So Dean said that it wasn't medically necessary?

23 A For anyone.

24 Q I want to talk a little bit about the surgery that you
25 sought preapproval for. The surgery that you want is a

1 penectomy, correct?

2 A No. The surgery -- gender confirmation surgery is a suite
3 of operations that have a variety of names, but the goal is to
4 use the tissue of the body to construct genitals which match the
5 gender identity of the patient.

6 Q And I guess the suite of surgeries that you believe you're
7 being denied is a penectomy, an orchiectomy, and a vaginoplasty,
8 correct?

9 A I believe those are the terms that are publicly used in the
10 medical literature.

11 Q And you believe that after you have these procedures, that
12 you will no longer have gender dysphoria?

13 A Yes. I believe that the strongest symptoms of my gender
14 dysphoria will be resolved, that much of the daily life
15 functionings that had been impinged will be resolved, and that
16 my hormone levels will be more easily managed.

17 Q And you also attribute all of the distress in your life to
18 not being able to have the surgery?

19 A I attribute the strongest component of my life's stress to
20 the State's denial and this process, yes.

21 Q But you're still in graduate school, right?

22 A Yes.

23 Q And that can be stressful?

24 A Not like this, but yes.

25 Q And, in fact, you spent the last summer in India, correct?

1 A This -- yes, the last three months up until two weeks ago,
2 three weeks ago maybe.

3 Q And I believe you said as soon as the trial is over, you're
4 going to go back to India for 12 months?

5 A No, probably Pakistan.

6 THE COURT: Pakistan.

7 MS. SCHMELZER: Pakistan. Sorry. Thank you, Your
8 Honor.

9 BY MS. SCHMELZER:

10 Q Back to Pakistan for 12 months, correct?

11 A Well, I have never been to Pakistan, but, yes, to Pakistan.
12 Yes, that's correct.

13 Q You also recently took on some side work for archeology,
14 correct?

15 A Actually that didn't pan out because of the rain.

16 Q You talked a little bit about the fear of your care and not
17 being provided things like hormones in the future, correct?

18 A In the future?

19 Q Right.

20 A Um --

21 Q Maybe I misstated that. Some of the fear that you have
22 about your care in the future.

23 A So --

24 THE COURT: Maybe you could just rephrase it generally.

25 MS. SCHMELZER: Sure, sure.

1 BY MS. SCHMELZER:

2 Q Do you have any fear about your transgender care for the
3 future?

4 A Currently the exclusion has been removed, and so I believe
5 that I'll be able to get the care that I need, unless there's
6 another change that's made at the last minute.

7 Q But you've been on hormone therapy continuously since
8 coming to Wisconsin, correct?

9 A Yes, since 2003.

10 Q And you've never been denied coverage for that therapy,
11 correct?

12 A No. I have been denied coverage for finasteride twice, but
13 both times we were able to get the exclusion overturned with my
14 doctor's consent.

15 Q And -- okay. So you've been denied finasteride twice, but
16 you've never had to go without it, correct?

17 A No, I've had to go without it but not for a lengthy period
18 of time.

19 Q Have you had to pay out of pocket for it?

20 A Yes, on two occasions.

21 Q How much was that?

22 A I don't recall. It was a short duration. It was like ten
23 days waiting for the doctor's letter to clear to get the
24 exclusion overturned. It was an internal process with Navitus,
25 who administers the hormonal medications.

1 Q Was it minimal?

2 A I believe it was less than \$100 probably.

3 Q Even though you couldn't get surgery after your request in
4 May of 2015, you were hopeful that eventually you'd be able to
5 get it, correct?

6 A Eventually -- no, not in May of 2015. I think prior to May
7 of 2015, my feelings were hopefulness that I would be able to
8 get surgery eventually, but because of that testosterone spike,
9 I have been constantly concerned that it needs to be done now
10 because of the inability of the drugs to control my testosterone
11 levels at this point.

12 Q You've been able to function day to day?

13 A Yes.

14 Q And you had things that were positive happen in your life
15 even though you couldn't get surgery?

16 A Yes, I have had positive things happen in my life.

17 Q And that helps, that you could focus on those?

18 A Yes.

19 Q I want to talk a little bit about -- I know they talked
20 about your finances and how much you make as a graduate student,
21 and I believe you testified that you couldn't afford to pay for
22 the surgery, correct?

23 A That's correct.

24 Q After May of 2015, correct?

25 A That's correct.

1 Q In January of 2015, your dad bought you a brand new car,
2 correct?

3 A He purchased a vehicle from the Toyota dealership. I'm not
4 sure of what the mileage was or those details. I believe it was
5 new, but I'm not sure.

6 Q Do you remember testifying that it was a new car?

7 A I believe it was new, whatever that means with the dealer,
8 yeah.

9 Q A Toyota Corolla?

10 A That's correct.

11 Q But you don't remember how much it cost?

12 A No, because at the time I had no transportation, so the
13 first time I saw it was when I had to go to the dealership to
14 pick it up.

15 Q You considered taking out a loan to pay for surgery,
16 correct?

17 A Yes, but I didn't believe that I would be approved or that
18 I could pay it off actually, to be honest.

19 Q You also thought it would be better to wait until you had
20 financial stability?

21 A Yes, I thought that that was probably better than
22 defaulting on a loan, yes.

23 Q And you also didn't want to build up any interest on the
24 loan?

25 A Yes, that's true too.

1 Q But you never talked to any bank or financial institution
2 about financing the surgery, correct?

3 A No.

4 Q Did you have any student loan debts after college?

5 A After undergraduate, no, I did not.

6 Q Do you have any student loan debts now?

7 A Not student loan debts, no.

8 Q You're requesting \$5 for -- \$5 co-payments to cover your
9 hormone therapy since January 17th, 2017, correct?

10 A I believe so.

11 Q But we haven't seen any receipts for those co-payments,
12 have we?

13 A I don't know.

14 Q None were presented today.

15 A By me?

16 Q By anyone in this courtroom.

17 A Oh, I suppose not.

18 Q Even though you could have gotten them.

19 A I suppose possibly.

20 Q Do you remember testifying in your deposition that you
21 could have gotten them?

22 A I believe --

23 THE COURT: Counsel, this is a discovery issue that you
24 should raise with me if you needed them. This is not a proper
25 subject for cross-examination. You should ask your next

1 question.

2 BY MS. SCHMELZER:

3 Q I'm going to talk a little bit about the expert that the
4 plaintiffs retained in this case, Dr. Budge.

5 A Okay.

6 Q She was retained -- before she was retained in this case,
7 you and Ms. Andrews had a meeting with her over coffee, correct?

8 A That's correct.

9 Q And Dr. Budge reached out to both of you to see if you
10 needed any mental health support, correct?

11 A That's correct.

12 Q And you both said you were fine, but you met with her to be
13 polite, correct?

14 A Yes.

15 MS. SCHMELZER: I think that's all I have, Your Honor.

16 THE COURT: All right. Redirect.

17 REDIRECT EXAMINATION

18 BY MR. KNIGHT:

19 Q I'd like to ask some follow-up questions and let you
20 explain some of the answers you gave with respect to Ms.
21 Schmelzer's questions. I believe Ms. Schmelzer asked whether
22 you were paid to go to graduate school?

23 A Yes, she did.

24 Q And do you understand why you're paid to go to graduate
25 school?

1 A I'm paid to do the research that I do because the research
2 that I do oftentimes brings in money to the state, like the
3 fellowship that I'm currently on and the fellowship that I was
4 on last year and the scholarships that I receive. I think in
5 total I have received something like, oh, I don't know, 30 or
6 \$40,000 worth of scholarships and fellowships that have been run
7 through the university, of which they take a certain cut. In
8 addition, I do teaching assistant work wherein I do most of the
9 work of a professor for a course for a fraction of the cost.

10 Q And I believe you were asked about fighting at the
11 University of Wisconsin for health care related to -- for the
12 health care for transgender people. Do you remember that
13 question?

14 A Funding?

15 Q I'm sorry, that you were given a scholarship because of
16 your fight.

17 A Yes, yes, that's correct, yes.

18 Q And so you've talked about that work. How does that relate
19 to this case?

20 A The work relates to this case in the sense that I also am a
21 transgender person who needs transgender health care.

22 Q So you were working to receive the care -- trying to get
23 the care in whatever way you could?

24 A No, I was working behind the scenes to receive the care for
25 me but also because I was aware that I had been critically

1 depressed when I was an undergraduate, and I had been quite
2 young and without a lot of coping skills I have now as an adult,
3 and I feared that someone would come along who would need this
4 exclusion who was not as equipped to deal with it as I was and
5 they might kill themselves or something.

6 Q I believe you were also asked about taking antidepressants.
7 Are you still taking antidepressants?

8 A I haven't taken any antidepressants since 2008.

9 Q And were those effective in treating you?

10 A No, they were not. I believe that they actually made my
11 symptoms worse because when I was first prescribed
12 antidepressants as an undergraduate, there was no black box
13 warning. Now they know not to give antidepressants to
14 adolescents because --

15 MS. SCHMELZER: Objection. Foundation, Your Honor.

16 THE COURT: I'll -- you've answered the question. I'm
17 not going to strike it.

18 And you may ask your next question.

19 BY MR. KNIGHT:

20 Q You were asked about some medical records from appointments
21 with Dr. Cook, and, of course, I can show those to you again --

22 A Yes. I'd like to see them.

23 Q So the first of those is Exhibit 518A. And do you --

24 THE COURT: He's got it on the screen.

25 You may proceed, Counsel.

1 MR. KNIGHT: Okay.

2 BY MR. KNIGHT:

3 Q Do you recall this appointment, and were the words that are
4 listed here that Ms. Schmelzer read to you, are those consistent
5 with your understanding of the conversation you had with
6 Dr. Cook?

7 A I think that the issue that I have with the records from
8 Dr. Cook's office are plain in the fact that I was so deeply
9 ashamed about being transgender at that time that conversations
10 surrounding my genitals and sex with anyone, much less an adult
11 male medical provider, were extremely uncomfortable and
12 difficult for me. To have been raised extremely conservative
13 and to go from everyone expecting you to marry a woman to trying
14 to talk to a doctor about having sex with a man as a woman is a
15 deeply unsettling conversation, especially for someone who was
16 raised in that environment, and so at that time I was not really
17 mentally equipped to talk about it in a way that really
18 reflected my feelings.

19 Q Is there anything more about 518A in terms of -- if you
20 want to take a minute to look at it -- that refreshes your
21 recollection about that appointment?

22 A I mean, it mentions my dog Freya.

23 Q All right. In terms of your need for treatment, your need
24 for surgery --

25 A I think no. I think that's fair.

1 Q And 518B, you were also asked some questions about this
2 record from Dr. Cook?

3 A Yes. And I think that this is at the heart of what was
4 bothering me is if you look at this record, it mentions my
5 concern about the cost of the surgery, and I think that makes it
6 clear how much I wanted it, that I was pricing it out and
7 thinking about the cost, but I also think that when he talks
8 about my -- when I find it "grotesque to contemplate" sex, I
9 think that, again, these are issues that were related to the
10 deep shame that I had been feeling and the difficulty I had
11 talking about this very sensitive topic at that age.

12 Q And I think the next record you were asked about is about a
13 diagnosis in -- a Dr. Gupta, who I don't believe you remember
14 seeing? This is in 2008, and, again, I can show you that
15 record.

16 A You can show me the record, yes.

17 Q Were you treated for --

18 THE COURT: And was this admitted or this was referred
19 to?

20 MR. KNIGHT: This is one of the ones that was admitted
21 as well, I believe.

22 THE COURT: What exhibit number?

23 MR. KNIGHT: I'm sorry. 517.

24 THE COURT: Thank you.

25 THE WITNESS: So I do recall being treated for bipolar

1 disorder beginning in, I believe, 2006 with Dr. Kathy Reeves or
2 it was possibly 2005 at the University of California-Santa
3 Barbara, but I don't recall Dr. Mona Gupta. My brother
4 committed suicide in July of 2007, and we were in a lot of
5 upheaval at that time, so it's difficult for me to recall maybe
6 a psychiatrist that I saw for just a few days or a few months at
7 that time.

8 BY MR. KNIGHT:

9 Q How long -- are you still being treated for that condition?

10 A No, I have not received treatment for any psychiatric
11 conditions since 2008, and I don't believe I ever had bipolar
12 disorder.

13 Q But you do believe that you still have gender dysphoria?

14 A Yes.

15 Q Ms. Schmelzer asked you some questions about co-payments
16 that you're claiming damages for?

17 A Yes.

18 Q And what -- why are you claiming damages for those?

19 A Well, I was asked to account for the costs to me
20 financially for the exclusion, and while I didn't pay out of
21 pocket like Shannon because I couldn't, I have been forced to
22 take drugs that I wouldn't otherwise have had to take and pay
23 the co-payments for those drugs even though they were covered by
24 insurance. I would not have had to take them if not for the
25 exclusion, and I have had to have lab work done that I wouldn't

1 have had to have done if not for the exclusion. I have had to
2 go to the doctor's office and pay for those co-pays as well for
3 visits I wouldn't have had to have if not for the exclusion, so
4 some of those things were included in that charge because those
5 were payments that I made that I wouldn't have had to make
6 otherwise.

7 Q And do you have a ballpark figure for what the total cost
8 of these co-payments and blood testing is?

9 A Since the date January of 2017?

10 Q Yes.

11 A It would roughly be \$5 a month for the hormones -- or,
12 sorry, for the androgen inhibitors that I wouldn't have to take
13 otherwise for the period from then until now as well as the
14 associated co-payments with blood work.

15 Q Okay. And do you know what the cost of the blood work
16 monitoring would be?

17 A I believe on that document it was \$312 since January 1st,
18 2017, I think.

19 Q Okay. And, I'm sorry, which document are you speaking to?

20 A The one that you are holding.

21 Q Actually, I wasn't showing it to you, but is there
22 something that would refresh your recollection with respect to
23 the cost?

24 A Probably the document you're holding.

25 Q Do you remember -- all right. I will ask you to take a

1 look at this, which is -- and I believe this is just being shown
2 to you, if you can see it?

3 A Is the jury light off?

4 THE COURT: It is. You may proceed. I did it.

5 THE WITNESS: Thank you.

6 MR. KNIGHT: I'm sorry.

7 BY MR. KNIGHT:

8 Q So does this refresh your recollection about the amount of
9 out-of-pocket costs that you paid for -- that you would have had
10 to pay for an exclusion?

11 A Yes, it does.

12 Q And what is that amount?

13 A It looks like it's about \$95.

14 Q Okay. And I think actually to refresh I should take this
15 away, but I'm going to look at page 2. Okay. And looking at
16 page 2 --

17 A Yes.

18 Q -- and does this refresh your recollection about the cost?

19 A Yes. The blood work was \$316.67.

20 Q And was that the only costs that you paid?

21 A Those were the costs that were put in the charge.

22 Q Okay. I'm sorry. I'm going to show you one more time. I
23 forgot to refresh your recollection. I believe there was one
24 other charge. Do you remember --

25 A Yes.

1 Q Okay. And do you recall that charge?

2 A Yeah. There was another \$200 for previous blood work
3 between January -- between 2014 at the time that I identified
4 that testosterone spike and the current -- the January 1st,
5 2017, date.

6 MR. KNIGHT: No further questions, Your Honor.

7 THE COURT: All right.

8 MS. SCHMELZER: I just have very brief, Your Honor --

9 THE COURT: Very brief.

10 RE-CROSS-EXAMINATION

11 BY MS. SCHMELZER:

12 Q Ms. Boyden, you talked about you being very deeply ashamed
13 about being transgendered when you first came out, correct?

14 A When I first came out, yes.

15 Q But you have zero shame about being transgender now,
16 correct?

17 A That's correct.

18 Q In fact, you now have a practice of radical outedness where
19 you tell everyone that you meet that you're trans, right?

20 A I try to as much as I can because I believe it helps people
21 to understand that transgender people are normal, yes.

22 MS. SCHMELZER: Thank you.

23 THE WITNESS: Uh-huh.

24 THE COURT: Did the jury have any questions for this
25 witness?

1 Then you may step down.

2 And I'm going to have a brief sidebar with counsel.

3 (Witness excused at 5:02 p.m.)

4 (Discussion held at sidebar at 5:02 p.m.)

5 THE COURT: I just wanted to confirm how long Dr. Budge
6 is going to be.

7 MR. DUPUIS: On the direct?

8 THE COURT: Yes.

9 MR. DUPUIS: Might be 45 minutes maybe.

10 THE COURT: All right. And you'd expect something
11 similar for cross or less, I would imagine.

12 MS. SCHMELZER: Similar.

13 THE COURT: Okay. So we're not going to get it done
14 today, and your witness will take how long on direct?

15 MR. ROTH: 30 minutes.

16 THE COURT: All right. I think we're going to call it
17 a day because we have some work to do on the exhibits and my
18 understanding where we are, so I'm going to send the jury home,
19 and we'll take up again in the morning, but counsel will stay so
20 we can address those other issues.

21 (Sidebar discussion ends at 5:03 p.m.)

22 THE COURT: As the jury may have gathered already,
23 we're not going to finish today, and under the circumstances,
24 because I suspect we will complete all of the testimony by the
25 morning break tomorrow or a little bit after, it makes the most

1 sense to send you home now and to take this up in the morning.
2 I have some work to do with counsel with respect to some of
3 these exhibits, which I thought we had addressed before trial
4 but we have some clarification to do, and I think it will
5 streamline what we do tomorrow.

6 So with that, I thank you very much for your attention
7 today. I fully anticipate we'll complete this trial tomorrow,
8 but I am going to have to have you come back regardless, so
9 we're going to stop now, and I'll see you at 8:30 a.m. If you
10 could be good enough to be ready to go at that time and waiting
11 in the jury room, we'll proceed on that basis.

12 And this evening I can't encourage you enough to just let
13 this go. It will percolate in your mind, the things you've
14 heard, but you're really not prepared to make any decisions, and
15 you just shouldn't discuss it with anyone. You're more than
16 welcome to tell your significant others or friends or whatever
17 that you were -- you did jury service today, but beyond that, in
18 describing what the building was like or something like that,
19 just talk about other subjects and wait until you have all the
20 evidence beyond that.

21 Thank you very much for your time, and we will see you
22 tomorrow morning. All rise for our jury, please. And you can
23 leave whatever you want behind or in the jury room. It will be
24 locked.

25 (Jury exits the courtroom at 5:05 p.m.)

1 THE COURT: All right. If the parties would be seated.
2 I'm trying to think of the most efficient way to do this, and I
3 think it may be to just take up plaintiffs' exhibits and then
4 defendants' exhibits in turn. I have admitted at this point for
5 plaintiffs Exhibit 6 and Exhibit 11, and the first two pages of
6 Exhibit 23.

7 Without putting too fine a point on it, I was quite clear
8 this morning that I expected the parties to consult at the break
9 and to let me know if there were any remaining disputes with
10 respect to introduction of additional evidence. We had three
11 breaks after that. We had the morning break, we had lunch, and
12 we had the afternoon break, so I was a bit disconcerted that
13 none of that had been addressed. In particular, you addressed
14 it among yourselves, but I'm not a mind reader. That's why I
15 asked you to tell me if there were any remaining issues.

16 That said, I will consider, if you would put up Exhibit 23,
17 page 3, and hear the objection for the defendants.

18 MS. SCHMELZER: Your Honor, it's a prior consistent
19 statement from -- it's authored by Ms. Boyden. It's a letter
20 from her to Employee Trust Funds, out-of-court statement. She
21 wants to use it to prove the truth of the matter asserted. It's
22 not admissible.

23 THE COURT: What's it being offered for?

24 MR. KNIGHT: We were offering it to show the contest --
25 I mean the context to which she got the response from ETF.

1 THE COURT: First of all, I can't see who it's
2 addressed to. I assume it's someone at the defendant. If you
3 just keep going until you have the full document.

4 MR. KNIGHT: I'm sorry.

5 THE COURT: There you go. You can stop now. Thank
6 you. So it's addressed to the ombudsperson at the defendant,
7 and it's a letter from your client to them, so generally it's
8 hearsay except under one of the exceptions. What's the
9 exception?

10 MR. KNIGHT: I mean, ultimately it's not offered -- I
11 don't believe it's offered for the truth of the matter asserted.
12 It's offered to show her effort to get the coverage, I guess.

13 THE COURT: And why wasn't it marked when you had the
14 opportunity to do so over the last month? Why am I just seeing
15 it today?

16 MR. KNIGHT: This is one of those documents that we
17 didn't expect we would need to use until we understood, because
18 of the Court's ruling, that the State -- the State was going to
19 be able to challenge the basis for the exclusion and argue --

20 THE COURT: No, it's not the basis for the exclusion.
21 It's the proof of damage as a result of the exclusion, and, you
22 know, you had to know from the beginning that at some point you
23 were going to have to prove damages, whether I ruled on
24 liability or not. At some point you would have to show what the
25 damages were that resulted from the exclusion so --

1 MR. KNIGHT: I understand. I didn't say that very
2 well. It's that the causal change -- chain was being
3 challenged. We believed that the entire scope of these appeal
4 documents show that the denial by Dean was based on the State's
5 exclusion.

6 THE COURT: And how does this show that?

7 MR. KNIGHT: This was her appeal --

8 THE COURT: No, don't move it. I'm reading it.

9 MR. KNIGHT: I'm sorry.

10 THE COURT: How does this document show that the
11 ombudsman or anyone else at the defendant was -- I mean, there
12 isn't any question that the defendants did deny because of the
13 exclusion. How does it have -- what does it have to do with the
14 causality as to Dean Health Plan?

15 MR. KNIGHT: I guess the reality is this, Judge: This
16 was her appeal. I suppose we don't really need to show her
17 appeal to them, and we can simply show the denial from Dean that
18 she was appealing, and so we can take this piece of that --

19 THE COURT: So "this," being page 3 of Exhibit 23,
20 you're proposing to withdraw.

21 MR. KNIGHT: We can just withdraw that.

22 THE COURT: All right. Then show me what you do want
23 to include still.

24 MR. KNIGHT: We would like to include her -- this is
25 her request for coverage to -- but this is Dean's letter

1 confirming the requested service, page 2 showing that it's
2 denied pursuant to the State's exclusion.

3 THE COURT: All right. Hang on. Just don't touch
4 anything at this point. When you put that page there, all I can
5 see are addresses. I can't see what you're telling me -- is
6 that the first page of the letter?

7 MR. KNIGHT: This is the first page of the letter.

8 THE COURT: And does it have any text on it?

9 MR. KNIGHT: It has text showing the --

10 THE COURT: That the letter confirms denial of the
11 requested services.

12 MR. KNIGHT: Right.

13 THE COURT: All right. Then let me see what we're
14 calling the fifth page then.

15 MR. KNIGHT: This is the fifth page.

16 THE COURT: All right. And the objection to this is
17 what?

18 MS. SCHMELZER: It's hearsay, Your Honor. I don't
19 think they've met any of the hearsay exceptions for this.

20 THE COURT: Well, you're not disputing the authenticity
21 of it, right? It did come from Dean? It was sent to Ms.
22 Boyden?

23 MS. SCHMELZER: I don't know that I would concede the
24 authenticity. This wasn't provided in discovery from them.

25 MR. KNIGHT: Yes, it was. That's actually not true,

1 and actually this was a filing with our summary judgment
2 pleadings.

3 THE COURT: What docket number is it? Is it at the top
4 there, 103?

5 MR. KNIGHT: Docket 103-6, so it was an exhibit in
6 support of our motion for summary judgment.

7 THE COURT: This will just take me a moment. I'm
8 inclined to give you some leeway since the focus until now
9 wasn't on the interruption of -- or the independent review by
10 the third-party providers, and as best I can tell, the evidence
11 seems to say that they were making a blanket denial of coverage,
12 which I explained was not going to -- was not an admissible
13 defense. It would have to be medically necessary requirements
14 independent of that.

15 103 and it's 6. Alina Boyden, ETF written complaint. You
16 are going to have to just leave it steady.

17 MR. KNIGHT: Okay. I'm sorry. I thought --

18 THE COURT: Just leave one of them up so I can see --
19 can you go back to the previous page and just leave it there?
20 Don't move it. Just leave it.

21 Now move it down slightly. Just move that down. There you
22 go. Thank you very much.

23 This is an official denial of requested services by Dean.
24 It would qualify as a business record. It's otherwise reliable,
25 and I'm going to allow it. The best way we can do this is I'm

1 going to call 23 pages 1 and 2 as 23A. I'll call 23 what were
2 pages 4 and 5 23B. Page 3 has been withdrawn.

3 Was there something else you wanted to be admitted from your
4 Exhibit 23?

5 MR. KNIGHT: I'm just looking. My understanding is
6 this was --

7 THE COURT: I'm giving you a chance to do just that.
8 Take your time, and let me know if there's anything else from
9 Exhibit 23 that you intend to proffer, and I'll give you a
10 ruling.

11 MR. KNIGHT: And I believe that the third page is a
12 part of that same Dean denial.

13 THE COURT: You withdrew the third page.

14 MR. KNIGHT: I'm sorry. I apologize. So then the
15 first page was the initial denial.

16 THE COURT: The first page you already have in, Exhibit
17 23A, pages 1 and 2. I'm asking after page 5 of your Exhibit 23
18 is there anything else that you're -- that you want to be
19 considered for admission, even though it wasn't timely
20 designated?

21 MR. KNIGHT: So the final denial from Dean looks like
22 comes, and she appealed, and then there's a denial dated June
23 15th, which I have put on the -- this is also a Dean record.

24 THE COURT: All right. I'm also looking at it from
25 your summary judgment submissions, and you want to offer it for

1 what purpose?

2 MR. KNIGHT: To show the basis for the denial.

3 THE COURT: And the objection is the same, Counsel? Is
4 the objection the same to this document?

5 MR. ROTH: Yes, Your Honor. I think our sort of global
6 problem with this is it presents just a sliver of what Dean did
7 or didn't do --

8 THE COURT: That's your doing. You don't want to let
9 it all in. This is a business record. If you want to provide
10 more detail as to what Dean did or didn't do, I mean --

11 MR. ROTH: We don't have a Dean --

12 THE COURT: Pardon me?

13 MR. ROTH: We don't have a Dean witness --

14 THE COURT: Then issue a subpoena and get someone here
15 tomorrow. I mean, this -- it's an odd situation because you're
16 the ones who want to argue that the third-party insurers would
17 somehow not -- you want to raise the possibility that they would
18 have denied coverage --

19 MR. ROTH: That's right.

20 THE COURT: -- even with the exclusion being gone. I'm
21 going to allow them to show why it was they denied it within
22 reason with previously produced documents, and this seems to be
23 a straightforward denial of coverage by the Dean Health Plan,
24 and they can argue its significance to the jury. So I will
25 admit as Exhibit 23C -- I'm just going to call it Document No.

1 103-6 from the summary judgment materials, pages 8 and 9.

2 That's your 23C. Anything else?

3 MR. KNIGHT: 103-6? Exhibit 103-6, Your Honor?

4 MR. DUPUIS: Docket --

5 THE COURT: Docket No. 103, pages 8 and 9 are admitted
6 as the final Dean denial, Exhibit 23C.

7 Anything else, counsel for the plaintiff?

8 MR. KNIGHT: So then the ultimate denial is from July.

9 THE COURT: July 8, 2016?

10 MR. KNIGHT: July 8.

11 THE COURT: And that's pages 10 and 11.

12 MR. KNIGHT: Correct. And this is her appeal --

13 THE COURT: Let me just read it.

14 And for the defendants, the objection is the same?

15 MS. SCHMELZER: Yes, Your Honor.

16 THE COURT: All right. My ruling is the same. I'll
17 admit this as 23D, as in dog, and that's pages 10 and 11 of 103.

18 And that is the end of what I am willing to allow you to add
19 to this record out of time, but I will admit, just for the
20 record, what has now already been admitted as Exhibit 23A,
21 Exhibit 23B, Exhibit 23C, Exhibit 23D as we've just gone
22 through. Those are the only exhibits then that have been
23 admitted so far by the plaintiffs. Were there any that I
24 missed?

25 MR. DUPUIS: Not that have been admitted, Your Honor.

1 THE COURT: That's what I'm talking about. All right.
2 Very good.

3 That brings me to defendants, who had their own set of
4 issues with respect to 17 and 18. We've now admitted 517. I've
5 admitted a 518A and a 518B. I also admitted 514. Are there
6 going to be any other 518s or are we done with that?

7 MS. SCHMELZER: We're done with that, Your Honor.

8 THE COURT: All right. Are there any other exhibits
9 that I had indicated to the parties I was going to sustain the
10 objection unless there was an agreement among counsel that you'd
11 advised me of? In other words, are there any others from 519 or
12 511 through 514 that need to be addressed or are those now all
13 out?

14 MR. ROTH: I think those are all out, and just to be
15 sure we're all on the same page, we do intend to use excerpts
16 from 501 tomorrow.

17 THE COURT: All right. And --

18 MR. ROTH: And I think --

19 THE COURT: And that is going to be -- you were going
20 to agree with counsel --

21 MR. ROTH: Yes.

22 THE COURT: -- and no one is going to say we're going
23 to take this up at sidebar while the jury is sitting waiting.

24 MR. ROTH: Yes, Your Honor.

25 THE COURT: And that is just going to be the exclusion

1 language itself or is there going to be something else?

2 MR. ROTH: There's going to be something else.

3 THE COURT: All right. But counsel are all in
4 agreement already or you will be before we meet at 8:15.

5 MR. DUPUIS: We're definitely in agreement on the
6 admission of the exclusion. We have not yet seen precisely what
7 they intend to --

8 THE COURT: All right. We will meet at 8:15. If
9 there's any remaining dispute, you will advise me at that time.
10 I will give you a ruling, but we're not going to hold up the
11 jury with something that isn't addressed to me at 8:15. Is that
12 clear?

13 MR. ROTH: Yes, Your Honor.

14 MR. KNIGHT: Yes, Your Honor.

15 THE COURT: All right. Any other exhibits that the
16 defendants believe were admitted other than 514, 517, and 518A
17 and B, as in boy?

18 MS. SCHMELZER: No, Your Honor.

19 THE COURT: All right. That addresses most of what I
20 wanted to make sure we covered. I wanted to make sure, Ms.
21 Schmelzer, you understood my concern with respect to these
22 co-pay documents. If you thought there wasn't -- there was
23 something that should have been produced and was not, that would
24 be a motion to compel to me and consequences if they didn't
25 comply, but it's not properly brought up as somehow you

1 didn't -- through a witness that they didn't comply with
2 discovery. I'm not sure where we're going with this. Is there
3 a dispute over the amount of co-pay payments for the defendants?

4 MS. SCHMELZER: I think we dispute that they should be
5 part of damages but --

6 THE COURT: But not the number.

7 MS. SCHMELZER: Not the number, but we still -- we
8 never saw any documents about the co-pay until --

9 THE COURT: But you understand why that's addressed to
10 me, not to a witness.

11 MS. SCHMELZER: Yes, Your Honor. Understood.

12 THE COURT: Okay. And then I just want to make sure
13 that defendants understand my ruling. If the evidence you
14 intend to present is that Dean denied transgender confirming
15 surgery generally as not medically necessary for anyone, that's
16 not an argument you get to make because that would be a
17 violation of the law as well as the fact that I've said they
18 can't rely on the exclusion, so your argument is going to have
19 to be that, I guess, plaintiffs haven't shown that Dean would
20 have approved this for the plaintiffs or they haven't proved
21 that. Are we clear?

22 MR. ROTH: Can I just ask one question, Your Honor?

23 THE COURT: Yes, that's why we're having this
24 discussion.

25 MR. ROTH: No, I understand. So Ms. Boyden did testify

1 today that her understanding was there were three reasons for
2 the denial of her second appeal I believe in January of 2017.
3 One was the exclusion, one was the Dean policy, and one was
4 Dean's decision that reassignment surgery wasn't medically
5 necessary. So are we not allowed to reference that in closing?

6 THE COURT: The only thing she testified to was they
7 said it wasn't medically necessary for anyone. If you have some
8 evidence that they were making independent decisions based on
9 individual presentations, then that's a different matter, but
10 you didn't prove that through Ms. Boyden. She said it was a
11 blanket denial for everyone as not medically necessary, and
12 that's not -- as I said in my opinion, that's not an appropriate
13 position. Now, that doesn't preclude you from arguing that
14 there's --

15 MR. ROTH: Can we cite that testimony in closing?

16 THE COURT: Well, you can't cite it for the proposition
17 that Dean has made clear they will deny these as not being
18 medically necessary because she didn't testify to that. She
19 testified that they said they're not going to provide these
20 generally, period. That's what she testified to.

21 MR. ROTH: I'll make one last pitch at the risk of
22 pushing this too far --

23 THE COURT: Let me just complete my thought, and I'll
24 hear from you. If you want to argue that they haven't shown
25 that this separate -- and this is what I understand you're going

1 to put Ms. Mallow on for is that they have an independent
2 obligation to determine whether they believe it's medically
3 necessary, and they haven't shown that the third parties would
4 have done that. You can make that argument, but you're not
5 going to be able to hook it on to a blanket denial, whether in
6 writing or through one of the witnesses, unless one of the
7 witnesses says that they were -- they denied it for other than a
8 blanket denial as not medically necessary.

9 MR. ROTH: So I guess my last pitch would be they can
10 only prove damages if they can show in the past the denial --
11 there would have been no denial by the third-party insurer, and
12 I think Ms. Boyden's testimony --

13 THE COURT: I'm sorry. If they can prove there would
14 have been no denial?

15 MR. ROTH: Sorry. Let me try it again. They would
16 have only obtained coverage if the third-party insurer actually
17 had gone through the process and found medical necessity.

18 THE COURT: Right, and they get to --

19 MR. ROTH: Setting aside Your Honor's ruling though I
20 guess is what I'd say. So two years ago when Dean was
21 considering Ms. Boyden's request, it obviously didn't have the
22 benefit of Your Honor's decision, and perhaps if Dean was sued
23 today, the exclusion -- and Dean had that policy --

24 THE COURT: You can't go down this road.

25 MR. ROTH: But two years ago that's what happened.

1 That's what she testified. That's actually in reality --

2 THE COURT: Because it was a blanket denial, which was
3 illegal, at least in this Court's view, and maybe the Seventh
4 Circuit will have a different opinion. I'm not certain.

5 MR. ROTH: I guess my position is that she should
6 have -- Dean should be part of this case then to have that
7 policy enjoined.

8 THE COURT: All they have to prove is that it is more
9 likely than not that it would have been approved, and I'm not
10 sure what evidence they have through their expert, what's been
11 disclosed in the reports as to what is the approach. You can
12 still argue that they haven't shown that the third parties would
13 agree that it was medically necessary, but you're not going to
14 be able to rely on actions by Dean which were part of a blanket
15 denial as a result of your client's blanket exclusion. That's
16 just not -- you're not going to be able to bootstrap your way
17 into that argument.

18 MR. ROTH: Fair enough.

19 THE COURT: All right. I'll hear if there's anything
20 more for the plaintiffs.

21 MR. DUPUIS: Just in terms of moving in documents that
22 we don't have necessarily a witness that we want to have read
23 it, just at the close of our evidence, is that when you would
24 want us to do that? So it's basically --

25 THE COURT: Normally what I do is you introduce it

1 through a witness because then the jury has seen it. If you're
2 saying there are some of these that are self-admitting or the
3 parties want to stipulate, as I think I told you on the phone --

4 MR. DUPUIS: Right.

5 THE COURT: -- to the admission of certain documents,
6 we can do that, but I can't guarantee you that at the end of
7 your case that I'm going to admit documents which weren't shown
8 to the jury and their relevance hasn't been established. So if
9 you have any of those, this would be a good time to raise it.

10 MR. DUPUIS: Yeah, it's the exclusion, the language of
11 the exclusion.

12 THE COURT: My understanding is the exclusion language
13 is going to be included as part of Exhibit 501. The only
14 question is what else is included.

15 MR. ROTH: I mean, we weren't intending to show the
16 exclusion to Eileen, so if they want it in, I mean, I guess we
17 can come to an agreement that we put it into the excerpts of
18 501 --

19 THE COURT: And you may want to show it in cross to a
20 witness.

21 MR. DUPUIS: But I guess the concern is, is there going
22 to be some kind of motion that we haven't met our burden.

23 MR. ROTH: To do what?

24 MR. DUPUIS: Until --

25 MR. ROTH: I guess I don't understand.

1 I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit
2 Reporter in and for the State of Wisconsin, certify that the
3 foregoing is a true and accurate record of the proceedings held
4 on the 9th day of October, 2018, before the Honorable
5 William M. Conley, U.S. District Judge for the Western District
6 of Wisconsin, in my presence and reduced to writing in
7 accordance with my stenographic notes made at said time and
8 place.

9 Dated this 7th day of June, 2019.

10

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_____/s/ Jennifer L. Dobbratz____

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Jennifer L. Dobbratz, RMR, CRR, CRC
Federal Court Reporter

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