

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

ALINA BOYDEN and SHANNON ANDREWS,

Plaintiffs,

Case No. 17-CV-264-WMC

vs.

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

Madison, Wisconsin
October 9, 2018
8:30 a.m.

Defendants.

* * * * *

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

APPEARANCES:

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3 Wisconsin Department of Justice
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7 Also Present: Diana Felsmann,
 WI Department of Employee Trust Funds

8

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19 THE CLERK: Case No. 17-CV-264-WMC, *Alina Boyden,*
 20 *et al. v. Robert Conlin, et al.* Court is called for a
 21 status conference. May we have the appearances, please?

22 THE COURT: Appearances for the plaintiffs.

23 MR. DUPUIS: Good morning, Your Honor. Larry
 24 Dupuis for the plaintiffs.

25 MR. KNIGHT: Good morning, Your Honor. John

1 Knight for the plaintiffs.

2 MR. DUPUIS: And also Nick Fairweather will be
3 appearing for the plaintiffs at various times. We'll sort
4 of switch back and forth I believe if that is okay with
5 the Court.

6 THE COURT: That's fine. And for the defendants.

7 MR. KILPATRICK: For the defendants, Steven
8 Kilpatrick with the Wisconsin Department of Justice. To
9 my right, Jody Schmelzer also with the Wisconsin
10 Department of Justice. And to her right, Colin Roth also
11 with the Wisconsin Department of Justice.

12 THE COURT: Very good. Just so the parties are
13 reminded, for purposes of the voir dire, we'll bring in
14 the panel as a group. They'll actually be seated -- those
15 that are not seated in the box will be seated where there
16 is a group right now. So you'll -- not now, but before we
17 bring them in, you'll just need to move over. That won't
18 be permanent. That will be just during the voir dire
19 period. But they'll be in the back left corner -- my
20 left, your right -- corner of the courtroom.

21 We will not make appearances again because you'll
22 introduce yourselves at the appropriate time during the
23 voir dire. I'm not sure there's much more we need to talk
24 about voir dire other than a reminder that once I've
25 seated what I believe to be 14 individuals who are able to

1 be impartial, we'll have our sidebar, at which time
2 counsel can raise any concerns as to cause or follow-up
3 questions that you believe are appropriate and then I will
4 address those.

5 Unless there's another reason for a sidebar, we'll
6 just proceed with peremptory strikes. During that period
7 I will be instructing the jury on how to behave, really
8 the jury panel on how to behave, at breaks and recesses
9 directly out of the introductory instructions because
10 otherwise they're just staring at you as you exercise your
11 strikes.

12 Unless there's any questions about the voir dire, the
13 issues that I wanted to be sure to address this morning
14 are any remaining disputes regarding the exhibits or
15 demonstrative exhibits and then to address any remaining
16 questions the parties may have regarding the Court's
17 directions on third-party insurance, the relevance of
18 third-party insurance providers, as well as the revisions
19 to the jury instructions I provided.

20 Is there any other topics that the parties want to be
21 sure to raise this morning that I haven't covered
22 generally?

23 MR. KNIGHT: Your Honor, John Knight for the
24 plaintiffs. I was under the understanding that we could
25 mention some -- raise a final concern about the voir dire

1 questions. I don't know that --

2 THE COURT: That's fine and this would be the
3 time. That's why I said "if there's anything else about
4 voir dire." So, by all means, I'll make sure we take that
5 up. Anything else for the plaintiffs?

6 MR. DUPUIS: Your Honor, just a couple of things,
7 a couple of very much sort of housekeeping things. One is
8 we have a number of other lawyers who are working on the
9 case with us but aren't going to be appearing at the desk.
10 And we just want to make sure it's okay for them to use
11 computers while they're back there.

12 THE COURT: That's something you really need to
13 work out with the court security officers. But generally
14 what we do is as long as you're in the first row and
15 you've identified yourself for the court security officers
16 as counsel to one of the parties, then you may use your
17 computer or laptop. Otherwise you if haven't, you may
18 well be asked to turn it off. So make sure you arrange
19 that at the break. Anything else?

20 MR. DUPUIS: Also, would it be all right if we
21 have our expert witness here for the other testimony?

22 THE COURT: My general ruling is that we do a
23 sequester of lay witnesses but not of experts, but I'll
24 hear defense counsel if they have an objection. Anything
25 else for the plaintiffs at this time?

1 MR. DUPUIS: I think there is -- we will want to
2 raise a couple of issues with regard to the exhibits.

3 THE COURT: And that's why I gave you a list. If
4 you have a concern as to exhibits, we'll come to that.

5 MR. DUPUIS: Right.

6 THE COURT: Is there anything else that I haven't
7 covered already?

8 MR. DUPUIS: I don't believe so.

9 THE COURT: I'll give you one more chance at the
10 close of this, so this isn't your last chance. But I just
11 want to have a sense of what I need to accomplish during
12 this short hearing. So does that cover the waterfront for
13 you?

14 MR. DUPUIS: Yeah. I mean we noticed one minor
15 error in the damages instruction that we'd also like to
16 raise.

17 THE COURT: That's why I listed instructions as
18 an issue as well. Anything else?

19 MR. DUPUIS: No.

20 THE COURT: All right. Let me hear from the
21 defendants. Any other subjects that you wanted to make
22 sure we covered this morning than those I've already gone
23 over?

24 MR. KILPATRICK: No other issues.

25 THE COURT: All right. Very good. Let me hear

1 from plaintiffs as to the voir dire. You said there was a
2 question, Mr. Knight, that you wanted to still address.

3 MR. KNIGHT: Sure, Your Honor. This is 8(h) and
4 it's the very final question: "Of course you should raise
5 your hand if you or someone close to you was granted or
6 denied coverage for that surgery." I would just like to
7 propose that we either -- that the Court strike the words
8 "that" or say "any kind of surgery."

9 It seems to me that that question is not -- there are
10 not going to be very many people that have been denied
11 coverage for surgery, so it's not going to be very many
12 people who are likely to raise their hand anyway.

13 THE COURT: So we could just remove the "that."

14 MR. KNIGHT: Okay.

15 THE COURT: Okay. And I think that's a fair
16 point. Anything else on the voir dire for the plaintiffs?

17 MR. KNIGHT: No.

18 THE COURT: All right. With that change, to many
19 "thats" in this discussion, any concerns for the
20 defendants?

21 MR. KILPATRICK: No, Your Honor.

22 THE COURT: All right. Very good. Then I'll
23 turn to the question of exhibits. I understand the
24 plaintiffs had a concern regarding exhibits. We'll start
25 with the exhibits that are going to be offered, then we'll

1 discuss demonstratives. And I'll hear from plaintiffs
2 first.

3 MR. DUPUIS: Your Honor, so first, in light of
4 the rulings yesterday, we just want to clarify that we'd
5 like to introduce as affirmative evidence, Interrogatories
6 8 and 9 and their responses which were -- I think that's
7 our Exhibit 3 I believe. And --

8 THE COURT: I don't know that I have those called
9 up yet, but I will at the break. In any event --

10 MR. DUPUIS: I have those available.

11 THE COURT: Hang on just a moment. -- in any
12 event, they are -- actually on your exhibit list they're
13 still listed as expert reports, but you may have
14 substituted them out.

15 MR. DUPUIS: No. Actually, I think I have the
16 wrong list. Hang on.

17 THE COURT: What were the exhibits you had said?
18 I might have misspoken.

19 MR. DUPUIS: It's Exhibits 1 and 2. I'm sorry.

20 THE COURT: All right. 1 and 2 I have. And if
21 you provide the actual question and answer as you're going
22 to offer it into evidence and just the question and answer
23 consistent with our discussions, provide that to opposing
24 counsel at the break, and then I'll hear from them if
25 there's any concerns as to your use. I imagine that they

1 concern a statement that the uniform benefits will
2 control.

3 MR. DUPUIS: It's actually a little more direct.
4 It's the interrogatory asks for an explanation of the
5 reasons for the denials. 8 and 9 both ask for that. And
6 as for ETF and GIB, Ms. Boyden's request was denied based
7 on the State of Wisconsin uniform benefits exclusion that
8 we've talked about and 9 is the same as to Ms. Andrews.

9 And then similarly we would like to be able -- these
10 are two exhibits that we had not originally included on
11 our list. But given the sort of -- we did not -- given
12 the --

13 THE COURT: Why don't you tell me what it is
14 you'd like to introduce in light of what you believe to
15 have been a change in the approach.

16 MR. DUPUIS: Sure. In summary judgment, in
17 response to proposed findings of fact, asking about the
18 cause, we asked -- we had a proposed finding of fact that
19 Ms. Andrews and Ms. Boyden were denied coverage because of
20 the exclusion found in the uniform benefits. The
21 defendants indicated that was undisputed for purposes of
22 summary judgment. And then there's --

23 THE COURT: Go ahead.

24 MR. DUPUIS: And then what we would like to
25 introduce are the two exhibits that were referenced in

1 that proposed finding of fact.

2 THE COURT: And what exhibits are those that
3 you're trying to get in?

4 MR. DUPUIS: They're not exhibits that are listed
5 yet.

6 THE COURT: I know that. I'm asking, what are
7 they, what are the documents?

8 MR. DUPUIS: They are Document No. 1036 and 1037
9 which are the denials of coverage and appeals documents
10 that our clients received. And I have copies of those if
11 you'd like to see them now.

12 THE COURT: You're three steps ahead of yourself.
13 They are the denials --

14 MR. DUPUIS: Yes.

15 THE COURT: -- and then you said the appeals.
16 What are the appeals, meaning the appeals from the denial?

17 MR. DUPUIS: Correct, the grievances. The
18 documents are packages.

19 THE COURT: They may be relevant in your rebuttal
20 case. You should provide copies to me at the break along
21 to opposing counsel if they haven't already seen this.
22 And I'll hear objections to their use as exhibits in your
23 rebuttal case.

24 Just so counsel is clear, I tried to make this clear
25 yesterday as well, the immediate question as to the

1 reasons for defendants' denial is, I don't think, even in
2 dispute. So the reasons they denied it is because of the
3 exclusion. The only question is whether they're the
4 proximate cause of the denial of surgery.

5 Obviously I think you're two-thirds of the way over
6 the fence. But the last effort by the defendants, as I
7 understand it, is that they're going to argue that even
8 without the exclusion, your clients would not have been
9 given coverage. Now, as I said, that's a different
10 question and that's a matter of cause. And if you believe
11 some of this is relevant to that, I'd consider it.
12 Although I don't know that it's directly relevant, I'll at
13 least allow you.

14 But I hope you appreciate that in the Court's view,
15 probably in plaintiff's view, by having established the
16 defendants'-- this absolute exclusion that that is causal
17 and at least a factor, which is what you're going to be
18 asking the jury to find, they're allowed to argue that it
19 wouldn't have mattered ultimately because the providers
20 would have had their own standards. Now, whether or not
21 that's true, they can establish that as part of what will
22 be decided at trial. Does that clarify?

23 MR. DUPUIS: Yes, it does, although my
24 understanding wasn't that they were going to try to prove
25 that they would, but that just is a theoretical

1 possibility.

2 THE COURT: No. I think more to the point that
3 you haven't met your burden of proof --

4 MR. DUPUIS: Right.

5 THE COURT: -- that's what they'll argue, that
6 this wouldn't have mattered, and that's common sense for
7 the jury to decide whether that's true. All right?

8 MR. DUPUIS: Yes.

9 THE COURT: All right. Very good. Anything as
10 to exhibits for the defendants? I think we had 511
11 through 514 to clarify.

12 MS. SCHMELZER: Yes, Your Honor. We just would
13 like some clarification outside of the presence of the
14 jury on the use of specific entries and medical records.
15 We understand that the plaintiffs did not object to
16 records which relate to the diagnosis and treatment of
17 gender dysphoria. And we have picked out those specific
18 ones instead of a whole group of certified records and we
19 want to be able to use those as affirmative evidence with
20 the plaintiffs.

21 THE COURT: Well, let's do the same thing.
22 At the break you should provide the actual exhibits that
23 you would like to use, the excerpts from the medical
24 files. And I will hear -- and you want to use those in
25 cross or are you going to do some affirmatively during the

1 plaintiffs' case?

2 MS. SCHMELZER: We're going to introduce them in
3 cross, Your Honor.

4 THE COURT: And you want them admitted at that
5 point?

6 MS. SCHMELZER: Exactly, and be able to show the
7 jury those.

8 THE COURT: All right. Then you should be
9 certain to exchange those and make sure that both sides
10 are on the same page. And then you should advise me at
11 the break -- if not the break before voir dire, then
12 certainly the break after voir dire -- as to what numbers
13 those exhibits will be or those documents will become.

14 And I assume they would be '10 -- I guess '11 --
15 sorry, I have to look at my own notes -- '11 through '14,
16 511 through 514, if possible. If there's more, then you
17 should break them down by A, B, C, so 511-A, 511-B and
18 511-C. Hopefully that's clear for the plaintiff as well
19 and you'll consult at the break and then I'll hear from
20 you if there are objections, but this wouldn't be the time
21 to raise that.

22 MR. DUPUIS: I think our main thing is we just
23 want to make sure that documents don't go back to the jury
24 without some guiding testimony.

25 THE COURT: And that's why you're going to

1 consult and then you can tell me if there's a problem and
2 we'll keep this moving.

3 MR. DUPUIS: Right. Thank you.

4 THE COURT: Any other issues for the defendants
5 as to exhibits?

6 MS. SCHMELZER: Not to exhibits, Your Honor.

7 THE COURT: All right. Are there any issues as
8 to demonstrative exhibits for the plaintiff?

9 MR. DUPUIS: I believe that the defendants have
10 not objected to one of our demonstratives. The other they
11 have reserved the possibility of objecting based on --

12 THE COURT: All right. Let me hear from the
13 defense. Any further objections as to demonstratives?

14 MR. ROTH: Not to theirs.

15 THE COURT: All right. And are there any
16 objections as to plaintiffs' -- as to defendants'?

17 MR. DUPUIS: So one of their demonstratives we do
18 not object to, No. 1 I believe, the revised. We discussed
19 these yesterday.

20 THE COURT: That's fine.

21 MR. ROTH: This one?

22 MR. DUPUIS: Right. Correct.

23 THE COURT: Perhaps you could lift the overhead
24 and let me see it. If you do it straight up -- there you
25 go. It has to go all the way up and be fully extended.

1 Perfect. All right. And then it will auto focus. You
2 may not have the arm up.

3 MR. ROTH: There. It just got twisted.

4 THE COURT: Thank you. And your objection to
5 this exhibit is what?

6 MR. DUPUIS: Actually, we had asked for one other
7 change.

8 THE COURT: With that said -- I'm sorry. Right
9 now I'm directing to you what is your objection to this
10 demonstrative exhibit? We're calling it Demonstrative
11 Exhibit -- Defendants' Demonstrative Exhibit 2; is that
12 right?

13 MR. DUPUIS: This is No. 1 I believe.

14 THE COURT: I thought there was no objection to
15 No. 1, but is this the one you objected to?

16 MR. DUPUIS: No, this is not the one we had
17 objected to.

18 THE COURT: Okay. So now I'd like to see
19 Exhibit -- you were objecting to what you thought was
20 Demonstrative Exhibit No. 2?

21 MR. DUPUIS: Right.

22 THE COURT: You're not objecting to what's on the
23 screen now?

24 MR. DUPUIS: We had asked that the other
25 insurance companies be labeled "other health plans," but I

1 think we can live with this. I'm not going to object
2 to it.

3 THE COURT: All right. Very good. Any other
4 concerns as to demonstratives for the plaintiff?

5 MR. DUPUIS: Demonstrative No. 2 we did have.

6 THE COURT: All right. So you're going to put
7 that up next. Thank you.

8 MR. DUPUIS: And ultimately our objection is to
9 whether -- we're just reserving the ability to object to
10 whether the foundation and the evidence actually supports
11 this. Our view is that it's not entirely linear in this
12 way and it's not an "if then"; it's a "with one always
13 coming before the other," at least that's our
14 understanding.

15 THE COURT: I've kind of lost you there.

16 MR. DUPUIS: So there are two decision boxes.

17 THE COURT: I understand what the graph says.
18 You said "one coming after the other." The first decision
19 comes first, which is coverage exclusion, "yes" or "no."
20 The second decision on this graphic has "is it medically
21 necessary," and then you say that there's not a linear
22 nature. Well, how should it be reflected?

23 MR. DUPUIS: I think sometimes it goes the other
24 direction. There's a medical necessity determination and
25 coverage exclusions. I don't think it's uniform. I don't

1 know at this point what Ms. Mallow is going to testify to.

2 THE COURT: All right. I'm not going to allow
3 you to use this in opening. I'll reserve on whether you
4 can use it at all at some point.

5 And perhaps the parties could consult and see if you
6 can get any closer to an understanding as to where the
7 disagreement is. To me this is -- this might be
8 appropriate to use in closing to show the defendants' view
9 about how it works and you can respond at that point. I
10 don't -- did you want to use this with your expert?

11 MR. ROTH: Our intention was to use it with our
12 ETF witness and I understand plaintiffs have an objection
13 to foundation. So I think our intention, to perhaps
14 assuage their concerns or let them object, if necessary,
15 was to essentially cover up, you know, most of this and
16 then unveil the pieces as the testimony proceeds.

17 So Ms. Mallow will testify about the process. And as
18 she does so, we would sort of uncover this as her
19 testimony supports what's in the demonstratives. So
20 ultimately the full picture would be up during her
21 testimony and then potentially used during closing as
22 well.

23 THE COURT: And if plaintiffs have an alternative
24 version or if you want to use this and mark it up while
25 you're crossing, you're welcome to do that.

1 MR. DUPUIS: Okay. Your Honor, I mean, obviously
2 the other thing is this is purporting to say what the
3 insurance company is doing and Ms. Mallow doesn't work for
4 the insurance companies, but I think we've already crossed
5 that bridge.

6 THE COURT: Well, she's capable of explaining
7 what the general process is. And so it seems to me they
8 have the foundation for that. So to that extent, I'll
9 allow it. Anything else for the plaintiffs?

10 MR. DUPUIS: Not on demonstratives I don't think,
11 Your Honor.

12 THE COURT: All right. Very good. And was there
13 anything else with respect to demonstratives for the
14 defendants?

15 MS. SCHMELZER: No, Your Honor.

16 THE COURT: Then it seems as though we may have
17 already been addressing concerns for the parties. Sorry,
18 I have a very odd pen here. I'm not familiar with that
19 one. It's almost like an eraser, but it leaves a mark.

20 I'm assuming that we're all on the same page then as
21 to the scope of the testimony that I'll allow from
22 Ms. Mallow, but I'll hear if plaintiffs have any other
23 concerns.

24 MR. DUPUIS: No, Your Honor, other than just the
25 laying of the foundation.

1 THE COURT: And I'll hear from the defendants
2 because I left open the possibility of a proffer on
3 foundation. But otherwise if you're comfortable with
4 where I've drawn the line, then we can just leave it at
5 that. Anything else for the defendants?

6 MR. ROTH: No, Your Honor.

7 THE COURT: Okay. Very good. I indicated I
8 would hear as to additional concerns on instructions and
9 I'll hear from the -- I'm not sure whether it's plaintiffs
10 or defendants who wanted to be heard as to the
11 instructions.

12 MR. DUPUIS: I think we wanted to be heard just
13 as to the damages instruction.

14 THE COURT: All right. I guess you're right, so
15 as to the damages instruction.

16 MR. DUPUIS: There appears to be an extra "not."
17 And is that in the intro instructions or in the closing
18 instructions?

19 MR. KNIGHT: Closing instructions.

20 THE COURT: Page?

21 MR. KNIGHT: I think it's page 3.

22 THE COURT: It certainly wouldn't surprise me and
23 I appreciate your pointing it out. If there is, I just
24 need to know where, just maybe line or paragraph. First
25 full paragraph? Carryover? Are we talking?

1 MR. KNIGHT: Towards the bottom of page 3 it's
2 (b), subpart (b), "The reasonable costs of other medical
3 care that plaintiffs reasonably needed, actually received
4 and paid for, that would" -- and then there's a "not"
5 there that we don't think belongs.

6 THE COURT: -- "that would have been covered."

7 MR. KNIGHT: -- "would have been covered but for
8 exclusion," right.

9 THE COURT: That seems correct to me as well.
10 Anything else for the plaintiffs?

11 MR. DUPUIS: No, Your Honor, other than obviously
12 we preserve any appeal issue on the causation, the
13 instruction regarding causation, although we believe,
14 based on the ruling, that the instruction is appropriate.

15 THE COURT: I don't know what you just said
16 because it sounded like you're reserving an objection, but
17 you agree it's correct.

18 MR. DUPUIS: We're not reserving the objection;
19 we're just preserving if we were to need to appeal, just
20 stating our objection on the record, which we already have
21 with our --

22 THE COURT: And I've ruled on why it is I'm
23 allowing this evidence in --

24 MR. DUPUIS: Right.

25 THE COURT: -- and you're preserving that. But

1 other than that objection, you're accepting the
2 instruction as consistent with my rulings?

3 MR. DUPUIS: Yes.

4 THE COURT: I get it now. Okay. Anything else
5 for the defendants?

6 MS. SCHMELZER: Yes, Your Honor. We would like
7 to take up the issue of sequestering Dr. Budge and
8 Ms. Mallow. We believe it's appropriate.

9 THE COURT: Ms. Mallow is an easy one because I
10 will sequester all witnesses who are not named experts and
11 so Ms. Mallow will be excluded from the courtroom until
12 she testifies.

13 MS. SCHMELZER: Yes. We also would request that
14 Dr. Budge be sequestered as well. The bulk of her expert
15 report and her opinions are based on interviews from the
16 plaintiffs. They're going to be getting up here and
17 telling that story again. We think it would be very easy
18 for her to listen to those stories again and perhaps use
19 those stories to, you know, support her opinions in ways
20 that she may not have thought of through the interviews.
21 We think that that's --

22 THE COURT: Well, there's two simple responses.
23 One is typically experts are allowed to hear the evidence
24 for the very reason you've said. The second is that if it
25 wasn't in the report, she can't rely on it now, so your

1 objection would be outside the scope of the report.

2 And plaintiffs should have ready the page and line
3 from the report where this information was relied upon.
4 If it was not relied upon on the report, then it will not
5 be relied upon by the expert on the stand because it's
6 outside the scope of the report. Are we clear?

7 MS. SCHMELZER: We are, Your Honor.

8 THE COURT: Very good. I believe those are all
9 the subject matters that I had intended to address. I
10 should have said, I guess there's a third response, which
11 is you can simply cross-examine the expert as well and
12 point out that this was not something you had noted until
13 now. For what that's worth, you can make that
14 determination yourself.

15 All right. Anything else for the plaintiffs at this
16 time?

17 MR. DUPUIS: No, Your Honor.

18 THE COURT: Anything else for the defendants?

19 MS. SCHMELZER: No, Your Honor.

20 THE COURT: Then just a reminder. We will break
21 until we have our full panel ready to come into the
22 courtroom. Typically it's right at nine or shortly
23 thereafter.

24 We will not rise for the jury panel; we will remain
25 seated. But we will begin to rise once we swear in our

1 jury as they enter and exit the courtroom.

2 And with that, we are off the record. You are free
3 to move about as you wish.

4 (Recess at 8:37 a.m. until 9:05 a.m.)

5 THE COURT: Just for the parties' benefit, I
6 think what I'm going to do is to question 8(h), in
7 fairness to both sides, is I'll say "Of course you should
8 raise your hand if you or someone close to you was granted
9 or denied coverage for that surgery or denied coverage for
10 surgery of any kind."

11 The reason for my concern is otherwise the defendants
12 don't get the essential question they want answered, which
13 is if the person was granted, because I don't want every
14 hand to be raised because at some point they had surgery
15 that was covered by insurance.

16 So I'm going to ask that, "granted or denied coverage
17 for that surgery or denied surgery of any kind or denied
18 coverage for any surgery of any kind." And they will only
19 be raising their hand at that point and then I'll have
20 them at sidebar if there's some issue beyond that.

21 And with that, we'll bring in our jury panel.

22 (Prospective jurors in at 9:06 a.m.)

23 THE COURT: Ms. Perales, if you could come
24 forward. Apologize for that.

25 I am Judge Conley and you are here for possible jury

1 service in Case No. 17-CV-264, *Boyden, et al. v. State of*
2 *Wisconsin Department of Employee Trust, et al. -- Trust*
3 *Funds, et al.*

4 Many people approach jury service with a certain
5 amount of apprehension, nervousness. But I think you'll
6 find that if we all do our jobs today that you'll find
7 jury service is an interesting, even a gratifying
8 experience.

9 The United States Courthouse that you entered this
10 morning is not my courthouse; it's not any other judge's
11 courthouse; it's not the lawyers' courthouse; it's not
12 even the parties' courthouse. This is your courthouse,
13 this is the public's business that's being conducted here
14 every day, and we need to keep that in mind as we proceed
15 in this trial.

16 To be able to continue to serve you better, we will
17 seek your input if you're chosen to be a member of this
18 jury. Obviously we'll seek your input as to this case.
19 But we'll seek your input generally through a survey,
20 whether you're chosen or not. And I hope you will answer
21 that survey so we can continue to improve our processes
22 and how we function as a courthouse, in particular how we
23 function with respect to juries. We cannot serve the
24 public or improve our system of justice without each of
25 your valuable contributions.

1 Indeed, other than paying taxes and voting, jury
2 service is probably the most important duty that most of
3 us will undertake in our system of justice, obviously
4 military service being an even greater sacrifice. Only by
5 realizing how important our system of justice is and how
6 dependent it is on good people like yourselves can we
7 truly understand and appreciate it.

8 Trial by jury has been eliminated in many countries
9 of the world, particularly in civil cases. The United
10 States justice system is a place where most jury trials in
11 the world are now held.

12 Contrary to general belief, we actually have the
13 highest involvement of nonlawyers of any justice system in
14 the world. That is a heritage handed down by the people
15 who founded our country. I cannot describe its importance
16 any better than did the United States Supreme Court
17 Justices that you heard on video, so the good news is I'm
18 not going to try. I just want to remind you of your role
19 before we begin what we call questioning or voir dire of
20 potential jury members.

21 The jurors decide what the facts are; that is, they
22 decide from the evidence admitted at trial what actually
23 happened. An important part of your job as a juror is to
24 decide what testimony to believe and what testimony not to
25 believe.

1 My job, as the judge, is simply to decide legal
2 questions. The judge decides what kind of evidence is
3 admissible and instructs the jurors at the end of the
4 trial as to the law that they shall apply. These
5 instructions will provide you with a legal yardstick, if
6 you will, by which you must measure the evidence in order
7 to decide the case, but you decide what the evidence
8 shows.

9 In deciding what actually happened, the jurors or
10 searching for the truth. Many people in fact define a
11 trial as a search for the truth. The trial begins with
12 voir dire, which literally means, from the Latin and
13 French, "to speak the truth" or "to inquire," although it
14 sounds better when it's not coming out of the nasally
15 Midwesterner's voice like my own. It is the crucial part
16 of any fair trial.

17 And I hope you will, consistent with the definitions
18 I've just given, understand that the series of questions
19 you're about to be posed are intended to obtain candid,
20 truthful responses to help insure that we seat a jury
21 comprised of impartial individuals, which is a fundamental
22 right of both sides of this case.

23 We've already seated the first 14 prospective juror
24 members in what we'll call the jury box, but all
25 prospective jury members who may be called forward during

1 this process should listen carefully to the questions I
2 pose, as you may be asked or called to answer the same or
3 similar questions if called forward.

4 At this time I'd ask the entire jury panel, including
5 you behind the bar, to stand, raise your right hand and be
6 sworn by our clerk.

7 **PROSPECTIVE JURORS, SWORN**

8 THE COURT: Please be seated. You just swore to
9 give perfect answers. None of us on the human coil are
10 going to accomplish that. But it is implied the
11 obligation you have to be candid and to do the best you
12 can to answer the questions honestly, understanding that a
13 few of them may even make you a little uncomfortable.
14 Remember that this is about the parties and insuring that
15 they obtain or are confident in the impartiality of the
16 people who are ultimately chosen to be jury members.

17 First I want to introduce court personnel again. I
18 am William Conley. I'll be the presiding judge. And the
19 person who just swore you in is one of our deputy clerks,
20 Vivian Olmo. Does anyone know either of us before today?
21 If you do, just raise your hand. All right.

22 Then let me tell you a little bit about the case.
23 Plaintiffs -- I should know this by now, *Alina* or *Alena*?

24 THE PLAINTIFF: *Alina*.

25 THE COURT: I apologize. -- Alina Boyden and

1 Shannon Andrews, both state employees, seek damages from
2 defendants, the State of Wisconsin Department of Employee
3 Trust Funds and the State of Wisconsin Government
4 Insurance Board, based on defendants' policy of excluding
5 gender confirming surgery and associated hormone therapy
6 from health insurance coverage offered to state employees.

7 The Court has already determined that the defendants'
8 policy of excluding this coverage violates federal
9 antitrust discrimination statutes. Your role at this
10 trial, if you're chosen to be a member of the jury,
11 therefore is limited to determining what, if any, damages
12 should be awarded to the plaintiffs.

13 Have any of you heard of this case before today? You
14 can just raise your hand if you've heard of the case. I
15 see one hand. And let me just ask you, and we'll have an
16 introduction of each of you in a few minutes, but for
17 Juror No. 11 -- you can provide her the mic -- without
18 going into what you've heard, is this something you read
19 in the paper or that you've had some other involvement in?

20 MS. WELDY: Just in the paper.

21 THE COURT: All right. You probably appreciate
22 that those reports can be incomplete or even inaccurate.
23 Anything about what you read you think may impact the way
24 you think about the evidence presented in this case as to
25 damages?

1 MS. WELDY: I don't believe so.

2 THE COURT: All right. And other than the
3 general fact of a decision being made as to liability,
4 anything else you remember, without telling me what it is?
5 Do you remember anything else, "yes" or "no"?

6 MS. WELDY: Some facts, yes.

7 THE COURT: All right. I'm going to come back to
8 that then as we go forward and I may have you explain that
9 at sidebar as we decide if it's necessary. And I very
10 much appreciate your raising your hand.

11 Was there anyone else who had heard about this case
12 before today? Very good.

13 The trial of this case --

14 MS. SCHMELZER: Your Honor, I believe another
15 hand was raised.

16 THE COURT: Oh, I apologize. Was there a hand in
17 the -- thank you, very much, Counsel. And if you'd just
18 state your last name.

19 MS. NOWICKI: Nowicki.

20 THE COURT: Thank you. You may be called
21 forward. Beyond reading it in the paper and knowing there
22 was a ruling, anything else you recall or that you were
23 involved in with regard to this case?

24 MS. NOWICKI: No.

25 THE COURT: All right. Do you have any concerns

1 about your ability to be impartial or affected by that in
2 terms of your ability to hear the evidence as to damages
3 and decide that question?

4 MS. NOWICKI: No, I don't think so.

5 THE COURT: All right. If you are called
6 forward, I will explore that a little further with you.
7 And when we get to it, I'll remind you to just be sure to
8 keep in mind if you would have raised your hand to a
9 question. And that's for all of you as well as we
10 proceed, but I'll remind you of that as well.

11 More generally, the trial of this case will begin
12 today, October 9, 2018. It will likely be completed
13 tomorrow, October 10. I suppose it could even be
14 completed today. We'll have to see how the process goes.
15 But if it extends at all, it would only be to Thursday.
16 So it could be a three-day trial depending upon all
17 factors, but I would expect to be completed tomorrow and
18 perhaps even today.

19 The trial will generally run from 8:30 a.m. until
20 5:30 p.m. We will take breaks for lunch of about an hour
21 and two additional short breaks of 15 to 20 minutes once
22 this morning and once this afternoon.

23 Is there any of you who would be unable to serve as a
24 juror during this time frame for any reason, including
25 vision, hearing or other health limitations? Just raise

1 your hand if this applies to you. Thank you.

2 Now, at this time I'm going to ask counsel for each
3 party to introduce themselves and then to introduce their
4 clients and we'll begin with the plaintiffs.

5 MR. DUPUIS: My name is Larry Dupuis. I practice
6 with the ACLU of Wisconsin-Milwaukee.

7 MR. KNIGHT: My name is John Knight and I'm also
8 with the ACLU.

9 MR. FAIRWEATHER: My name is Nicholas Fairweather
10 I'm with Hawks Quindel.

11 THE COURT: And if one of you would be good
12 enough to introduce your clients.

13 MR. KNIGHT: On my far right is Alina Boyden.

14 THE COURT: Ms. Boyden, would you be good enough
15 to stand as well? Thank you.

16 MR. KNIGHT: And right next to me is Shannon
17 Andrews.

18 THE COURT: Then finally, would all of you be
19 kind enough, if you haven't already, to just turn to the
20 back so other members of the jury can see you? And you
21 may be seated.

22 And I'll simply ask, does anyone know any of the
23 attorneys or their clients before today? Just raise your
24 hand. Very good. And then I would ask defendants to do
25 the same.

1 MR. KILPATRICK: Good morning. My name is Steven
2 Kilpatrick. I'm an assistant attorney general with the
3 Wisconsin Department of Justice.

4 MS. SCHMELZER: I'm Jody Schmelzer. I'm also an
5 assistant attorney general with the Department of Justice
6 for the State of Wisconsin.

7 MR. ROTH: Colin Roth, also an assistant attorney
8 general with the Wisconsin Department of Justice.

9 THE COURT: And I should have asked, do you have
10 a corporate representative or a representative of the
11 defendants?

12 MR. KILPATRICK: Diana Felsmann is here with the
13 State Department of Employee Trust Funds.

14 THE COURT: Very good. And I think you've all
15 turned for the benefit of the others and you may be seated
16 and I'll ask the same question: Does anyone know defense
17 counsel or their representative -- or the defendants'
18 representative before today? And you can simply raise
19 your hand if that applies to you. Thank you, very much.

20 The following people are also involved in this case
21 and may be called as witnesses. Please raise your hand if
22 you know any of these people -- and it's a very short
23 list -- Jeffrey E. Bogardus. *Bogardus*, I think it's
24 pronounced. Stephanie L. Budge. Again raise your hand if
25 you know any of these people. Michael S. Farrell. Arlene

1 Larson. Eileen Mallow. And finally, J.P. Wieske or
2 *Wieske*. I think it's *Wieske*, W-I-E-S-K-E. Thank you.

3 At this time then we're going to get to know you a
4 little bit. You have in front of you a sheet of paper
5 which has a group of stilted things we'd like to tell you
6 about -- would like you would tell us about. We're going
7 to start with Juror No. 1 in the back corner and we'll get
8 a mic to you momentarily.

9 While he's getting ready to speak, I'll just explain
10 that we'll ask for your name, age and city or town of your
11 residence; if you would be kind enough to tell us where
12 you were born and raised; your marital status, children,
13 if that's applicable; current occupation or former
14 occupation if you're now retired and the same with respect
15 to a spouse or a domestic partner, again if that's
16 applicable; any military service that you've had,
17 including branch, rank, approximate date of discharge; how
18 far you went in school and major areas of study, if any;
19 membership in school or organization -- I should say any
20 groups or organization, and if so, whether you've ever
21 served in a leadership position; hobbies and leisure-time
22 activities; favorite types of reading material; favorite
23 times of television shows, talk radio, movies, music,
24 otherwise; bumper stickers or letters to the editor --
25 bumper stickers on your car, I should say -- letters to

1 the editor or any calls to any radio or TV show; whether
2 you're a regular contributor to any blogs or online
3 discussion groups or chat rooms; and your primary source
4 of news.

5 As I say, those are in some ways arbitrary questions.
6 They're simply intended to get to know you a little
7 better, keeping in mind that the point of this exercise is
8 for the members -- the parties, the individual parties, to
9 decide whether there's some concern about your ability to
10 be impartial.

11 But more importantly, if there's something else that
12 you think is important in defining who you are, it may be
13 relevant to the parties. You're welcome to volunteer that
14 information as well. And with that, we'll hear from Juror
15 No. 1.

16 MR. WISNEFSKE: Hello. My name is Matthew David
17 Wisnefske. I am 30 -- that was embarrassing -- 36 years
18 old. I live in the city of Reedsburg in Sauk County. I
19 was born in Monroe, Wisconsin and I was raised there. I'm
20 currently married. I have no children. I am currently a
21 consultant for a firm called Cadmus. We do environmental
22 and energy consulting. My wife is a policy analyst for
23 End Domestic Abuse-Wisconsin, which is a nonprofit that
24 supports domestic abuse shelters throughout the state.

25 I did not serve in the military. I have a Ph.D. from

1 the University of Wisconsin-Milwaukee. I got my Ph.D. in
2 political science. I am not currently a member of any
3 groups that I think are noteworthy.

4 In terms of hobbies and leisure-time activities, my
5 wife and I like to travel a lot. And we have a Golden
6 Retriever we spend a lot of time in the park with.
7 Favorite types of reading material would probably be
8 science fiction books. Favorite types of television shows
9 would also be science fiction. I tend to listen to NPR or
10 other local radio.

11 I have a travel bumper sticker on my car, but that's
12 it, for the United Kingdom. I'm not a regular contributor
13 to any online blogs or discussion groups. And I would say
14 that my primary source of news is the *New York Times*
15 online or other newspapers, actually probably more than
16 *Madison Capital Times* or *State Journal*.

17 THE COURT: Can I just ask you, in terms of -- I
18 understand the subject matter of your consulting work. I
19 take it you're involved in survey work or the canvassing
20 is what?

21 MR. WISNEFSKE: Actually, we do do some survey
22 work. But primarily what I do is take utility data and
23 confirm the savings for energy-saving projects, so that
24 would be sale of energy equipment or retrofit for large
25 commercial buildings, things like that. So while we do do

1 some surveys, that is not the majority of what I do.

2 THE COURT: So the current colloquial is *data*
3 *mining*. But you're actually studying data for the benefit
4 of better understanding energy use and how it's done; is
5 that a fair summary?

6 MR. WISNEFSKE: Correct.

7 THE COURT: Okay. And you said you didn't belong
8 to any groups of note. Was that because you belong to
9 groups related to work, but not otherwise, or what did you
10 mean by that?

11 MR. WISNEFSKE: No. I just -- actually, I don't
12 know that I belong to any official groups.

13 THE COURT: Understood. Thank, very much. And
14 Juror No. 2.

15 MR. SWALES: Hi. My name is Dan Swales. I'm 23
16 years old. I was born and raised and currently live in
17 Janesville, Wisconsin. I'm single. I don't have any
18 children. Currently I work at a car dealership as an
19 automotive detailer. I do not have any military service.
20 Let's see. I have my associate's in arts and sciences
21 from UW-Rock County. Memberships, I don't think I'm in
22 any applicable or relevant groups.

23 In high school I was captain of my soccer team with
24 the varsity soccer team. Hobbies/leisures, I like to go
25 to the gym, video games, hang out with friends, things

1 like that. Favorite types of reading material, I haven't
2 really read much lately in terms of books or novels.

3 I like *Better Call Saul* for television show. Movies:
4 Fantasy, things like that. I'm not a regular contributor
5 to any blogs or discussion groups, otherwise I just browse
6 Reddit, which is like the front page of the internet.
7 That's what it labels itself as. I listen to podcasts
8 like Joe Rogan. Lately I've been kind of interested in
9 Ben Shapiro. He's a conservative talk show host. But I
10 also kind of like to get a mixed source, so like CNN, NPR,
11 local radio, things like that.

12 THE COURT: Any concentration of studies in your
13 associate degree or was it general studies?

14 MR. SWALES: It was political science. And I've
15 also attended UW-Whitewater and UW-Madison. So I have
16 about a semester and a half left.

17 THE COURT: All right. And does your
18 concentration continue to be political science?

19 MR. SWALES: That was biology.

20 THE COURT: Okay. Thank you, very much. Juror
21 No. 3.

22 MS. JIRU: Hi. My name is Margaret, or *Maggie*,
23 Jiru. I'm 66. Born in Pardeeville, Wisconsin. Raised in
24 Pardeeville and Denver, Colorado and Durango, Colorado.
25 Married. I have one stepson and a delightful

1 nine-year-old grandson. Recently retired from 37 years of
2 nursing at Meriter Hospital. No military. I studied
3 music at the University of Colorado before I went into
4 nursing. I used to belong to groups, but no more.

5 My hobbies, mostly golf, travel. Thinking about
6 getting a dog. Reading, I like to read fiction,
7 mysteries. TV, same kinds of things. Radio, I listen to
8 NPR, WPR. No bumper stickers. No contributions to blogs.

9 Used to read the newspaper. But my husband and I are
10 kind of on opposite sides of the spectrum politically, so
11 we no longer get the newspaper. And I don't really listen
12 to a lot of news anymore. So that's about it.

13 THE COURT: Let me just ask you, is your husband
14 retired as well?

15 MS. JIRU: No. He's -- well, yes and no. He's
16 kind of retired. He does drive a cab in the early morning
17 hours and also does some mortgage consulting.

18 THE COURT: And was that his full-time job in the
19 past or did he have some --

20 MS. JIRU: He was a mortgage lender in the past.

21 THE COURT: Mortgage lender. All right. Are you
22 yourself, are you living in Pardeeville still today?

23 MS. JIRU: No. I live in Madison. I've been
24 here since '81.

25 THE COURT: Very good. Thank you. Juror No. 4.

1 MS. CAHILL: My name is Karen Cahill. I am 65.
2 And I live in Lake Mills. I was born in Chicago,
3 Illinois. I'm single. And I don't have kids. I am
4 retired. My -- when I was working, I was a customer
5 service representative in the billing department at
6 American Family Insurance. No military service. I have a
7 Bachelor of Fine Arts degree from the University of
8 Illinois and a Master of Arts from the University of Notre
9 Dame. I'm a member of Wisconsin Regional Artists
10 Association and I'm their membership chairman.

11 My hobbies are gardening, art and probably reading I
12 would say. I like to read things like biographies.
13 Presently I'm reading one about Julia Child. And I
14 finished a book about -- it's called *Code Girls*, from
15 women that coded -- decoded messages during World War II.

16 I like to watch like oldies TV shows like on Me TV.
17 And the same with radio, I like oldies music. I don't
18 have any bumper stickers. No letters to the editor or
19 call-in. And I don't have any blog contributions or
20 anything like that. And I mostly would watch the news
21 like on the local TV shows or on the radio.

22 THE COURT: Thank you, very much. Juror No. 5.

23 MR. BISHOP: My name is Jared Bishop. I am 37.
24 I live in Pardeeville. I was born in Austin, Minnesota,
25 raised in Wisconsin. I am single. I have two children.

1 I'm an operations manager at a regional feed mill. My
2 girlfriend is a stay-at-home mom. No military service.
3 Graduated high school, some college. I did not complete
4 college. Membership groups, I'm a member of the NRA and
5 Wisconsin Gun Owners.

6 Hobbies, I have a machine shop at home, automotive
7 stuff. Favorite types of reading material, I listen to a
8 lot of books on tape and things like that: Malcolm
9 Gladwell, things like that, educational-type stuff. TV
10 shows, I don't watch much. I have a Velocity Channel on
11 in the shop all the time. It's just car shows.

12 I have an NRA bumper sticker in my back window as
13 well as a Thin Blue Line American flag. I don't really
14 contribute to anything online. And primary source of news
15 is I look at local news online every morning and that's
16 about it.

17 THE COURT: Thank, very much. Juror No. 6.

18 MR. SCHULTZ: My name is Brian Schultz. I'm 51
19 years old. I was born in Prairie du Sac, Wisconsin. And
20 I grew up between Sauk City and Plains, so rural Sauk
21 City. I'm married. I have three stepchildren. I am a
22 director of public works in Black Earth. My wife is
23 currently unemployed. She has in the past been a day care
24 worker and assistant of students at River Valley High
25 School. No military service. I did attend a tech school,

1 but I did not complete it.

2 I'm not the member of any organization. My hobbies
3 are fishing, reading and watching pretty much any type of
4 sport. I like to read westerns and World War II history.
5 I do like the oldies television shows and sports shows.
6 That's about all I watch.

7 No bumper stickers. I do not contribute in any way
8 to any blog or chat rooms or anything. And news source
9 would be, when I do watch it, it would be just local
10 stations and online for the local newspaper.

11 THE COURT: You said you were director of public
12 works for White Earth?

13 MR. SCHULTZ: Black Earth.

14 THE COURT: Black Earth. Got it. I wasn't
15 familiar with White Earth. Thank you.

16 MR. DAY: My name is David Day. I'm 47 years
17 old. I live in Watertown, Wisconsin. I was born and
18 raised in Hartland, Wisconsin. I am married. I have two
19 kids. I currently work in the R and D, research and
20 development department, at CL&D Graphics. We print a
21 variety of labels. I work specifically with shrink sleeve
22 labels. My wife, she is a nurse practitioner. She works
23 at the Dean Clinic in Fort Atkinson.

24 I do not have military service. My wife has 20 years
25 as a Reservist in the International Guard. For school,

1 after high school I went to college, dropped out. More
2 recently I went back to technical college and got an
3 associate's degree with a business management certificate
4 or degree.

5 Groups or organizations, I'm a member of the United
6 Church of Christ in Watertown. I serve on the board of
7 trustees. I think they just picked me to kind of fill a
8 spot that they have, so don't necessarily know too much
9 what I'm doing there.

10 Hobbies, a ton of hobbies. I especially like
11 snowboarding, mountain biking. I do a lot of outdoor
12 activities like prairie restoration or tree planting;
13 taking out buckthorn, invasive species, stuff like that.
14 Pretty much anything outdoors I like to do.

15 Reading materials, I like nonfiction or historical
16 fiction books where you can learn something I think.
17 Television shows, movies. Don't watch a lot of TV, but
18 stuff I like would probably be action or comedies. I
19 mean, I like a variety of music, a variety of everything,
20 nothing too much.

21 Bumper stickers, I do have an American flag on the
22 back of my car, but no bumper stickers other than that.
23 Nothing to do with any blogs or discussion groups online.
24 Primary news, in the morning I watch about 20 minutes of
25 our local news and on my lunch break at work I'll just

1 scroll through Google news, just random articles.

2 THE COURT: First all, thank you for your wife's
3 service. And I suspect as a Reservist, the service, that
4 continues for the whole family if she's called forward.

5 Secondly, you said research and development work.
6 Are you mainly on the business side of that or on the
7 technical side?

8 MR. DAY: Technical side.

9 THE COURT: So your background is in business,
10 but you're actually doing specific research?

11 MR. DAY: I guess I started at this company
12 almost 30 years ago. Started entry level and I worked up
13 to management. So it's kind of technical. Shrink sleeves
14 is a big huge department, so anything, whether it's
15 internal or visiting customers or cold packers or
16 anything.

17 THE COURT: Very good. Thank you. Juror No. 8.

18 MS. POWERS: My name is Carole Powers. I live in
19 New Glarus. I was born in St. Louis, Missouri. Raised in
20 southeast Missouri; Bloomington, Illinois; and then spent
21 about 40 years in Champaign, Illinois where I went to
22 school. I've got a bachelor's in therapeutic recreation.
23 I work at Community Living Connections. I support special
24 needs people who live in their own apartments or homes.
25 My husband Dave is a corporate recruiter. I have no

1 children. He has two daughters. I have no military
2 service. I'm not a member of any kind of group or
3 organization.

4 Hobbies, I like gardening and photography and any
5 kind of art. I have a 12-year-old niece. I spend a lot
6 of time with her. Reading material, I like World War II
7 history and historical fiction and just kind of a variety,
8 whatever catches my interest.

9 Mostly I watch TV without commercials, so that's like
10 Turner Classic Movies, some Netflix. I like podcasts. I
11 listen to *Lore*, which is probably my favorite one. Listen
12 to lots of different kinds of music. I don't have any
13 bumper stickers. And I'm not a contributor to blogs. I
14 really don't do anything online much. My primary source
15 of news really is my husband, who listens to Fox and has a
16 news feed. When I listen to news, it's usually NPR.

17 THE COURT: I didn't catch your age.

18 MS. POWERS: Oh. I'm 61.

19 THE COURT: And also, when you said you do
20 community networking or community living connections, do
21 you do that for a public institution, semi public or
22 private?

23 MS. POWERS: Community Living Connections is a
24 nonprofit here in Madison.

25 THE COURT: All right. And your job

1 responsibilities are generally what?

2 MS. POWERS: I just provide support to people who
3 live in their own homes. So that could be as basic as
4 showering and taking care of their homes, budgeting,
5 doctor's appointments.

6 THE COURT: A lot of them continue independent
7 living?

8 MS. POWERS: Exactly.

9 THE COURT: Thank you, very much. You may pass
10 the mic forward and we'll go in reverse order with Juror
11 No. 14.

12 MR. WILSON: My name is Earl Wilson. I live in
13 Iowa County, township of Lyndon. I was born in Michigan,
14 grew up in Sturgis, moved to Wisconsin 25 years ago and
15 lived in Iowa County, Mineral Point, Lyndon area ever
16 sense. Recently filed for divorce. I have four
17 daughters. I'm a veterinarian, private practice, mixed
18 animal, dairy beef, small animal. My spouse is a
19 registered nurse.

20 No military service. I completed my Doctor of
21 Veterinary Medicine at Michigan State. Church council
22 president at the United Church of Christ in Mineral Point
23 and I'm also the president of the Iowa County Soccer --
24 excuse me -- Soccer Association.

25 Hobbies, soccer and woodworking. I probably read

1 mostly science fiction to relax, some fantasy.

2 Television: movies, science fiction fantasy, kind of
3 whatever the kids are watching. Music, whatever the kids
4 are watching or listening to, whether I like it or not.

5 I listen to a lot of public radio, Wisconsin Public
6 Radio. No bumper stickers or any of that stuff. I don't
7 contribute to anything online. Source of news, National
8 Public Radio and I read *Detroit Free Press*, kind of keep
9 up with news back in Michigan.

10 THE COURT: I didn't catch your age.

11 MR. WILSON: I'm 51.

12 THE COURT: Thank you. Juror 13.

13 MR. MANLEY: Theodore Manley. 64. They call me
14 *Teddy*. I drive truck. Born in Sullivan, Illinois. Live
15 in Beloit. Drive truck for commercial. And, let's see,
16 single. Military, not in. High school. Membership, I've
17 been with the Moose Club since '85. Hobbies, putz with my
18 motorcycle, mess around with old cars. Reading scenario
19 is the same with like information on bikes, old cars and
20 carts.

21 TV, some talk shows, informative like the History
22 Channel and Discovery Channel. *Velocity* is a show about
23 hot rods and motorcycles. Bumper stickers, an American
24 flag, a Harley sticker on the back window. Don't have a
25 computer, don't want a computer, don't need a computer, so

1 that takes care of that. I don't have a smartphone, got a
2 flip phone. I mean, you got to be smart enough to
3 operate it.

4 So I think that's a pretty good summary. That's
5 about it. If I've missed anything, let me know. Thank
6 you.

7 THE COURT: The only thing I guess, are you long
8 haul or short haul?

9 MR. MANLEY: Short haul. Home every night.
10 Minnesota, Iowa, Indiana.

11 THE COURT: Any particular product or just
12 generally?

13 MR. MANLEY: I work for Pratt Industry, a
14 hundred-percent recycled cardboard and they manufacture
15 fiber which is used to manufacture cardboard. They just
16 built a brand-new plant in Beloit. I worked for them out
17 of Indiana while the plant was being built. And they're
18 family owned. And like I said, everything they use is
19 100-percent recycled.

20 THE COURT: Thank you, very much. Juror No. 12.

21 MR. HALLER: My name is Jon Haller. I am 58 and
22 from here in Madison. Currently married. I have two
23 children of my own, a stepdaughter. My wife is a business
24 manager for a small employee benefits company here in
25 town. Up until two months ago I was the director of

1 market research for the Credit Union National Association,
2 also known as CUNA. But not big CUNA; we're the little
3 CUNA.

4 THE COURT: You're the Credit Association, not
5 the Mutual Insurance Company?

6 MR. HALLER: Not the Mutual. Thank you, very
7 much, yes. I did consumer loyalty research, product
8 development research and research on legislative issues.
9 No military service. I have got an MBA from UW. No
10 memberships in groups.

11 Hobbies, mostly listen to music anywhere from Blue
12 Grass to Heavy Metal. I like doing puzzles as well. And
13 watch whatever football game that is on TV. Don't read a
14 whole lot, although I do have a John Grisham book with me
15 today. Programs, we watch mostly *NCIS*, *NCIS New Orleans*,
16 *Bull*, *This Is Us*. Get a lot of music. No bumper
17 stickers. No contributions to blogs or anything like
18 that. And my primary source of news is MSNBC.com. Or if
19 it's something else, local news, usually my wife will tell
20 me about it.

21 THE COURT: Just because of your wife's work in
22 benefits and then your own work for the Credit Union in
23 part developing products or legislative, does either one
24 of you work at all with the health insurance industry or
25 health insurance?

1 MR. HALLER: My wife does.

2 THE COURT: Does she talk with you about the
3 changes in health insurance and approaches to it?

4 MR. HALLER: Sure.

5 THE COURT: Anything that you think would
6 impact -- anything that you've discussed with her that you
7 think would impact how you view the damages in a case like
8 this?

9 MR. HALLER: I don't believe so, no.

10 THE COURT: Nothing comes to mind?

11 MR. HALLER: Nothing comes to mind.

12 THE COURT: Thank you. Juror No. 11.

13 MS. WELDY: My name is Gaby Weldy. I'm 52.

14 Right now I live in Baraboo. I was born and raised in
15 rural Sauk County out in the sticks in Leland, if anybody
16 knows where that's at. I'm married. I have two children
17 and a grandson that's three. I am currently the manager
18 of a \$4-million-a-year retail facility in Sauk City. My
19 husband is a truck driver. I don't have any military
20 service. But if you're confused by my shirt, my father
21 did. And it's his birthday today, so that's why it says
22 *Army*.

23 THE COURT: I figured it had to be you or a
24 relative.

25 MS. WELDY: Yeah. I have an associate's degree

1 in business management. Memberships in groups, I've been
2 past president of the WELCA, the women's group for my
3 Lutheran Church. I served as a youth leader for 4-H, part
4 of the Chamber in Sauk City, numerous groups where I work,
5 committees where I work.

6 Hobbies and leisure time, my husband and I like to
7 travel, camping, flea markets, that kind stuff. Favorite
8 types of reading material, fiction. I'm a Harry Potter
9 fan, if anybody knows what that is.

10 TV shows, I don't get to watch a lot. I'm not home a
11 lot. Discovery Channel, History Channel. I don't have
12 any bumper stickers. Don't contribute to any blogs or
13 anything online. And primary source of news would
14 probably be online newspaper, sometimes local TV before I
15 go to bed.

16 THE COURT: Thank you, very much. Thank you for
17 your father's service.

18 MS. WELDY: Thank you.

19 THE COURT: Juror No. 10.

20 MS. HANSON-ROCHE: My name is Lisa Hanson-Roche.
21 I'm 54 years old. And I live in Fall River in Columbia
22 County. I was born in Madison and raised in Poynette. I
23 am married and have one daughter. I am currently a school
24 psychologist. And my husband is retired and was formerly
25 a diesel injection technician.

1 I have no military service. I have a master's degree
2 in school psychology. I am a member of the National
3 School Psychology Association and the Wisconsin School
4 Psychology Association. And I have served in a couple
5 leadership positions on the state association.

6 My hobbies would be sports and biking and reading and
7 scrap-booking, crafting kinds of things, and spending time
8 with family and friends. The types of materials I like to
9 read are mysteries and suspense. And those are the same
10 kinds of television shows and movies. I like action
11 movies as well.

12 I have no bumper stickers. I just have an angel
13 wings of my brother-in-law, who has passed away, on my
14 window. No letters to the editor or calling into radio or
15 TV shows. The only online discussions I do are ones with
16 school psychologists across the United States. And news
17 would be local news channels.

18 THE COURT: And I assume your education is in
19 psychology?

20 MS. HANSON-ROCHE: Yes.

21 THE COURT: Do you have a BA, MS, Ph.D.?

22 MS. HANSON-ROCHE: A BA and then a master's in
23 school psychology.

24 THE COURT: School psychology. All right. Have
25 you dealt with transgender issues within the school?

1 MS. HANSON-ROCHE: With high school.

2 THE COURT: With high school?

3 MS. HANSON-ROCHE: With high school students
4 occasionally, not very often.

5 THE COURT: Understood. And as you've probably
6 gathered, this concerns damages related to denial of
7 health insurance coverage. Your role in this jury would
8 not be as an expert, it would be as one individual's
9 perspective, and there's two questions that arise out of
10 that. The first one is do you think you can play that
11 role or do you think that you would bring to bear your own
12 perspective or understanding in a way that would make it
13 difficult for you to decide this case just on the evidence
14 that's presented in the courtroom?

15 MS. HANSON-ROCHE: I think I can be neutral and
16 not -- I wouldn't call myself an expert, so --

17 THE COURT: And you don't feel like you have some
18 strong perspective yourself, one way or the other --

19 MS. HANSON-ROCHE: No.

20 THE COURT: -- as to these kinds of issues,
21 coverage issues?

22 MS. HANSON-ROCHE: No, I don't think so.

23 THE COURT: All right. And the second thing is
24 do you think you can play that role in the jury? In other
25 words, not only would the other jury members have to

1 understand they can't look to you for expertise, but that
2 you would understand you're not to provide expertise; in
3 other words, not to opine as an expert, but rather
4 describe your own lay view of whatever evidence was shown
5 in the courtroom. Would you be comfortable being
6 cognizant and aware that that's your role?

7 MS. HANSON-ROCHE: Yes.

8 THE COURT: Thank you, very much. Juror No. 9.

9 MS. VOGEL: My name is Miranda Vogel. I'm 32
10 years old. I was born in Two Rivers, Wisconsin and raised
11 there and then Green Bay, Wisconsin. I am divorced. No
12 children. I'm a pharmacy technician and also a customer
13 service agent at an airline. No military service. About
14 two and-a-half years spent in school at UW-Green Bay.
15 Originally majored in English and in biology. No
16 membership to any groups.

17 Hobbies and leisure would definitely be travel. Like
18 music, movies. Favorite types of reading material would
19 be fictional novels. Favorite types of TV would be old
20 sitcoms, late-night talk shows. No bumper stickers. I
21 don't contribute to any blogs. And my primary source of
22 news would be some social media or the local news.

23 THE COURT: Thank you, very much.

24 Members of the jury, I'm going to start to ask more
25 specific questions. And these are just elicited or

1 intended to elicit your own background and experiences. I
2 don't think the earlier questions required it. But at any
3 point if you'd like to talk about anything, once you
4 identify yourself by raising your hand, we can do it at
5 sidebar. We can do it very quickly and without
6 inconveniencing anyone. So please, just feel free to let
7 me know if you'd rather discuss something at side bar.

8 The first questions just go to your own court
9 experience. How many of you or a close relative of yours
10 has been involved as a party to a lawsuit, so a plaintiff
11 or a defendant in a lawsuit?

12 And for your benefit, this is where we're parting
13 ways, so you may be called forward. You don't need to
14 raise your hand to these questions. But please, if you
15 are called forward, try to keep in mind what questions you
16 would have raised your hand to and then I'll try to help
17 refresh you as well.

18 I see one hand. And is this something you're
19 comfortable talking about?

20 MR. WISNEFSKE: Yes.

21 THE COURT: If you'd just describe what your
22 involvement was.

23 MR. WISNEFSKE: It was my father is a retired
24 doctor. And I know on one occasion, this was more than 20
25 years ago, he was sued for malpractice but that case was

1 dismissed.

2 THE COURT: All right. Anything about his
3 experience that you think would resonate for you in a case
4 like this?

5 MR. WISNEFSKE: No.

6 THE COURT: Thank you, very much. And you can
7 pass the mic to your left. I saw at least one other hand
8 up.

9 MS. JIRU: Just in small claims court. So I
10 don't know if that qualifies or not.

11 THE COURT: Did you bring the suit or were you
12 sued?

13 MS. JIRU: No, because the person who we were
14 suing filed bankruptcy. It was a restoration on a house.

15 THE COURT: You filed it and then it was moved to
16 bankruptcy and that was the last you heard of it?

17 MS. JIRU: Correct.

18 THE COURT: Anything about that experience that
19 you think would impact your ability to be impartial here?

20 MS. JIRU: Not at all.

21 THE COURT: Thank you. And if you'd pass the mic
22 to your left, Juror No. 4.

23 MS. CAHILL: My mother slipped on the ice and
24 fell at a movie theater in Madison and we had a lawsuit
25 which ended up being settled with the movie theater.

1 THE COURT: All right. Anything about that
2 experience, positive or negative, that stays with you at
3 this point?

4 MS. CAHILL: Not positive or negative. I mean,
5 it was an interesting process.

6 THE COURT: Did it end in a manner that you
7 thought was satisfactory for your mother?

8 MS. CAHILL: Yes.

9 THE COURT: All right. Anything about her
10 experience you think might cause you to identify with the
11 plaintiffs or the defendants or otherwise influence you in
12 some way that would make it difficult for you to be
13 impartial here?

14 MS. CAHILL: No.

15 THE COURT: All right. Thank you, very much.
16 Was there another hand? If you'd just pass the mic to
17 your left. Juror No. 6.

18 MR. SCHULTZ: My wife, before we were married,
19 was involved --

20 THE COURT: Could you bring the mic closer?
21 Thank you.

22 MR. SCHULTZ: -- was involved in a traffic
23 accident and there was a lawsuit there.

24 THE COURT: And were you plaintiffs, defendants,
25 both?

1 MR. SCHULTZ: She was the plaintiff.

2 THE COURT: All right. And it was just your wife
3 or you were in the car as well?

4 MR. SCHULTZ: It was just her.

5 THE COURT: I apologize. I didn't quite hear
6 that part. And anything about her experience -- did it
7 end in a manner that she was satisfied with?

8 MR. SCHULTZ: Yeah.

9 THE COURT: All right. Anything about her
10 experience you think may impact your ability to listen to
11 the facts here and decide the case based on the evidence
12 admitted?

13 MR. SCHULTZ: No. There's also one other case
14 that she is currently involved in.

15 THE COURT: Okay. Is she again the plaintiff?

16 MR. SCHULTZ: I don't know how you would put it.
17 It's a sexual assault case.

18 THE COURT: All right. Is she going to be a
19 witness or --

20 MR. SCHULTZ: Probably. She was the one affected
21 by the --

22 THE COURT: So she would have been a victim in
23 the case?

24 MR. SCHULTZ: Yes.

25 THE COURT: Is that something you're comfortable

1 describing now?

2 MR. SCHULTZ: I can. We were out at a
3 bar/restaurant and with some friends who had other friends
4 with them and one of the other friends grabbed my wife's
5 breast.

6 THE COURT: And is that something that's in
7 criminal proceedings at this time?

8 MR. SCHULTZ: Yes.

9 THE COURT: So I imagine that's an upsetting
10 experience for all of you, especially of course your wife,
11 but for you as well.

12 MR. SCHULTZ: It is.

13 THE COURT: Do you think that that might resonate
14 in a way that would make it more difficult for you to be
15 impartial, understanding that the facts here are very
16 different? It's a civil case.

17 MR. SCHULTZ: No. I can be impartial. It's a
18 total separate --

19 THE COURT: And you can separate those events
20 from what's going on in other parts of your life --

21 MR. SCHULTZ: Yeah.

22 THE COURT: -- at this point? Thank you, very
23 much.

24 Is there anyone else who raised their hand in the
25 back row? And we'll just come to the front row. I see

1 one hand unless there's another. Juror No. 11.

2 MS. WELDY: The economic crash of 2008, at that
3 time is when I had our own business. And the economy
4 caused us to lose our business, so we were involved in
5 numerous proceedings. Lost our house, lost our business,
6 but that's a while ago.

7 THE COURT: I'm sorry to hear it and I know how
8 traumatic that can be.

9 MS. WELDY: Very much so.

10 THE COURT: Did you go through receivership or
11 bankruptcy?

12 MS. WELDY: Bankruptcy.

13 THE COURT: So you've managed to dig your way out
14 of that hole and I congratulate you for that.

15 MS. WELDY: Thank you.

16 THE COURT: But the question for this purpose is
17 whether you think that might resonate in some way -- I'm
18 not sure what it would be -- that would impact your
19 ability to be impartial here.

20 MS. WELDY: I don't believe so.

21 THE COURT: Thank you. And thank you for
22 explaining that sensitive issue. You know, that's what
23 bankruptcy is for, is exactly situations like that, to let
24 people start over, especially after an economic downturn.
25 So thank you, very much.

1 Was there anyone else who had raised their hand?

2 All right. These questions still concern court
3 proceedings. But other than what you've just described,
4 have you or a close relative ever been a witness in a
5 lawsuit? So someone who had been called forward to
6 testify either at a trial or at a deposition involving a
7 dispute in court. Is this for the matter you've already
8 mentioned or something else?

9 MS. JIRU: No.

10 THE COURT: Yeah. Then by all means, if you'd
11 pass the mic. Juror No. 3.

12 MS. JIRU: As a nurse, I was called as a witness
13 in a drunk driving I think once or twice. I can't
14 remember.

15 THE COURT: All right. And was that always for
16 the prosecution or was it also --

17 MS. JIRU: I was a witness as to drawing blood,
18 blood samples.

19 THE COURT: Understood. And so you would have
20 gone on for the purpose of explaining "I did draw this
21 sample and this is the sample I drew"?

22 MS. JIRU: Yes.

23 THE COURT: And that's a "yes"?

24 MS. JIRU: Yes.

25 THE COURT: Sorry. We have to make a record.

1 No, that's fine. Anything about that experience you think
2 would impact you or how you would view witnesses who are
3 called to the stand?

4 MS. JIRU: Not at all.

5 THE COURT: Thank you. Is there anyone else who
6 had raised their hand? Thank you.

7 This last question is intended just to find out
8 whether you served on a jury before. So any of you in the
9 box here who have served previously on a jury? I see a
10 couple hands. If you could pass the mic to your left.

11 Juror No. 4, just tell me generally, was it a civil,
12 criminal matter, what you remember about the basic case?

13 MS. CAHILL: Okay. I actually served twice on
14 juries. Once when I lived Chicago I served on a jury
15 which involved a personal injury case where a man was
16 injured while he was cleaning a car for a railroad, a
17 railroad car. And then the second case I was on involved
18 a fight at a bar and that was in Jefferson County here in
19 Wisconsin.

20 THE COURT: Was the second one criminal or civil?
21 In other words, was someone being charged with a crime in
22 the fight arising out of the fight or was it a lawsuit
23 over injuries?

24 MS. CAHILL: It was over injuries.

25 THE COURT: All right. And as to that case,

1 since we're talking about that one, how long ago was that?

2 MS. CAHILL: It was about like 12, 13 years ago.

3 THE COURT: All right. And do you recall whether
4 it went to verdict; in other words, that the jury had to
5 vote on liability or damages?

6 MS. CAHILL: Yes, yes, we did.

7 THE COURT: All right. And did you find the
8 defendant liable?

9 MS. CAHILL: Yes.

10 THE COURT: And then you ended up awarding
11 damages?

12 MS. CAHILL: Yes.

13 THE COURT: All right. Were you the foreperson
14 for that jury?

15 MS. CAHILL: No.

16 THE COURT: All right. Then as to the personal
17 injury case that occurred earlier, you said many years
18 ago, do you recall anything about the nature of that case
19 or whether it went to verdict?

20 MS. CAHILL: Yes. That one was they were
21 awarding damages for the injury itself and then for pain
22 and suffering and then we did arrive at a verdict on that.

23 THE COURT: All right. And were you the
24 foreperson of that jury?

25 MS. CAHILL: No.

1 THE COURT: Anything about either of those two
2 experiences, positive or negative, that you feel strongly
3 about now today?

4 MS. CAHILL: No. Again I think it was an
5 interesting process to go through and I didn't feel like
6 it was positive or negative; it was just interesting.

7 THE COURT: And anything about that experience
8 you think would resonate in a way that would affect how
9 you would view the evidence presented here in this case?

10 MS. CAHILL: No.

11 THE COURT: Thank you, very much. I know there
12 was at least one other hand, so I'll ask you to pass the
13 mic to your left. And if you could do the same, just
14 describe your jury experience.

15 MS. POWERS: Sure. I served on a grand jury in
16 Illinois. I think it would have been like in the mid 90s.
17 I think I served for a two-week period of time.

18 THE COURT: And obviously that's a very different
19 experience. Generally there isn't a judge present and
20 generally you're hearing certain evidence and just
21 deciding whether a matter, a criminal matter, should go
22 forward or not.

23 MS. POWERS: Yes.

24 THE COURT: Anything about that experience,
25 positive or negative, that resonates for you now?

1 MS. POWERS: No. I thought it was very
2 interesting.

3 THE COURT: All right. And any reason you'd
4 think -- obviously, because it's so different and
5 different standards and this will be very different, but
6 any concern that it might impact you in some way in your
7 ability to hear the evidence here and decide this case on
8 the evidence presented by both sides?

9 MS. POWERS: No concern about that.

10 THE COURT: All right. Thank you. I didn't see
11 any other hands in the jury for past jury experience, so
12 I'll move on to kind of a shift.

13 If you'd just look around in the box itself, but
14 keeping in mind this will be a question I'll pose to you
15 as well if you are called forward, do you know anyone else
16 in the box before today? So, in other words, do you know
17 any of your fellow jury panel members in this box before
18 today? All right.

19 MS. WELDY: He's actually one of my customers in
20 my store. He might not remember who I am.

21 THE COURT: And the store is?

22 MS. WELDY: McFarlane's in Sauk City.

23 THE COURT: And the store is?

24 MS. WELDY: McFarlane's.

25 THE COURT: The kind of --

1 MS. WELDY: Oh, a hardware store.

2 THE COURT: Hardware store. All right. Any
3 reason why you think you would value his opinion, Juror
4 6's opinion, differently than anyone else in a
5 deliberation process because of that past relationship?

6 MS. WELDY: No, not at all.

7 THE COURT: All right. And would your answer be
8 the same, Mr. Schultz? Any reason you would value Juror
9 11's opinion differently than anyone else in the jury?

10 MR. SCHULTZ: No.

11 THE COURT: All right. Thank you. Then I am
12 going to begin -- I'm sorry, there is one last question.
13 Have you or anyone else close to you ever worked in a law
14 firm or taken law classes beyond just an introductory
15 business law or something? Yes.

16 MS. JIRU: I have a brother who's a lawyer --

17 THE COURT: Okay.

18 MS. JIRU: -- but not in this country.

19 THE COURT: He's a lawyer overseas?

20 MS. JIRU: In Taiwan, yes.

21 THE COURT: All right. Anything about his
22 experiences or does he work in any way in a field related
23 to being in court?

24 MS. JIRU: No, not any longer.

25 THE COURT: Anything about his work or what he's

1 described that you think would influence you?

2 MS. JIRU: Not at all.

3 THE COURT: Thank you. Is there anyone else?

4 Thank you.

5 These questions are more case specific. And again if
6 at any point, other than just raising your hand to
7 identify yourself, you want to discuss this at sidebar,
8 I'm more than happy to do it in that manner. The first
9 question is meant to be expansive. And simply raise your
10 hand if it applies to you generally and we can talk about
11 the remainder at sidebar.

12 Is there anything about the fact that the plaintiffs
13 in this case are transgender, whether positive or
14 negative, which would interfere with your ability to be
15 fair and impartial to both sides in this case? And if you
16 think that might apply to you, positive or negative, this
17 would be the time to raise your hand. Thank you.

18 Similarly, is there anything about the fact that the
19 defendants are the State of Wisconsin Department of
20 Employee Trust Funds and the Government Insurance Board,
21 again whether positive or negative, which would interfere
22 with your ability to be fair and impartial to both sides
23 in this case? And again if that applies to you, just
24 raise your hand. Thank you.

25 Relatedly, have you or someone close to you ever

1 worked for the State of Wisconsin? Just raise your hand
2 if that applies to you. I see a few hands. What we'll do
3 is just -- we'll just walk through the reason for your
4 raising your hand, Juror No. 1.

5 MR. WISNEFSKE: My wife was briefly a legislative
6 aide to a state assembly representative.

7 THE COURT: All right. And she no longer works
8 for the state?

9 MR. WISNEFSKE: No.

10 THE COURT: Any concerns about her involvement
11 with the state in the past that you think may affect you
12 in some way?

13 MR. WISNEFSKE: No.

14 THE COURT: For example, she doesn't continue to
15 carry some health insurance or something through the
16 state?

17 MR. WISNEFSKE: Nope.

18 THE COURT: All right. Very good. If you'd pass
19 the mic to your left, I think the next person who raised
20 their hand may have been at the far -- I'm sorry, Juror
21 No. 6.

22 MR. SCHULTZ: My wife also, back in the late 80s,
23 early 90s, worked as a legislative aide.

24 THE COURT: All right. Same question for you --
25 I should have asked probably in there, your role as a

1 director of public works, do you think the fact that
2 defendants are government entities may in some way impact
3 how you view the case here?

4 MR. SCHULTZ: No.

5 THE COURT: All right. And if you could pass the
6 mic to Juror No. 8 -- or Juror No. 7. I apologize.

7 MR. DAY: My sister works for unemployment up in
8 Appleton. My mom used to work for the Agricultural Trade
9 Consumer Protection as a receptionist.

10 THE COURT: All right. Anything about their past
11 employments you think may impact you or current
12 employments?

13 MR. DAY: No.

14 THE COURT: Thank you. Juror No. 8.

15 MS. POWERS: My sister-in-law worked for maybe
16 the Department of Education. She worked for DPI.

17 THE COURT: All right. And does she continue to
18 work there?

19 MS. POWERS: No.

20 THE COURT: Anything about her past work you
21 think may have an impact on how you view the evidence
22 here?

23 MS. POWERS: No.

24 THE COURT: Thank you. You can pass the mic
25 forward. I think there was at least one hand in the front

1 row. If you just keep moving it to your right, we'll get
2 there, Juror No. 10.

3 MS. HANSON-ROCHE: My uncle works for the
4 Department of Corrections and he's retired.

5 THE COURT: All right.

6 MS. HANSON-ROCHE: And my aunt worked for the
7 Department of Revenue and is retired. And I worked as an
8 LTE for the Department of Health Services during my
9 college years.

10 THE COURT: And do you personally get any
11 benefits from your past employment for the state?

12 MS. HANSON-ROCHE: No.

13 THE COURT: And anything about the fact that your
14 uncle and aunt may get benefits that you think would
15 impact how you view the evidence in this case?

16 MS. HANSON-ROCHE: No.

17 THE COURT: Thank you. I did not see any other
18 hands. We're coming back then. Yes, Juror 12.

19 MR. HALLER: I worked for the state Educational
20 Communications Board. We're talking 35 years ago though.

21 THE COURT: All right. Any benefits that still
22 continue from that?

23 MR. HALLER: No.

24 THE COURT: Any concerns that your past work
25 would influence you here?

1 MR. HALLER: No, none whatsoever.

2 THE COURT: Juror No. 13.

3 MR. MANLEY: My sister works for Rock County at
4 the courthouse in the jail or whatever, but it hasn't got
5 nothing to do with me.

6 THE COURT: Fair enough.

7 MR. MANLEY: You know, it's like trying to
8 understand the question.

9 THE COURT: Yeah. And in fact the county, in
10 some ways, has interrelationships, so that is appropriate.
11 Thank you, very much, for identifying yourself.

12 MR. MANLEY: All right.

13 THE COURT: Was there anyone else who had raised
14 their hand in response to that question, having you or
15 someone else close to you working for the state of
16 Wisconsin? Thank you.

17 Have you or someone close to you ever filed -- this
18 is a more specific question as to court proceeding, but a
19 very special kind -- have you or someone close to you ever
20 filed a lawsuit or administrative complaint alleging
21 discrimination, whether against the government, an
22 employer or anyone else? Just raise your hand if that
23 applies to you or someone close to you. Thank you.

24 Similarly, have you or someone close to you ever had
25 a lawsuit or administrative complaint filed against them

1 or against their employer because of alleged
2 discrimination? Again just raise your hand if that
3 applies to you. Thank you.

4 Next question: Have you or someone close to you ever
5 been employed by, been a member of or volunteered for any
6 organization whose mission includes the protection of or
7 the narrowing of constitutional or civil rights? It's a
8 broad question. I'll read it one more time. And I
9 suppose -- well, I'll just read the question one more time
10 and then we can address it.

11 Have you or someone close to you ever been employed
12 by, been a member of or volunteered for any organization
13 whose mission includes the protection of or narrowing of
14 constitutional or civil rights?

15 And I know Juror No. 5 said he's a member of the NRA.
16 That would qualify. Anyone else? Any organization
17 involved with constitutional or civil rights that you're a
18 member of or otherwise been involved in.

19 And I'll just ask you, with respect to your
20 involvement with the NRA, any concerns that that would
21 somehow influence how you viewed the evidence in a case
22 here, particularly in terms of damages for a violation?

23 MR. BISHOP: Absolutely not, no.

24 THE COURT: Thank you, very much.

25 MR. BISHOP: You bet.

1 THE COURT: Next question. And we are coming to
2 the end, but again realize that each of these are just
3 trying to elicit from you, are there areas where you're
4 concerned about your ability to be impartial that may be
5 important to the jury.

6 The next question is do you have any -- have very
7 strong beliefs, either positive or negative, about
8 protections from sex discrimination at work? So, in other
9 words, do you have particularly strong feelings, strong
10 beliefs, even very strong beliefs, either positive or
11 negative, about protections from sex discrimination at
12 work? And if that applies to you, you should raise your
13 hand. Thank you.

14 Similar question: Do you have very strong beliefs,
15 either positive or negative, about employer-provided
16 health insurance? Again just raise your hand if that
17 applies to you. Thank you.

18 And then finally, do you have very strong beliefs,
19 either positive or negative, about the denial of insurance
20 coverage generally?

21 The same question for denial of insurance coverage:
22 So very strong beliefs, either positive or negative, about
23 denial of insurance coverage for gender confirming surgery
24 or hormone therapy for transgender individuals
25 specifically? In other words, if you have very strong

1 feelings about that, positive or negative, you should
2 raise your hand. All right. I see one hand. Why don't
3 we just have a brief discussion at sidebar. Thank you.
4 And counsel should approach.

5 (At sidebar.)

6 THE COURT: If you could just describe the reason
7 you raised your hand.

8 MR. SCHULTZ: Because I'm Catholic and I believe
9 in the Catholic faith.

10 THE COURT: And so you believe transgender is
11 inconsistent with your faith?

12 MR. SCHULTZ: Correct.

13 THE COURT: Thank you. I consider myself
14 Catholic too, so I can appreciate the importance of that.
15 And I understand what you're saying is for some reason you
16 read your faith in that way?

17 MR. SCHULTZ: Mm-mm.

18 THE COURT: I'm not sure that's an accurate
19 description of the faith, but I respect your view. So
20 what I'm taking from this is you don't think you could be
21 impartial in this case?

22 MR. SCHULTZ: Probably not.

23 THE COURT: Understand. That's why I asked you
24 to raise your hand. I very much appreciate your raising
25 your hand as you did. I'm going to excuse you. Did you

1 leave anything?

2 MR. SCHULTZ: Just a bottle of water that was
3 over there.

4 THE COURT: Sometime you and I can have a
5 discussion on Catholic theology. But in the meantime, if
6 you want to grab your water, you're welcome to. And then
7 you can just sit in the back of the courtroom just behind
8 those who are seated there from the jury and then I'll
9 address all of you when we're finished. But thank you
10 again for raising your hand.

11 (End sidebar.)

12 THE COURT: And we're going to call forward an
13 additional jury member.

14 THE CLERK: Kelly Marie Haberman.

15 THE COURT: While Ms. Haberman is taking her seat
16 in the jury, if someone would be kind enough to hand her a
17 sheet for her to introduce herself. I'm just going to ask
18 the same question again of those who have remained.

19 Ms. Haberman, you may have a seat for just a second
20 and look over the list and we'll have you introduce
21 yourself in a moment.

22 But for those of you who are still sitting in the
23 jury box, the question was do you have very strong
24 beliefs, either positive or negative, with respect to
25 denial of insurance coverage for gender confirming surgery

1 or hormone therapy for transgender individuals
2 specifically? And of course you should raise your hand if
3 you or someone close to you was granted or denied coverage
4 for that surgery or denied coverage for surgery of any
5 kind.

6 I see one hand. Were there any other hands with
7 respect to these series of questions? All right. I'm
8 just going to ask Juror No. 11 to come forward, if you
9 would.

10 (At sidebar.)

11 THE COURT: You just need to speak into the mic.
12 I assume you couldn't hear what was said at sidebar, so
13 just tell me why you raised your hand.

14 MS. WELDY: Actually, I have a very large family.
15 I have 65 cousins and --

16 THE COURT: You can probably keep your voice down
17 a little bit. You're very good --

18 MS. WELDY: Thank you. I'm used to speaking a
19 lot.

20 THE COURT: All of us can hear you. So you have
21 a very large group of cousins.

22 MS. WELDY: I have some gay members in my family
23 and I have a cousin that was denied surgery. I have very
24 conflicting emotions because of being past president for
25 WELCA. My church doesn't believe in --

1 THE COURT: Was she denied surgery related to
2 transgender confirming surgery?

3 MS. WELDY: Yes.

4 THE COURT: You have conflicting views because
5 you know of your cousin and presumably like your cousin,
6 love your cousin?

7 MS. WELDY: Yes.

8 THE COURT: So that was upsetting then. You have
9 this religious component that you think, as you understand
10 your religion, you believe may be inconsistent with
11 providing insurance coverage?

12 MS. WELDY: Not so much the insurance coverage.

13 THE COURT: The lifestyle as opposed to something
14 that may have something to do with how they are born or
15 raised?

16 MS. WELDY: My religious beliefs that I've been
17 raised in my entire life is different.

18 THE COURT: First of all, thank you, very much,
19 for raising your hand because this is exactly why we go
20 through this process, so thank you.

21 MS. WELDY: Mm-mm.

22 THE COURT: Secondly, what I'm hearing is there's
23 enough emotion on both sides of that that it might get in
24 the way of your abilities to hear the evidence. I'm not
25 trying to put words in your mouth. If you think you can

1 set those conflicting feelings aside and listen to the
2 evidence and decide the case based on just the evidence
3 presented in the courtroom, then you should tell me that.
4 But I'm trying to understand how much this is going to
5 weigh on you, positive or negative, during the course of
6 the evidence.

7 MS. WELDY: I guess I'm torn. I know what my
8 cousin went through, so I would probably have a tendency
9 to be more --

10 THE COURT: Empathetic or sympathetic?

11 MS. WELDY: Yes.

12 THE COURT: Sure. I think again I'm going to
13 excuse you, but I will allow if there's follow-up
14 questions that either side has of you. All right. Then
15 I'm going to excuse you. And I really appreciate your
16 raising your hand. If you left anything behind, you
17 should just grab it. And then if you would do the same as
18 the last juror member. If you would just sit behind the
19 row of the people in the jury panel, I'll address you once
20 this process is finished. Thank you.

21 (End sidebar).

22 THE COURT: We will call another juror forward.

23 THE CLERK: Ronon O'Neill.

24 THE COURT: Hopefully there will be a sheet there
25 for you as well. And while you're getting settled, I'm

1 going to ask our new Juror No. 6 if you would now stand
2 and introduce yourself.

3 MS. HABERMAN: My name is Kelly Haberman. I am
4 37. I live in Lake Mills. I was born in Long Beach,
5 California, raised in Watertown. I'm married. I have one
6 infant daughter. I am a legal assistant at a small law
7 firm in Lake Mills. My husband is an accountant for a
8 railroad construction company in Madison. I do not have
9 any military service. I have a master's in professional
10 development from UW-La Crosse. I am a
11 secretary/administrative assistant for Lake Mills Area
12 Community Foundation.

13 I enjoy spending time with family and friends. I
14 play volleyball, garden. I read John Grisham books, James
15 Patterson. Television shows, we watch a lot of sports in
16 our household. I do have a United States Marine Corps
17 sticker on my car. I do not contribute to any blogs or
18 online discussion groups. And I watch *Fox News*.

19 THE COURT: U.S. Marine Corps sticker because
20 you --

21 MS. HABERMAN: My older brother is a major in the
22 United States Marine Corps.

23 THE COURT: Thank you for his service. I want to
24 just explore with you briefly your role as a legal
25 assistant in a small legal office. Do they do personal

1 injury work?

2 MS. HABERMAN: Yes. And actually my father is a
3 partner at the law firm and he does personal jury. That's
4 what he specializes in.

5 THE COURT: Generally on defense side, on
6 plaintiff side or both?

7 MS. HABERMAN: Plaintiff.

8 THE COURT: On plaintiff side. All right. So as
9 legal assistant, do you learn an awful lot about these
10 cases as they come in and out?

11 MS. HABERMAN: I actually don't work directly
12 with him. I do more estate planning and estate
13 administration, real estate work as well as some civil
14 litigation. We represent some local banks.

15 THE COURT: All right. So other than a few
16 stories you may have heard, not a live role in personal
17 injury, but what about with respect to other litigation?

18 MS. HABERMAN: Correct.

19 THE COURT: Would you be involved in cases
20 involving lawsuits?

21 MS. HABERMAN: Yes. We do file some lawsuits,
22 usually foreclosures, replevins.

23 THE COURT: And do you have a role there to put
24 the papers through?

25 MS. HABERMAN: Sure.

1 THE COURT: Do you think that those experiences
2 would influence how you view evidence in a case like this
3 for damages?

4 MS. HABERMAN: No.

5 THE COURT: And I'll just push you a little bit.
6 I'm not saying it's not true, but you don't think you
7 would identify with one side or the other in a case like
8 this in terms of awarding damages?

9 MS. HABERMAN: I guess I've never been involved
10 in litigation where there has been an award of damages.
11 Usually it's just foreclosures are probably I think the
12 most.

13 THE COURT: All right. So you don't have any
14 concerns that you can listen to the evidence and decide
15 the case based on the evidence presented here in the
16 courtroom?

17 MS. HABERMAN: Correct.

18 THE COURT: Very good. I'm going to ask you -- I
19 said I would ask about these other questions that I posed
20 so far, but let's hear from the additional juror and then
21 I'll ask you both these follow-up questions. Thank you.

22 Juror No. 11.

23 MS. O'NEILL: My name is Ronon O'Neill. I am 43.
24 I'm never sure. I'm sorry.

25 THE COURT: That's fine. I was waiting to hear

1 which side you were going to fall on.

2 MS. O'NEILL: I live in McFarland, Wisconsin. I
3 was born in Connecticut. I lived in Australia until I was
4 four and was back to Connecticut and then I moved to
5 Wisconsin for school and here I am. I am married and I
6 have two children. I am a physician's assistant. I work
7 in neurosurgery at SSM Health and have done so for 13
8 years. My husband is a web developer. I don't really
9 know what he does, computers. He works for Rutabaga
10 Paddlesports Company.

11 No military service. I have a master's degree in
12 physician assistant studies from the UW-Madison. I don't
13 have any memberships other than like professional
14 memberships for physician assistant people.

15 So many hobbies, but I like gardening, building,
16 traveling internationally, traveling locally, knitting,
17 lots of stuff. I'll stop. I don't watch a lot of TV. I
18 listen to a lot of podcasts, not many political podcasts
19 other than Rachel Maddow because she is a little crazy. I
20 listen to a lot of pop music, which drives my husband
21 crazy.

22 I don't have any bumper stickers. Online, the only
23 involvement I have is with like breast cancer online.
24 People ask a lot of questions. That was it for online
25 stuff other than I read my Facebook. Primary news source,

1 mainly NPR. And I read whatever free news I can get off
2 the Internet.

3 THE COURT: So you watch Rachel Maddow because --

4 MS. O'NEILL: I don't watch, because I don't have
5 cable, but I listen to her.

6 THE COURT: You listen to her because you like --
7 she's a little crazy?

8 MS. O'NEILL: She's a little conspiratorial which
9 I think is funny.

10 THE COURT: Fair enough. More specific questions
11 as to your role as a physician's assistant. Do you
12 perform duties inside the operating room or are you pre-
13 or post-surgical involved?

14 MS. O'NEILL: All of it.

15 THE COURT: Have you ever been a witness or a
16 party to any kind of a malpractice claim?

17 MS. O'NEILL: No.

18 THE COURT: Nothing arising out of your role in
19 surgery?

20 MS. O'NEILL: No.

21 THE COURT: All right. You may be seated as
22 well. I'm just going to ask generally, as you think back,
23 would you have raised your hand to any of the questions,
24 for either one of you? Do you recall if you would have
25 raised your hand to a question I've already posed? I'm

1 going to review them generally, but if you recall, I'd
2 just ask you to tell me what that would have been.

3 MS. O'NEILL: I've served on a jury before.

4 THE COURT: All right. And where did you do
5 that?

6 MS. O'NEILL: Dane County Courthouse.

7 THE COURT: Criminal or civil?

8 MS. O'NEILL: I believe it was civil.

9 THE COURT: Do you remember the subject matter at
10 all?

11 MS. O'NEILL: Yeah. It was a motorcycle
12 accident, so for damages, pain and suffering.

13 THE COURT: And did you -- so the jury found
14 there was liability already or the jury found liability?

15 MS. O'NEILL: There was liability for hospital
16 and costs, but there was -- it was a trial for the pain
17 and suffering and --

18 THE COURT: And did the jury reach a verdict?

19 MS. O'NEILL: Yes.

20 THE COURT: Do you recall what the verdict was?

21 MS. O'NEILL: I always get the defendant -- the
22 plaintiff was awarded a cash amount.

23 THE COURT: For pain and suffering?

24 MS. O'NEILL: For pain and suffering.

25 THE COURT: You're going to be asked potentially

1 to do something similar here. Do you have any concerns
2 that your role in that process will be influenced by your
3 role in this earlier case?

4 MS. O'NEILL: No.

5 THE COURT: Do you think you can listen to the
6 evidence and decide the case based on the evidence?

7 MS. O'NEILL: Yeah.

8 THE COURT: Were you the foreperson of your jury?

9 MS. O'NEILL: No.

10 THE COURT: Anything about that experience,
11 positive or negative, that you think may impact how you
12 decide the case here?

13 MS. O'NEILL: I don't believe so.

14 THE COURT: Any other court experience, court
15 proceedings, whether as a party yourself or a witness in a
16 case, anything like that?

17 MS. O'NEILL: No.

18 THE COURT: All right. And I'll ask the same
19 questions of you.

20 MS. HABERMAN: Just being involved as filing
21 lawsuits.

22 THE COURT: All right. But we've discussed that
23 and you're comfortable that shouldn't impact your ability
24 to listen to the evidence and decide the case based on
25 that evidence?

1 MS. HABERMAN: Correct.

2 THE COURT: All right. Any other court
3 experience for either of you that we haven't discussed?

4 Either of you know anyone else in this group of 14
5 before today? Thank you.

6 Anything about the fact that the plaintiff -- the
7 plaintiffs are transgender, positive or negative, which
8 would interfere with your ability to be impartial in this
9 case?

10 Similarly, anything about the fact that the
11 defendants are state governmental entities or the State of
12 Wisconsin that would influence you, positive or negative,
13 in a way that would make it difficult for you to be
14 impartial? All right.

15 Anyone -- you or someone close to you work for the
16 State of Wisconsin or other governmental entities? All
17 right.

18 You or someone close to you ever filed an
19 administrative lawsuit or a lawsuit or an administrative
20 complaint or had one filed against them concerning
21 discrimination? I see both your heads shaking no.

22 Any specific involvement with organizations that
23 include protection of or narrowing of constitutional
24 rights or civil rights?

25 Do you hold very strong beliefs regarding the

1 protection of sex discrimination or providing
2 employer-provided health care insurance that you think
3 would impact you in some way?

4 Have you been involved in health care issues at all
5 in your capacity as a physician's assistant?

6 MS. O'NEILL: I mean --

7 THE COURT: In other words, if there were -- have
8 you ever been involved with a patient in assisting them in
9 a coverage issue, for example?

10 MS. O'NEILL: It's primarily taken care of by our
11 nursing staff, although I will sometimes have to review
12 some documents maybe. But mainly the physicians in my
13 department -- I mean, neurosurgery is such a complex
14 subspecialty -- they tend to only want the physician input
15 on --

16 THE COURT: Understood. So as you sit here
17 today, you can't recall being involved in some way in one
18 of those issues?

19 MS. O'NEILL: No, not really.

20 THE COURT: Even generally?

21 MS. O'NEILL: I mean, I have to do like
22 preauthorizations, but that's not a denial; that's more of
23 a process.

24 THE COURT: All right. Because you are involved
25 in that way or generally because you understand what a

1 surgical process is, do you have any concerns that that
2 might influence you in how you view the evidence that's
3 presented?

4 MS. O'NEILL: I don't believe so.

5 THE COURT: Okay. And do you understand that
6 again, as discussed with one of your fellow jurors, you're
7 not going to be an expert? You should neither allow
8 yourself to be used as an expert by other jury members or
9 consider yourself one to explain how the process works to
10 other jury members, but rather simply to bring your own
11 common sense to bear in viewing the evidence in deciding
12 this case.

13 MS. O'NEILL: Absolutely.

14 THE COURT: And are you comfortable you can do
15 that?

16 MS. O'NEILL: Yeah. I know nothing about gender
17 reassignment.

18 THE COURT: Very good. And then for both of you,
19 do you have very strong beliefs, either positive or
20 negative, about the denial of insurance coverage generally
21 or insurance coverage for gender confirming surgery or
22 hormone therapy for transgender individuals specifically?
23 Nope. Thank you.

24 This is for all of you then: Should the evidence
25 support it, would any one of you have any difficulty -- I

1 should say would you have any difficulty in awarding
2 damages in this case in a substantial amount? Again,
3 should the evidence support it, would anyone have
4 difficulty doing that? Just raise your hand if it applies
5 to you.

6 Similarly, should the evidence support it, would any
7 of you, would you, have any difficulty in awarding no
8 damages or a small amount of damages, again should the
9 evidence support it? You should raise your hand if this
10 applies to you.

11 All right. At the end of this case I am going to
12 give you instructions on the law. These instructions will
13 govern your deliberations. You are required to follow
14 those instructions even if you do not agree with them. Is
15 there any one of you -- would you be unable or unwilling
16 to follow these instructions? I won't be offended in the
17 least if you raise your hand, but you should raise your
18 hand if you think you would have difficulty or you would
19 be unable to do that. Thank you.

20 This is a catchall. It's the last question and it's
21 intended as such. You've heard a little bit more about
22 what the issues may be, what the case is about. I just
23 want you to reflect one more time. Do you know of any
24 reason whatsoever why you could not sit as a trial juror
25 with absolute impartiality to all parties in this case?

1 And if this applies to you, this is the time to raise your
2 hand. Thank you.

3 We're going to have a brief sidebar. And then at
4 minimum, I'll let you stand and stretch and we'll take a
5 quick break if someone needs to take one, but just give me
6 a few minutes here.

7 (At sidebar.)

8 THE COURT: If counsel would approach, please.
9 The question for both sides at this point is whether
10 there's any follow-up questions or if you think someone
11 should be excused for cause at this point. And I'll hear
12 first from the plaintiffs.

13 MR. KILPATRICK: I don't believe so.

14 MR. DUPUIS: I don't think anybody should be
15 excused for cause at this point.

16 THE COURT: Any follow-up questions?

17 MR. DUPUIS: I don't think so.

18 THE COURT: Same for the defendants.

19 MS. SCHMELZER: Nothing from us, Judge.

20 THE COURT: Just a reminder that we'll go back.
21 You'll begin to exercise your strikes. I'm going to let
22 the jury stand and stretch during that period. If they
23 need to excuse themselves, they will, otherwise they'll
24 come and sit or stand in their spot. And once they're all
25 back, I will be instructing them on how to conduct

1 themselves at breaks and recesses. But I'll excuse the
2 remainder of the jury panel at this time.

3 Very good. You may step back.

4 (End sidebar.)

5 THE COURT: Members of the jury, I'm just going
6 to address you briefly. I told you I'd let you stand and
7 stretch. Some of you took the opportunity to do that
8 already. I'll let you do it again. The parties will
9 undergo --

10 THE BAILIFF: Judge, we're missing one.

11 THE COURT: That's fine. That's how we'll
12 proceed. You can stand and stretch as you wish at this
13 time. I'm going to address the other members of the panel
14 in a moment. And if you do need to excuse yourself, feel
15 free to do that briefly. If you could, come back and sit
16 in your chair or stand next to your chair once you're
17 done. When everyone is reassembled, I'll be addressing
18 you on how to conduct yourselves at breaks or recesses.

19 But for now, if you do excuse yourself, please just
20 don't discuss anything about what you've heard this
21 morning. You can discuss the color of the building, the
22 shape of the courtroom, anything you want to talk about,
23 but not anything about this case or what you heard about
24 the case. And I'll address all of you on that as soon as
25 we're all reassembled. So if anyone needs to excuse

1 themselves for a few minutes, please do.

2 And let me just address those of you who have not
3 been called forward as well as those of you who were
4 called forward and were good enough to identify yourselves
5 out of a concern. It's crucial -- and I apologize, you
6 may have trouble seeing me among counsel. I'll go over
7 here -- it's crucial that you came in this morning. As
8 you see, we're down to three individuals who weren't
9 called. If we run out of individuals, we then are in a
10 situation where we can't hold a trial today. That's why
11 we err on the side of having enough people.

12 We try to be as careful as we can not to have more
13 than necessary because we appreciate the interruption in
14 your lives this is causing. But to the extent you weren't
15 called forward, that's the reason why. And I thank you,
16 very much, for your service.

17 As for those of you who were called forward and
18 excused, I want to thank you every bit as much. You
19 played a crucial role in allowing the parties to get to a
20 point where they could feel they could exercise their
21 peremptory challenges and get a jury that could be
22 impartial, which after all is what this is about: it's to
23 give the parties a sense of fairness in the process.

24 So I thank all for your service. I don't believe
25 there's any other obligation that you have with respect to

1 jury service. But I would ask you to check in with
2 Ms. Perales just to make sure if there's some other
3 responsibility you have, otherwise you're free to go.
4 Thank you all.

5 (Prospective jurors excused at 10:41 a.m.)

6 THE COURT: And while we're waiting, I'm going to
7 stand and stretch myself.

8 (Peremptory challenges exercised at 10:40 a.m.)

9 THE COURT: As I mentioned to you, I am going to
10 give you some instructions that will apply to you, if
11 you're chosen to serve on this jury, as to how you should
12 conduct yourselves during breaks or recesses during trial
13 whether at lunch hour or overnight.

14 First, do not discuss the case either among
15 yourselves or with anyone else during the course of the
16 trial. The parties to this lawsuit have a right to expect
17 from you, as a member of the jury, that you keep an open
18 mind throughout the trial. For that reason, you should
19 not reach any conclusion yourself until you have heard all
20 the evidence, have heard the lawyers' closing arguments
21 and my instructions on the law and have retired to
22 deliberate with other members of the jury. Until then,
23 until you retire to deliberate, you may not discuss this
24 case with anyone, even your fellow jurors.

25 After you retire to deliberate, you may begin

1 discussing the case with your fellow jurors, but even then
2 you should not discuss the case with anyone else until you
3 have returned a verdict and the case is at an end.

4 Think of it this way: We are human beings. We start
5 to form opinions about things on almost no information.
6 You'll do your best as, an individual, to keep an open
7 mind and to not reach any final conclusions until you've
8 heard all the evidence, heard my instructions on the law,
9 heard the arguments and are together. If you start to
10 discuss your preliminary views, even innocently, with
11 others about what you're hearing in the courtroom, you're
12 now going to be cross-fertilizing your own initial
13 impressions and making it more difficult for you to come
14 together and deliberate over all of the evidence and the
15 law. In other words, you're just going to reinforce
16 impressions that are uninformed or not sufficiently
17 informed.

18 So just be your own counsel. Listen to the evidence,
19 think about the evidence as it's submitted, try to keep an
20 open mind and don't discuss it among yourselves until it's
21 time for you to actually deliberate. That's all that
22 instruction is telling you.

23 Second, I know that many of you use cell phones,
24 computers, the Internet and other schools of technology.
25 And one of you has remained a Luddite and I congratulate

1 you for your efforts. For those of you who are using
2 those technologies, I must warn you in particular about
3 commenting about the trial, talking to anyone about this
4 case or using these tools to communicate electronically
5 with anyone else during the course of the trial. This
6 includes your family and friends.

7 You may not communicate with anyone orally or
8 electronically, whether through a cell phone, an email --
9 I guess even you have the cell phone, so even that applies
10 to you -- text messaging, Twitter, other applications
11 through internet chat rooms, by way of any social
12 networking website, including Facebook, My Space, Snap
13 Chat, LinkedIn, You Tube or whatever else has been
14 invented in the last few months, probably more than that
15 that you may be using to communicate. You can't talk
16 about this case while you're serving as a juror, period.
17 You can't comment on it. You can't say anything about it.

18 There have been reports, I'm grateful that it's not
19 happened in our court, where jurors have started to
20 comment about a case they're sitting on. And that has
21 resulted in a mistrial and starting all over again for the
22 parties and the court personnel who have brought the case
23 to this point. Not only that, but it's made the time the
24 other jury members have spent on the case meaningless.

25 So just don't do it. You cannot do it. And that's

1 something you should all keep in mind while you're a
2 member of the jury. Afterwards, if you want to make
3 comments, that's up to you. But during the trial itself
4 and until you've finished your deliberations, it's not a
5 proper subject for discussion orally or online.

6 Third, do not permit any person to discuss the case
7 in your presence. If anyone tries to talk to you despite
8 your telling him or her not to, report that fact to the
9 court security officer who will report it to me. But
10 don't discuss it with anyone else, including your fellow
11 jurors, or discuss with them any other fact that you think
12 should be brought to my attention. Simply tell the court
13 security officer and they will take it from there.

14 We haven't had an issue like that except in one
15 instance where one of the jury members innocently started
16 talking to someone in the hallway. We sequester
17 witnesses, so you don't know who's going to be testifying
18 and they may be in the hallway. Fortunately that
19 conversation remained innocent and never brought up
20 subject matter of the case. But you just shouldn't have
21 those conversations with someone you don't know in the
22 hallway.

23 And this is the fourth instruction: You should not
24 have any interaction with any of the parties or their
25 clients, any of the attorneys or their clients, during

1 this process. They have similar instructions not to
2 interact with you. So don't be offended if they look away
3 rather than say "hello" and start up a conversation or
4 even say "hello." That's how they should behave and
5 that's how they should behave only as a matter of
6 appearance.

7 In fairness to both sides, you're separate during the
8 course of the trial and you should respect that
9 separation. Not that I think anyone would abuse it, but
10 we avoid even the possibility of an appearance of abuse.

11 Fifth and finally, you, as jurors, must decide this
12 case solely on the evidence presented here within the
13 walls of this courtroom. No matter how interested you may
14 become in the facts of the case, you must not do any
15 independent research, investigation or experimentation
16 about the issues or facts in the case nor about the
17 individuals or entities involved in the case.

18 In other words, you not only should not consult
19 dictionaries or reference materials or read newspapers,
20 listen to radio or television about this, which used to be
21 the concerns, but you can't go online. Everyone, most
22 everyone, walks around with access to an immense resource
23 of information, some of it good, some of it not so good,
24 some of it wrong, some of it just confused. None of it is
25 relevant for your deciding this case.

1 What's relevant is what I admit as evidence in this
2 courtroom, the testimony on the stand and the documents
3 that are admitted as exhibits. That's what you will
4 decide this case on. And you do it under the rules of
5 evidence, which are not perfect, but have been developed
6 over hundreds of years for a reason, which is that it's
7 the best means we've come up with to give both sides a
8 fair trial.

9 You've seen things being tried in the public sector
10 or by Congress and you've seen that there's a reason why
11 there are rules of evidence, why we try to insure fair
12 trials. And I only hope that all of you will respect that
13 and understand you're not to look at anything else, except
14 the evidence in this case, to decide the case.

15 Fortunately, as a civil jury, you'll be given an
16 opportunity to ask questions by writing them down during
17 the course of the trial. You can certainly -- any juror
18 can ask questions when you're deliberating. So if you
19 really feel like something was left out, I'll tell you if
20 legally you're entitled to know it and answer the question
21 if you are.

22 So with that, those are your instructions and we will
23 now excuse those members of the jury panel who are not
24 going to be asked to serve. And then I'll address them
25 and we'll also seat our jury. You may proceed.

1 THE CLERK: The following jurors are excused and
2 should take a seat in the back of the courtroom: Matthew
3 Wisnepske, Daniel Swales, Margaret Jiru, Jared Bishop,
4 Kelly Haberman, and Ronon O'Neill.

5 THE COURT: I'm sorry. Last name is what?

6 THE CLERK: Haberman.

7 THE COURT: Thank you. And then the name after
8 that?

9 THE CLERK: Ronon O'Neill.

10 THE COURT: Ms. O'Neill. Very good. Then we're
11 going to call out the names of the jury members. And as
12 your name is called, we're going to ask you to move down
13 to your right to fill in the seat, starting with seat No.
14 1 in the back.

15 THE CLERK: Karen Cahill, David Day, Carole
16 Powers, Miranda Vogel.

17 THE COURT: And, Ms. Vogel, I apologize for this,
18 but you're the lucky person that gets to come out of this
19 door and then go around and sit in the back. It will
20 swing open there. And then if you'd just come all the way
21 around and sit. You can leave that open. That's fine.
22 And then the remainder of you will move to your right in
23 the first row. You may proceed.

24 THE CLERK: Lisa Hanson-Roche, Jon Haller,
25 Theodore Manley, and Earl Wilson.

1 want you to have a general understanding of what will take
2 place.

3 When you come back, I'll give you some very brief
4 instructions -- brief instructions, not very brief -- on
5 how the case will proceed. But for your information, it
6 will begin with opening statements after my instructions
7 by the parties. And we'll probably break for lunch around
8 12:30. But we're going to take a 15-minute break now and
9 then reconvene for my instructions, opening statements and
10 maybe beginning of a witness and then we'll break for
11 lunch.

12 With that, I thank you and all should rise for our
13 jury. You can follow the court security officer out.

14 (Jury out at 11 a.m.)

15 THE COURT: If the parties would be seated
16 briefly. I will just hear if there are any other concerns
17 before we take our break for the plaintiffs.

18 MR. KNIGHT: No, Your Honor.

19 MR. DUPUIS: No, Your Honor.

20 THE COURT: For the defendants?

21 MR. KILPATRICK: No, Your Honor.

22 THE COURT: How long do you expect your opening
23 to be?

24 MR. KNIGHT: 10 to 15 minutes.

25 THE COURT: All right. Something similar?

1 MR. KILPATRICK: Same.

2 THE COURT: Very good. Then we probably will
3 have time to proceed with a first witness, so you'll want
4 to make sure you have that person ready. And we'll take
5 our break now and reconvene at 11:15. Thank you.

6 (Recess at 11:01 a.m. until 11:20 a.m.)

7 THE COURT: Unless there's something more for the
8 parties, we will bring out the jury.

9 (Jury in at 11:20 a.m.)

10 THE COURT: Members of the jury, we are about to
11 begin the trial in this case. Before it begins, I will
12 give you some basic instructions to help you understand
13 how the trial will proceed, how you should evaluate the
14 evidence, and although I've already basically done it by
15 my instructions, how you should conduct your yourself
16 during the course of the trial.

17 All of these instructions, beginning with these,
18 you'll have in writing, so there's certainly no need to
19 memorize them. You'll have them all in writing, multiple
20 copies, during your deliberations.

21 The party who begins a lawsuit is called the
22 plaintiff. Here, as you've already heard, the plaintiffs
23 are Alina Boyden and Shannon Andrews. The party against
24 whom the suit is brought is called the defendant. Here
25 the defendants are the State of Wisconsin Department of

1 Employee Trust Funds and the State of Wisconsin Group
2 Insurance Board.

3 As you also heard during voir dire, plaintiffs, both
4 state employees, seek damages from defendants based on
5 defendants' policy for excluding gender confirming surgery
6 and associated hormone therapy from health insurance
7 coverage offered to state employees.

8 The Court has already determined that defendants'
9 policy of excluding this coverage violates federal
10 antitrust -- or I'm sorry, antidiscrimination statutes.
11 Antitrust is a whole nother matter.

12 Specifically the defendants excluded from health
13 insurance coverage provided to state employees, quote,
14 "procedures, services, and supplies related to surgery and
15 sex hormones associated with gender reassignment." As a
16 practical matter, this meant that plaintiffs were
17 wrongfully excluded from coverage for vaginoplasty, the
18 surgical creation of a vagina, and other similar surgeries
19 and related hormonal therapy that were available to state
20 employees who are not transgender and sought the same
21 treatment to address their medical needs.

22 Your role, therefore, will be limited to determining
23 what, if any, compensation or damages should be awarded to
24 plaintiffs. In this case the evidence will fall into
25 three categories: (1) the cost of surgeries and hormone

1 therapy paid for by plaintiffs that would have been
2 covered but for the exclusion; (2) the reasonable cost of
3 other medical treatments that the plaintiffs received and
4 paid that would have been covered but for the exclusion;
5 and (3), the mental and emotional pain and suffering that
6 plaintiffs have experienced because of the exclusion.

7 The case will proceed as follows:

8 First, plaintiffs' counsel will make an opening
9 statement outlining their case. Immediately after
10 plaintiffs' statement, defendants' counsel will also make
11 an opening statement outlining their case. What is said
12 in opening statement is not evidence; it is simply a guide
13 to help you understand what each party expects the
14 evidence to show.

15 Second, after the opening statements, plaintiffs will
16 introduce evidence in support of their damages claim.
17 Then defendants may introduce evidence to rebut
18 plaintiffs' claim, although they are not required to
19 introduce evidence or to call any witnesses to address
20 plaintiffs' claimed damages. If defendants introduce
21 evidence, plaintiffs may then introduce what is called
22 rebuttal evidence.

23 Third, I will give you some additional instructions
24 on what the law allows you to award in damages in this
25 case.

1 Fourth, the parties' counsel will then make closing
2 arguments explaining what they believe the evidence has
3 shown and what inferences they believe you should draw
4 from the evidence. What is said in closing argument is
5 also not evidence. You will ultimately be asked to decide
6 what the evidence proves or does not prove. Plaintiffs
7 have the right to give the first closing argument, because
8 they have the burden of proof, and to make a short
9 rebuttal argument after defendants' closing argument.

10 Fifth, I will give you very brief instructions, and
11 those are very brief, to guide your deliberations.

12 Sixth, you will retire to the jury room and begin
13 your deliberations.

14 You have heard and will hear the term "burden of
15 proof" used during the trial. In simple terms, the phrase
16 "burden of proof" means the party who makes the claim has
17 the obligation of proving that claim. At the end of the
18 trial I will instruct you on the proper burden of proof to
19 be applied in this case.

20 The trial day will generally run from 8:30 a.m. until
21 5:30 p.m. unless the case -- well, it won't go over the
22 time I've already indicated. You will have at least an
23 hour for lunch and two additional short breaks, one we've
24 taken for this morning and the one in the afternoon will
25 be about 20 minutes long. During those breaks I've

1 already instructed on how you should conduct yourselves.

2 Just don't discuss the case.

3 So let me move on to just a little bit about how you
4 should think about the evidence presented, first as to
5 determining the credibility of witnesses.

6 In deciding the facts you have to decide which
7 testimony to believe and which testimony not to believe.
8 You may believe everything a witness says, part of it or
9 none of it. In considering the testimony of any witness,
10 you may take into account many factors, including the
11 witness's opportunity and ability to see or hear or know
12 the things the witness testified about, the quality of the
13 witness's memory, the witness's appearance and manner
14 while testifying, the witness's interest in the outcome of
15 the case, any bias or prejudice the witness may have,
16 other evidence that may have contradicted the witness's
17 testimony, and the reasonableness of the witness's
18 testimony in light of all the evidence. The weight of the
19 evidence does not necessarily depend upon the number of
20 witnesses who testify.

21 During the trial you will hear the lawyers make
22 objections to certain questions or to certain answers of
23 the witnesses. When they do so, it is because they
24 believe the question or answer is legally improper and
25 they want me to rule on it. Do not guess why the

1 objection is being made or what the answer would have been
2 if the witness had been allowed to answer it.

3 If I tell you not to consider a particular statement
4 that has already been made, then put that statement out of
5 your mind unless someone tries to raise it during
6 deliberations. And at that point, I'll point out, it's to
7 not be considered because you're not to consider it if I
8 exclude it as evidence. Again there are good reasons that
9 certain evidence is excluded and it is important that you
10 respect my rulings and directions in that regard.

11 Now, during the trial I may sometimes ask a witness
12 questions. Please do not assume that I have any opinion
13 about the subject matter of my questions. Typically I
14 just ask questions to clarify something that I don't think
15 is clear as it might be. You're not to put any more
16 weight on any question I ask or any answer that's given to
17 any other question or answer given during the course of
18 the trial.

19 If you wish to ask a question about something you do
20 not understand, then I'll ask you to write it down on a
21 separate slip of paper. Were you handed out notebooks?
22 If not, they're right on the right there and you can just
23 pass them out as I'm instructing you. There should be
24 pencils there too. And if we don't have enough for
25 everyone, we'll definitely get it at the first break.

1 If, when the lawyers have finished all their
2 questioning of the witness, the question that you have is
3 still not answered to your satisfaction, raise your hand
4 and the court security officer or I will take the question
5 from you. I will then review it, show it to counsel and
6 decide whether it is a question that can be asked under
7 the rules of evidence. If it cannot, I will tell you
8 that, otherwise I will pose a question to the witness.

9 I will try to remember to look over and see if you
10 have any questions. But frankly, I'm not very good at
11 that because I intend to be focusing on moving the trial.
12 So please raise your hand high and at least get the court
13 security officer's attention and they will make sure that
14 you have -- that the question is brought to me.

15 What I would recommend to you is if you have
16 questions, write them down on the last piece of paper in
17 the back of your notebook, because they may get answered
18 during the course of the questioning by the lawyers and
19 then you can just cross it out.

20 If it's not answered and you think that witness could
21 answer the question, then you just -- when I ask if you
22 have any questions, you can just -- or if you have a
23 question that hasn't been answered when the witness is
24 done, just rip the paper out and hand it to me and we'll
25 go from there.

1 If you want to take notes, those notepads and pencils
2 are for that purpose as well. This does not mean that you
3 have to take notes. Take them only if you want to and if
4 you think they will help you recall the evidence during
5 your deliberation. Do not let notetaking interfere with
6 your important duties of listening carefully to all of the
7 evidence and of evaluating the credibility of the
8 witnesses. Keep in mind that just because you have
9 written something down, it does not mean that the written
10 note is more accurate than another juror's mental
11 recollection of the same thing.

12 No one of you is the secretary for the jury. No one
13 of you is charged with responsibility of recording
14 evidence. Each of you is responsible for recalling the
15 evidence and testimony. I should say testimony and other
16 evidence.

17 Although you can see that the trial is being
18 reported -- that is, being taken down by a court
19 reporter -- you should not expect to use trial transcripts
20 in your deliberations. You will have to rely on your own
21 memories and the exhibits that are actually admitted into
22 trial that will be provided to you.

23 Evidence at trial includes the sworn testimony of
24 witnesses, exhibits admitted into trial, facts judicially
25 noticed and facts stipulated by counsel. I will advise

1 you of all of those things if they're applicable here.

2 You may consider only evidence that is admitted into
3 the record. Summaries and timelines or charts that the
4 parties may use for convenience and to help explain the
5 facts of the case are not themselves evidence or proof of
6 any facts.

7 In deciding the facts of this case you are not to
8 consider the following as evidence: statements and
9 arguments of the lawyers, questions and objections of the
10 lawyers, testimony that I instruct you to disregard, and
11 anything you may see or hear when the court is not in
12 session even if what you see or hear is done or said by
13 one of the parties or one of the witnesses.

14 Evidence may be either direct or circumstantial and
15 you'll be the judge of the value of that. Direct evidence
16 is direct proof of a fact, such as testimony by a witness
17 about what the witness said or heard or did.
18 Circumstantial evidence is proof of one or more facts from
19 which you could find another fact.

20 For example, if the issue is did it rain yesterday
21 and a witness gets on the stand and said "I was out in the
22 rain yesterday," that would be considered direct evidence.
23 If a witness got on the stand and said "I wasn't out in
24 the rain, but I saw wet umbrellas in the entryway to the
25 building yesterday," the latter would be circumstantial

1 evidence.

2 The law makes no distinction between the weight to be
3 given to either direct or circumstantial evidence. You
4 should consider both kinds of evidence. You are to decide
5 how much weight to give any evidence.

6 A witness may be discredited by contradictory
7 evidence or by evidence that at some other time the
8 witness has said or done something or has failed to say or
9 do something that is inconsistent with the witness's
10 present testimony. If you believe any witness has been
11 discredited, it is up to you to decide how much of the
12 testimony of that witness you believe.

13 If a witness is shown to have made false testimony
14 knowingly -- that is, voluntarily and intentionally --
15 about any important matter, you have the right to distrust
16 the witness's testimony about other matters. You may
17 reject all of the testimony of that witness or you may
18 choose to believe some of it.

19 The general rule is that you find -- that if you find
20 that a witness said something before trial that is
21 different from what the witness said at trial, you are to
22 consider the earlier statements only as an aid in
23 evaluating the truthfulness of the witness's testimony at
24 trial.

25 You cannot consider as evidence in this trial what

1 was said earlier before the trial began, with an exception
2 to this general rule and that exception applies: If you
3 find that any party made statements before trial began
4 that are different from the statements they made at trial,
5 you may consider as evidence in the case whichever
6 statement you find more believable.

7 During the course of the trial lawyers may refer to
8 or read from depositions or other sworn testimony. These
9 are transcripts of testimony taken before trial. This
10 testimony is given under oath just like the testimony at
11 this trial.

12 Similarly, lawyers may also refer to answers of one
13 of the parties to interrogatories; that is, questions
14 submitted by the other party during the course of
15 discovery. These answers were given in writing and under
16 oath before trial as well and you should consider the
17 answers the same or give it the same consideration as if
18 given by the party here in court.

19 You are to consider only the evidence in the case.
20 But in your consideration of the evidence, you are not
21 limited to what you see and hear as the witness testifies.
22 You are permitted to draw, from the facts you find have
23 been proved, such reasonable conclusions as seem justified
24 in light of your own experience and common sense.

25 You will also hear from an expert or experts. An

1 expert is a person whose training and experience makes him
2 or her a true expert in a technical field. The law allows
3 that person to state an opinion here about matters in that
4 particular field.

5 It is up to you to decide whether you believe the
6 expert's testimony and choose to rely upon it. Part of
7 that decision will depend on your judgment about the
8 expert's background of training and experience and whether
9 that is sufficient for him or her to give the expert
10 opinion that you heard as well as whether the expert's
11 opinions are based on sound reason, judgment and
12 information.

13 During the trial an expert may be asked a question
14 based on assumptions that certain facts are true and then
15 asked for his or her opinion based upon that assumption.
16 Such an opinion is of use to you only if the opinion is
17 based on assumed facts that are proven later. If you find
18 that the assumptions stated in the question have not been
19 proven, then you should not give any weight to the answer
20 the expert gave to the question.

21 I hope, as I said at the outset, that for you, all of
22 you, you find this case to be interesting and ultimately a
23 gratifying experience.

24 And with that we will hear opening statements from
25 the parties, beginning with the plaintiffs, Mr. Knight.

1 MR. KNIGHT: Good morning. My name is John
2 Knight and I'm one of the attorneys for the plaintiffs,
3 Alina Boyden and Shannon Andrews. We're here today, as
4 the Court has talked to you about, because you have the
5 important responsibility of deciding how much the State of
6 Wisconsin will pay to compensate two women for the harm it
7 caused them.

8 It involves three basic ideas:

9 The government should not treat people differently,
10 less favorably, because of who they are;

11 Secondly, when the government, in this case the State
12 of Wisconsin, treats someone differently and breaks the
13 law and treats someone differently, it should pay for that
14 and pay a fair amount to compensate the person it injured,
15 it hurt; and

16 Third, when the government hurts someone, the people
17 that are in the best position to talk to you about the
18 harm are the people who are actually injured by the state
19 as well as experts who can help you understand the nature
20 of that harm.

21 The Court has already found that the State
22 defendants' policy of denying health insurance coverage to
23 people like my clients violated federal discrimination
24 laws. The evidence will show that my client's health
25 insurance coverage for medical care, surgery that they

1 needed, was denied because of the State's exclusion.

2 You'll hear my clients explain how they suffered due
3 to this denial of care. Your job is to listen to the two
4 women who were harmed by the State and decide what is a
5 fair amount for the State to pay to compensate them.

6 Let me tell you about these two women, Alina Boyden
7 and Shannon Andrews, who work for the state. Theirs is
8 the story that illustrates the first principle I
9 mentioned, that the State should not treat someone
10 differently just because of who they are.

11 Shannon and Alina will explain to you that the State
12 denied them crucial medical care just because they are
13 transgender. They were denied this care not because it
14 wasn't necessary, medically necessary for them, but
15 because of the State's policy of excluding coverage for
16 people who are transgender. Denying Shannon and Alina
17 insurance coverage put them at extreme peril, as I think
18 you will hear from them in their own words.

19 Shannon struggled for many years to get the health
20 care she needed and had to pay for the vast majority out
21 of her own pocket. As a result of delaying treatment,
22 while she scrimped and saved, she went through long
23 periods of deep depression and at times became suicidal.
24 If she had not had the financial means to pay herself for
25 the care she needed, she might not be here today to tell

1 you her story.

2 Alina had no money to pay for the surgery, so she
3 couldn't get the surgery she needed as long as the
4 exclusion was in place. But she will tell you about the
5 harm she's faced in waiting to be able to get that care.

6 Shannon and Alina are transgender women. What that
7 means is that these are women who lived their lives for
8 some period of time being identified as boys. But both of
9 them knew from a very young age that that was wrong, that
10 they knew they were girls and now women.

11 Shannon will explain that it took her many years to
12 tell her friends and family who she is and to seek out the
13 medical care she needed. It was only after she tried to
14 kill herself that she realized she could not achieve any
15 of her dreams in life if she were dead. Once she saw a
16 therapist, he confirmed that what she needed was medical
17 treatment, hormonal therapy and surgery.

18 Alina had a similar experience struggling to get the
19 care she needed. She'll tell you that in college, her
20 medical provider advised her that the condition she had
21 could only be treated by transitioning to living as a
22 women. She started to take hormone therapy -- and you'll
23 learn more about what -- why that hormone therapy is
24 medication for someone like Alina -- and that helped. But
25 she knew that she needed surgery.

1 Shannon is a cancer researcher who grew up nearby in
2 Sun Prairie. She attended the University of
3 Wisconsin-Madison graduating with a degree in genetics.
4 She then completed a doctorate at Princeton University in
5 molecular biology in 2009. Currently she is the acting
6 lab supervisor of the Carbone Cancer Center. Science is
7 her passion and Shannon has dedicated her life to helping
8 people with cancer.

9 Alina was born in Texas, but came to Wisconsin to
10 study anthropology -- study for a doctorate in
11 anthropology at the University of Wisconsin-Madison, which
12 is one of the best schools in the country for
13 anthropology. As a graduate student, the University pays
14 her to teach undergraduate students in anthropology,
15 archeology and world prehistory. She loves to teach and
16 mentor her students and would love to continue teaching
17 after she graduates.

18 When you hear from Shannon and Alina, I think you'll
19 agree that they deserve to be treated fairly, with dignity
20 and respect, just like everyone else.

21 I mentioned before a second principle that is
22 important to keep in mind as you listen to Shannon and
23 Alina. The government should compensate the people it
24 injures when it breaks the law and discriminates against
25 them as the Court has already decided it thinks that

1 exclusion of coverage does here. Normally state employees
2 are provided health insurance coverage for the medical
3 care they need. But Shannon and Alina were denied
4 coverage that's necessary to treat them solely because of
5 who they are.

6 You'll hear them and a psychologist talk about the
7 medical condition that affects them. That condition is
8 called "gender dysphoria." It is a medical condition that
9 can cause some transgender people to experience serious
10 life-altering distress, anxiety and depression because
11 they know they are a gender that is different from what
12 was assigned to them at birth.

13 Dr. Stephanie Budge is a clinical psychologist and
14 professor at the University of Wisconsin who is an expert
15 regarding the treatment of gender dysphoria. She
16 evaluated both Alina and Shannon and found that surgery
17 was medically necessary for them. You'll hear her testify
18 later today or tomorrow.

19 She will explain that this condition, if it isn't
20 treated, can make it impossible to function at work and at
21 home and far often leads to self-harm and even suicide.
22 Like other serious conditions, it's no one's fault and
23 it's no one's choice. It happens and it has to be
24 treated.

25 You'll hear Shannon, Alina and Dr. Budge use the

1 words "gender confirmation surgery" or "sex reassignment
2 surgery" to refer to the surgery they needed or still
3 need. These words are simply a shorthand for surgery to
4 treat this condition gender dysphoria that you're going to
5 learn more about today.

6 And Shannon and Alina were denied insurance coverage
7 for the surgery they needed because the State had a
8 specific policy of denying coverage to treat gender
9 dysphoria, a condition only experienced by people like
10 Shannon and Alina who are transgender.

11 This medical condition is one you may never have
12 heard of or know anything about. It isn't really
13 surprising because it's a condition that does not affect
14 very many people. But its rarity, the rarity of this
15 condition and the fact that it may be new to you, makes it
16 no less life threatening or real than other conditions
17 that you may have heard about.

18 There's no question here that this is necessary and
19 effective medical treatment for these women. For many
20 transgender people, this kind of medical treatment is the
21 difference between life and death. Treatment saved
22 Shannon's life. Shannon and Alina will each tell you just
23 how hard it was to be told that because of who you are,
24 the surgery they definitely needed would not be covered by
25 insurance.

1 This testimony -- their testimony will illustrate the
2 third idea I mentioned at the start, that the people to
3 listen to in deciding how serious the harm is when the
4 government discriminates against someone is the people who
5 are affected. And those with the expertise can explain
6 the nature of that harm, such as Dr. Budge.

7 Shannon could not wait for the surgery she needed.
8 She could not go on living without it. That ultimately
9 put Shannon between a rock and a hard place. She knew she
10 wouldn't live very long, much less into retirement,
11 without surgery. But she also knew that if she spent all
12 her savings down, she might not be ever able to retire,
13 but she also felt she had no choice.

14 She drained her retirement fund and savings to pay
15 for her first round of surgery. She asked for insurance
16 to reimburse her, but it was right there in black and
17 white in the policy that the coverage was excluded. It
18 was futile to ask for the coverage, but she did it anyway.
19 The request was denied because of the State's exclusion.

20 For the second round of surgery, Shannon had to
21 scrimp and save all over again. Her parents helped her
22 with what they could because they knew how badly she
23 needed this treatment. Shannon didn't ask her state
24 insurance to pay for the second round of surgery because,
25 as I said, it was written right there in black and white

1 they wouldn't cover it.

2 Alina will also talk about her need for surgery.

3 Unlike Shannon, she will tell you that she could not come
4 up with the money herself to pay for it. After she
5 started as a grad student, she learned about this coverage
6 exclusion that you're going to learn more about.

7 So at first she didn't even try to get coverage, but
8 in May 2015 things changed. The medication that she was
9 taking, the hormones she had been taking for a number of
10 years, weren't working anymore. Her doctors warned that
11 she faced eminent health risks because of her inability to
12 get the surgery. She needed to act to get the surgery she
13 needed immediately, so she asked for coverage. That
14 request was denied.

15 The State may try to tell you that they didn't cause
16 the denials here. The evidence will show otherwise. The
17 evidence will show that the State's exclusion of coverage
18 is what led to the denial of coverage for Shannon and
19 Alina.

20 Lots of people face problems paying for the medical
21 care they need. We can all understand that struggle. But
22 here, Shannon and Alina will tell you that the coverage
23 was denied then for no reason other than who they are, the
24 fact that they are transgender.

25 There is real financial and human cost to what the

1 State of Wisconsin did to Shannon and Alina. And where
2 the State does that to someone, it is only fair that the
3 State should pay fully to compensate them for that harm.
4 Fair and humane treatment of the people who work for the
5 state is all Shannon and Alina are asking.

6 The evidence will show that the State not only broke
7 the law when it denied Shannon and Alina insurance
8 coverage because they're transgender, but caused them
9 serious harm. You now have the important job of deciding
10 what the State should pay to fairly compensate them for
11 the suffering and life-shattering distress and related
12 medical risk they have caused Alina and Shannon. Thank
13 you.

14 THE COURT: Thank you, Mr. Knight. Now we'll now
15 hear opening statement from the defendants.
16 Mr. Kilpatrick.

17 MR. KILPATRICK: Plaintiffs, certainly they've
18 had a hard life living as transgender persons with gender
19 dysphoria and they have suffered a lot. They've suffered
20 discrimination. But this case is not about compensating
21 them for the distress and discrimination that have
22 occurred over their entire lives; this case is about
23 whether they are entitled to compensation for the
24 insurance coverage exclusion that the defendants had in
25 their policy.

1 Good morning. I'm Steve Kilpatrick. Again I'm an
2 attorney with the Wisconsin Department of Justice
3 representing the defendants in this case, the State Group
4 Insurance Board and the State Department of Employee Trust
5 Funds. And myself and Colin Roth and Jody Schmelzer will
6 be representing them throughout today and tomorrow. And
7 we want to thank you for your service and thank you for
8 your attention and listening to me.

9 So in the few minutes that I'm going to be talking to
10 you today, I'm just going to go over three things: (1) I'm
11 going to talk to you about your job; (2) I'm going to talk
12 about the evidence of the plaintiffs; and (3) I'm going to
13 talk about the evidence of the defendants' witness, Eileen
14 Mallow, from the Department of Employee Trust Funds.

15 So what is your job? Well, your job here is the most
16 important job of anybody in this room. Your job is to
17 decide again did the defendants' health insurance coverage
18 exclusion of sex reassignment surgery, and not anything
19 else, cause the plaintiffs to suffer emotional distress
20 and out-of-pocket expenses. And only if you answer "yes"
21 to that question do you go to the second question: What
22 amount of money must the defendants pay the plaintiffs to
23 fairly compensate them? That is your job.

24 And remember, and I can't stress this enough, that it
25 is the plaintiffs' burden of proof. It's the plaintiffs'

1 job to prove that they are entitled to damages. It is not
2 the defendants' job. The plaintiffs, they have the burden
3 of proof. And to do your job properly and determine the
4 proper outcome, you've got to listen carefully to all the
5 testimony that you're going to hear.

6 Now, let's talk about the evidence of the
7 plaintiffs'. As the plaintiffs' attorney told you, you're
8 going to hear from Alina Boyden and Shannon Andrews. And
9 in hearing their testimony -- and their testimony not only
10 includes the answers to the questions that their attorneys
11 ask them, but answers to the questions that the
12 defendants' attorneys ask them -- you may learn things,
13 information, stories about discrimination that occurred in
14 the past and distress that they suffered in the past.

15 But as I said, this case is not about distress in the
16 past; this case is about certain time periods, certain
17 time frames during which the plaintiffs claim to have
18 suffered emotional distress because of this insurance
19 coverage exclusion and it's only those time periods that
20 are relevant to this case.

21 You heard the judge say you don't have to take notes
22 and I'm not telling you you have to take notes. But I
23 would encourage you to write down these time frames, at
24 least make a mental note of these time frames, because
25 each time frame is different. Each plaintiff has a

1 different time frame. And knowing these damages periods I
2 think will help you focus on what evidence is relevant out
3 of all the evidence that you're going to hear over the
4 course of today and tomorrow. And you'll need to pay
5 careful attention to that evidence because some of that
6 evidence, some of the testimony, is going to be about
7 things that fall outside of those damages periods.

8 So for Shannon Andrews, she is seeking damages during
9 a time frame of March 2014 to the present. That's for
10 Ms. Andrews, March 2014 to the present. For Ms. Boyden,
11 her time frame, it's a bit shorter, May 2015 to the
12 present, again May 2015 to the present. So those are the
13 time frames that are relevant here.

14 Now, I'm going to go over and describe what the
15 evidence will establish. For Ms. Andrews, around April
16 2014, again around the beginning of her damages period,
17 she had successfully come out as a transgender person to
18 her friends and family, had obtained new employment, had
19 savings, an IRA account and was not concerned about health
20 insurance coverage. Testimony will show that she was
21 experiencing fairly little distress and was in fairly high
22 spirits at that time.

23 Further, the evidence will show that her problems
24 with depression and anxiety almost disappeared in June
25 2015, well over a year after the start of her damages

1 period. In fact, in July 2015, about 15 months after the
2 start of that period, Mr. Biondi, Ms. Andrew's therapist,
3 discharged her from his therapy saying that she was living
4 a full and vibrant life.

5 In addition, around that same time, again July 2015,
6 is when Ms. Andrews only first became eligible for sex
7 reassignment surgery, in any event. And this was
8 eligibility according to the medical standards of care
9 that doctors have who treat transgender persons.

10 So it was not until October 2015 when she first
11 obtained genital reconstruction surgery at an
12 out-of-pocket cost of \$21,000 to her. So, in other words,
13 Ms. Andrews waited to have that sex reassignment surgery.
14 She waited because of fears of what transition would mean
15 for her personal and professional life. So that surgery
16 in October 2015 is several months after the beginning of
17 her damages period.

18 And after she received this genital reconstruction
19 surgery, she had very little distress in her life, the
20 evidence will show, what she calls a level of distress of
21 2. On a scale of 1 to 10, with 10 being the most distress
22 and 1 being the least, her level was a 2. So she was
23 experiencing fairly little distress from the beginning of
24 her time period, her damages time period, until the fall
25 of 2016. Over two years, feeling okay.

1 Remember, your job is to determine whether plaintiffs
2 can prove that they suffered emotional distress and
3 out-of-pocket medical expenses because of the exclusion
4 during these damages periods.

5 So then about a year after receiving the surgery,
6 this first round of surgery in the fall of 2016,
7 Ms. Andrews' distress level increased. The evidence will
8 show it was caused by several factors: (1) the distress of
9 recovery from the first surgery; (2) the results of the
10 2016 presidential election and corresponding fears of
11 negative changes for other transgender persons like the
12 barring of transgender persons from the military, the
13 possible transgender bathroom bill in Wisconsin, the
14 possibility of getting rid of the nondiscrimination clause
15 in the Affordable Care Act, and general fears of hospitals
16 not having adequate health care for transgender persons.
17 Those are what caused the level distress to increase, the
18 evidence will show.

19 To combat that, in November 2016 she began to take
20 mood stabilizing drugs and the evidence will show she felt
21 better around February 2017. So again remember your job
22 is to determine whether the exclusion, the health
23 insurance coverage exclusion, caused the plaintiffs to
24 suffer emotional distress and out-of-pocket costs.

25 So a few years after the first round of her sex

1 reassignment surgery, this time in 2018, February of 2018,
2 she obtained her second round of sex reassignment surgery.
3 This was called "facial feminization surgery" and that
4 cost \$50,000. Now, this facial feminization surgery
5 includes a few different procedures. I want to go over
6 those now.

7 One procedure of the facial feminization surgery is a
8 hairline advancement procedure to address a receding
9 hairline and in her case a widow's peak. And the evidence
10 will show that Ms. Andrews was -- decided to have this
11 procedure after she had received negative comments from
12 persons posting online after she had posted a photograph
13 of herself.

14 Facial feminization surgery also included
15 rhinoplasty, commonly known as a "nose job," to reduce a
16 bump on her nose.

17 The facial feminization surgery also involved work
18 done on her jaw and her chin because she felt that her
19 face looked too broad.

20 The facial feminization surgery also included work
21 done to reduce the size of her brow on her forehead.

22 And finally, the plastic surgeon performed what's
23 called a "trachea shave," a procedure to get rid of the
24 Adam's apple because she felt anxiety if people were to
25 look at that knob on her neck.

1 And after all of this surgery, the evidence will show
2 that Ms. Andrews' distress level was still a 1 or a 2 on a
3 scale of 1 to 10, with 10 being the highest level of
4 distress.

5 And because this \$50,000 facial feminization surgery
6 falls within the relevant time period, she seeks
7 reimbursement for the cost of this surgery as an
8 out-of-pocket expense.

9 So to sum it up, Shannon Andrews seeks damages to
10 compensate her for emotional distress and reimbursement of
11 her out-of-pocket costs for two surgeries she received
12 from the time frame March 2014 to the present. And she
13 has the job, she has the burden, to present evidence to
14 prove her case that it was the health insurance coverage
15 exclusion, not anything else, that caused those injuries
16 to her.

17 Now, we'll move on to the second plaintiff, Alina
18 Boyden. Her damages time frame is different, it's a
19 little shorter, but again hers is May 2015 to the present.
20 And the evidence will show that in May 2015, and you heard
21 plaintiffs' counsel talk about this, she had a health
22 incident. She had a spike in her testosterone levels.
23 And the evidence will show she feared she was suffering
24 from cancer, so she made a visit to the doctor at Dean
25 Medical Clinic to address that fear. The visit was not

1 about gender transitioning.

2 So when Ms. Boyden went to the Dean Clinic, the nurse
3 refused to treat her because she was transgender. Then
4 when she was eventually able to see a doctor, the doctor
5 also told her that she could not be treated because she
6 was transgender.

7 Now, despite this awful treatment from Dean,
8 Ms. Boyden did eventually receive care. She did not have
9 cancer. She was prescribed medication to lower that spike
10 in her testosterone level.

11 But there is nobody from Dean that is going testify
12 at this trial, so the evidence will not show that anyone
13 at the Dean Clinic refused to treat Ms. Boyden because of
14 defendants' health insurance coverage exclusion that's at
15 issue in this case.

16 Third thing -- I'm almost done -- third thing I want
17 talk to you about is the testimony of defendants' witness.
18 Eileen Mallow is from the Department of Employee Trust
19 Funds. She is going to testify that the health insurance
20 coverage exclusion does not, and I repeat, does not mean
21 that health plans that contract with the Group Insurance
22 Board and the Department, like Dean, are allowed to refuse
23 treatment to patients simply because they are transgender.
24 That's not how the health exclusion -- health care
25 insurance exclusion worked.

1 She will also tell you about the health insurance
2 claim process in general associated with state employees
3 like the plaintiffs. She'll testify that the defendant
4 Group Insurance Board determines what benefits are going
5 to be provided in the health insurance plans that state
6 employees get to choose from as a benefit of their
7 employment. And she'll tell you that the Department of
8 Employee Trust Funds administers the Board's decisions
9 through a contracting with private insurance companies
10 that offer these health insurance plans.

11 And she will testify that it is those private
12 insurance companies, those health plans, that make
13 coverage decisions on a state employee's claim or prior
14 authorization requests for surgery and that coverage
15 decision includes the question of medical necessity on an
16 individual patient level. So the evidence will show that
17 it is those insurance companies who are the ones deciding
18 whether the employee's claim or prior authorization
19 request is medically necessary for the purpose of
20 insurance coverage.

21 She is going to testify, Ms. Mallow, that these
22 insurance health plans make this medically necessary
23 coverage on their own. They do not have to agree with the
24 employee's doctor on the issue of medical necessity. And
25 only if the insurance companies or health plans decide the

1 state employee's claim or prior authorization request is
2 medical necessary does the state employee obtain insurance
3 coverage. That decision is subject to an appeals process
4 that does not involve the defendants.

5 So why is this important? Well, it's important
6 because plaintiffs seek reimbursement for out-of-pocket
7 costs and emotional distress from living without these sex
8 reassignment surgeries for a time. But neither of the
9 plaintiffs are going to be able to produce a witness from
10 any of the insurance companies or health plans testifying
11 that it would be more likely than not that they would have
12 approved these claims for sex reassignment surgery even
13 without the exclusion.

14 That's all I have for now. I want to thank you for
15 listening, for being attentive. The next time I'm going
16 to speak to you is after you've heard all the evidence
17 just before you go into deliberations. And at that time,
18 after you've heard all the evidence, is when I'll ask you
19 to return a verdict favorable to the defendants. Thank
20 you.

21 THE COURT: Thank you, Mr. Kilpatrick. And now
22 we'll hear from the first witness for the plaintiffs. And
23 we will break at 12:30 or thereabouts at a natural point.
24 Plaintiffs should call their first witness.

25 If you would be good enough to move the --

1 MR. FAIRWEATHER: Your Honor, the plaintiffs call
2 plaintiff Shannon Andrews.

3 **SHANNON ANDREWS, PLAINTIFFS' WITNESS, SWORN**

4 THE COURT: Sorry about the mic. If you just
5 move a little closer to the mic, that will be great. You
6 can also move the mic over if that's easier for you.

7 THE WITNESS: Let's try that.

8 THE COURT: Thank you. You may proceed, Counsel.

9 MR. FAIRWEATHER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. FAIRWEATHER:

12 Q. Shannon, can you state your full name for the record
13 and for the jury?

14 A. Yes. My name is Shannon Andrews.

15 Q. How old are you, Shannon?

16 A. I'm 36.

17 Q. And where do you currently live?

18 A. I live on the east side of Madison.

19 Q. And we've introduced you to the jury, but are you one
20 of the plaintiffs in the case that brings us all here
21 today?

22 A. I am.

23 Q. By way of introduction, can you tell the jury where
24 you were born and where you grew up?

25 A. Sure. So I was born in Pasadena, California. My

1 parents moved there so that my dad could go to school for
2 a little bit, but they were from the Madison area. When I
3 was two years old they moved back to Madison where the
4 rest our family is. And I grew up here and lived here and
5 went to school her until I was about 21, when I went away
6 for a few years to grad school to get my degree. And
7 after that I came back here and I've been here since.

8 Q. So did you do your -- let's start with the elementary
9 schooling. Did you do that in Sun Prairie?

10 A. I did, yes.

11 Q. And where did you go to high school?

12 A. I went to high school at Edgewood on the west side of
13 Madison.

14 Q. And when did you graduate from high school?

15 A. I graduated in 1999.

16 Q. Did you take any time off after high school before
17 moving on to further schooling?

18 A. No. I had applied to be an undergraduate at the
19 UW-Madison because I wanted to study biology and I went
20 straight from high school to my undergraduate.

21 Q. So if my math is correct, you started your
22 undergraduate process in 1999; is that right?

23 A. That's correct.

24 Q. And did you graduate from the University of
25 Wisconsin?

1 A. I did, in 2003.

2 Q. So four years, it took you?

3 A. Four years, yes.

4 Q. Congratulations. What did you study at UW-Madison?

5 A. I was an undergraduate in the genetics department.

6 Q. Did you receive a degree in genetics?

7 A. I did, a Bachelor's of Science.

8 Q. Any departmental or school or university-wide honors
9 that went along with that degree?

10 A. I had an honors in independent research because I
11 took a part-time job shortly before I entered college
12 working in a fruit fly lab. We were studying limb
13 development. Insects make a great model system for that
14 because their genes are kind of arranged in a way that
15 makes it really easy to see big changes in their body with
16 small changes in their genome. So we can turn an antenna
17 into a leg or something like that. That's sort of, you
18 know, a mad science kind of thing, but it was really
19 interesting to me.

20 Q. You testified that you moved on to graduate studies;
21 is that right?

22 A. That's correct.

23 Q. And did you move on to graduate school immediately
24 after graduation from UW-Madison?

25 A. I did. In 2003 I accepted a graduate position at

1 Princeton University.

2 Q. Where is Princeton University?

3 A. In New Jersey.

4 Q. Why did you decide to go to Princeton?

5 A. I interviewed a number of schools. But there was
6 some faculty at that university who were doing excellent
7 research that was really interesting to me because of my
8 background in developmental biology. There was some
9 researchers there who were sort of studying body
10 development: how an embryo, when it's developing, figures
11 out which end is going to be the head, which end is going
12 to be the tail, which is the top and the bottom. And I
13 was really interested in those sorts of questions of
14 figuring out just how a living organism grows and
15 ultimately becomes what it is.

16 Q. We'll come back and talk a bit about your studies and
17 your time at Princeton. But did you receive a degree from
18 that institution?

19 A. I did. I received my Ph.D. in the summer of 2009.

20 Q. And what was the Ph.D. in?

21 A. Molecular biology.

22 Q. So if my math again is correct, you were at Princeton
23 for six years; is that right?

24 A. About five and a half, yes.

25 Q. Now, after you received your Ph.D. from Princeton,

1 did you move on to more schooling -- I can't imagine
2 that's possible, but -- or did you move on to employment?

3 A. I, towards the end of my time when I was defending my
4 thesis, I found some papers that had been published by a
5 researcher who was here at the UW of Madison who was
6 working on a team that was very similar to one of the ones
7 that I had researched. It was a gene called
8 permilia [phonetic] which was involved both in development
9 and is an important target for Plasmodium falciparum,
10 which is a malaria parasite.

11 So I thought, well, okay, this guy is doing this
12 research into sleep and memory and how those things impact
13 neurodegenerative diseases like Alzheimer's and
14 Huntington's disease. And I thought this is a nice way to
15 take some of my developmental research and do something
16 that's more medical.

17 Q. And what is the name of the scientist that you are
18 referencing there?

19 A. Dr. Jerry Yin.

20 Q. How long did you work in Dr. Yin's lab?

21 A. Two and-a-half years, from 2010 to the fall of 2012.

22 Q. Were you paid by Dr. Yin?

23 A. I was. I was an employee of the Genetics Department
24 at the UW.

25 Q. And did you have any specific job title or

1 classification?

2 A. Postdoctoral fellow.

3 Q. Now, why did your time as a postdoctoral fellow with
4 Dr. Yin end?

5 A. Funding ran out for my position. And because of some
6 of the stuff I was going through in my life at the time, I
7 had basically not bothered to secure any other funding
8 because I didn't think it was going to matter.

9 Q. So again relying on my math, you worked in Dr. Yin's
10 lab until about 2011 or '12; is that right?

11 A. That's correct.

12 Q. Did you continue employment in the Madison area or in
13 Wisconsin after that?

14 A. I was unemployed for a little over a year. During
15 that time I was kind of working for free helping Dr. Yin
16 write some SBIR grants, which are basically like small
17 business grants to start up a biotech company. He wanted
18 to try to further develop some of the ideas that had been
19 involved in my research while I was working for him, so I
20 contributed my scientific expertise to that.

21 Q. And when was your next significant employment after
22 working for Dr. Yin?

23 A. I got a position at the Carbone Cancer Center in
24 March of 2014 and I've been there since.

25 Q. What's your job title at the Carbone Cancer Center?

1 A. I'm an assistant researcher.

2 Q. And you're still in that assistant researcher
3 position; is that right?

4 A. Yes, I am.

5 Q. First of all, what does the Carbone Cancer Center do,
6 if you could explain that to the jury?

7 A. So the Carbone Cancer Center basically is responsible
8 both for research and for patient treatment. We try to
9 assess the effectiveness of chemotherapy regimens and
10 preventive cancer treatments for patients who are at
11 the UW.

12 A lot of what our lab does essentially is when
13 somebody goes to the UW Hospital and gets blood drawn or
14 urine or any other kind of biological lab sample, those
15 samples get sent to our lab. And then we perform whatever
16 tests are indicated by the treating physician or else that
17 are indicated in a program of research if that's for like
18 a drug trial or something.

19 Q. And your testimony is that you've been employed in
20 the same position your entire time at Carbone; is that
21 right?

22 A. Yes, for the past four and-a-half years.

23 Q. Do you have any managerial or other administrative
24 duties?

25 A. During the last couple of years my boss, Jill

1 Kolesar, who was then the principal investigator, left
2 Madison to take that position at the University of
3 Kentucky. And then our acting supervisor, Joan Reddick,
4 retired just this past summer. And since they've been
5 gone, I've sort of taken over responsibility for basically
6 assessing whatever research we're doing and saying to the
7 doctors, "Well, this is a thing we can do. This is a
8 thing we cannot do," you know, and so forth.

9 Q. So you testified earlier that you work in a specific
10 lab at Carbone; is that right?

11 A. That's correct. When I joined, it was then known as
12 the 3P Lab. And the 3Ps were pharmacogenetics,
13 pharmacokinetics and pharmacodynamics. We've since been
14 rebranded as the Cancer Pharmacology Lab, but our duties
15 are essentially the same.

16 And I was hired to work on the pharmacogenetics part,
17 which is essentially trying to assess a patient's
18 individual heredity, because certain people will respond
19 more effectively to certain drug regimens because of the
20 genes they have or else are at higher risks for certain
21 kinds of cancer depending on what genes they have. And my
22 job was to kind of analyze those small genetic differences
23 and figure out sort of if we can get a personalized
24 regimen of medicine for an individual patient which would
25 be more effective than something more generic.

1 Q. So you've been at Carbone in the same lab for about
2 four and-a-half years; is that right?

3 A. That is correct.

4 Q. And do you enjoy your work?

5 A. Very much so. I think for most of my life I've been
6 trying to find some way to fit into society or do
7 something that's valuable for people. And working at the
8 Carbone Cancer Center really gave me that feeling that I
9 was doing something very important that was actually
10 helping people.

11 Q. I want to go back and talk a bit about or have you
12 talk a bit about some of the issues that bring us all here
13 today. And I understand that you've alleged that you have
14 had some gender identity issues in your past; is that
15 accurate?

16 A. Yeah, that is correct. I think the first time I can
17 remember ever expressing something like that, I was
18 probably four or five years old.

19 Q. And what do you recall about what happened when you
20 were at that four- or five-year age?

21 A. So, you know, when I was very young, I didn't really
22 think about, you know, identity or anything related to
23 that. That was just kind of, you know, who I was. I was
24 playing dress-up at home like a lot of kids do. And I
25 remember kind of like looking up at my mom and saying, "I

1 want to be a girl when I grow up." She didn't react
2 negatively necessarily or anything to that, but with a
3 sort of expression of like shock or surprise.

4 And I became aware that this was something that was
5 not a normal thing to say and that, you know, perhaps it
6 was dangerous for me to express those thoughts to people
7 or, you know, to let that be known. And so I kind of
8 formed this idea that this was something that really
9 needed to be either suppressed or, if it couldn't be made
10 to go away, at least be hidden.

11 Q. Did you believe that there was something unusual
12 about the way that you were feeling?

13 A. I guess I kind of felt like I was probably the
14 solitary freak who was the only one of my kind. I didn't
15 know the word "transgender." I didn't know that there
16 were other people like me who existed. And so I thought,
17 well, like this is just something weird about me and maybe
18 there's some way that I can make myself be normal.

19 Q. And you testified about your recollection about when
20 you were four to five years old. How did that develop or
21 change during your school years before high school?

22 A. Well, a lot of the time at home I basically, you
23 know, like I guess like a lot of kids -- girls do, dressed
24 as a girl at home, but I'd dress like a boy when I went to
25 school.

1 There were certain times throughout my life when -- I
2 had a younger brother who was two years younger than me.
3 We went to the same school. And he had made some offhand
4 comments to other students about the way I acted and
5 dressed when I was at home. I don't think there was any
6 malice in what he did. I think to him, you know, I was
7 just his older sibling and I was just this person who
8 was -- he kind of took at face value.

9 But when other students, you know, found out about
10 that, there was a lot of, you know, mockery or like
11 disbelief and questions asking me if that was really true.
12 And, you know, I was frightened by that and felt kind of
13 isolated. And so to protect myself, I kind of withdrew
14 from people and kind of devoted myself to, you know,
15 school work and studies and things like that.

16 Q. Outside of this withdrawing and devoting yourself to
17 your school work -- that is, your time prior to high
18 school -- what other coping mechanisms did you have?

19 A. Well, you know, I had -- I was diagnosed with
20 attention deficit disorder, so there were times when I was
21 on medication for ADD. I wouldn't say that really caused
22 me any distress. I think maybe it caused a little bit of
23 distress for people who had to deal with me when I was a
24 child, but not to me personally. I spent a lot of time
25 kind of just in private reading books and, you know, kind

1 of imagining a life that I could have had if things had
2 been different.

3 Q. And up to now you've been talking about your
4 schooling in Sun Prairie; is that right?

5 A. That's correct.

6 Q. And for high school you moved, at least for high
7 school, to Madison, right?

8 A. I still lived in Sun Prairie, but I commuted to
9 Madison for high school.

10 Q. How did your gender identity issues develop during
11 your high school years?

12 A. During the time I was in middle school, basically the
13 summer right before I entered high school, I kind of
14 became aware that what I was doing, the way I was
15 dressing, was part of a wider phenomenon. I still didn't
16 know the word "transgender," but I knew the word
17 "cross-dresser." And I was like probably 11 or 12 at the
18 time I just kind of remember hearing about this in the
19 context of like a monster movie.

20 And I remember that feeling of like "maybe that's
21 what's wrong with me" kind of going through me like a
22 lance. And I became very depressed. I think that was the
23 first time in my life I was ever actively suicidal.

24 And I remember waking up and for a few minutes after
25 waking up, before you kind of put yourself back together

1 and remember what's -- you know, who you are and what's
2 going on in your life, I felt okay, and then it would all
3 come crashing down on me.

4 And so I made a dedication, you know, kind of as I
5 entered high school, that I would stop doing those things
6 and just try to be normal. And so for most of high school
7 I really rigorously oppressed those things and tried to
8 just be a student.

9 Q. So you continued by focusing on your studies; is that
10 accurate?

11 A. That's correct.

12 Q. Anything else that you did during high school to cope
13 with what you were feeling as it related to your gender
14 identity?

15 A. I read a lot of books and I spent a lot of time kind
16 of -- while I had had this experience when I was probably
17 15 or 16.

18 So I went to a Catholic school. And as part of our,
19 you know, religious education, we had to volunteer
20 somewhere and I chose to volunteer at a library helping
21 them shelve books. And I remember kind of being in the
22 library, I think this might have been at school, but
23 hearing some students kind of snickering in the background
24 over someone who had had a sex change. I thought, "Oh,
25 that's something I can do. I want that if that's really

1 possible."

2 So I spent a lot of time looking through databases
3 and news articles and kind of picking up every little bit
4 of information that I could to try to figure out what was
5 true and what was possible and what I could expect. And a
6 lot of what I picked up was really negative.

7 There was this kind of attitude that like, well, if
8 you're transgender, you're either a computer programmer or
9 you're a prostitute. And at the very least, I wasn't
10 really good with computers and I didn't want to live a
11 life where I was marginalized or disrespected. I really
12 wanted to be a scientist. I really felt like I couldn't
13 do that if people didn't respect me.

14 And so, you know, I had some instance where I tried
15 to come out to my parents and sort of presented to them
16 all the stuff I had been looking up as like a research
17 project I was doing to kind of test the waters, engage
18 their reaction. And they didn't react with like hatred or
19 fear or anything, but just a sort of pity and I didn't
20 want to be pitied. So I kind of pulled myself back from
21 actually saying that this was something that applied to me
22 and decided against -- it needed to be hidden.

23 Q. So you testified earlier that you attended college at
24 the University of Wisconsin; is that right?

25 A. That's correct.

1 Q. Did you live on campus at UW?

2 A. No. I was worried about my family's finances. And
3 we lived really close to campus, so commuting from my
4 family's home was a really easy way to save some money
5 while I was going to college and I lived at my parent's
6 home all four years.

7 Q. What kind of social life did you have during college?

8 A. None. During high school I had been bullied a lot
9 for being, you know --

10 THE COURT: I apologize for interrupting, but
11 because some of the answers are getting very long. And in
12 fairness to both sides -- and I'll ask this of all
13 witnesses -- if you could try to focus on the question and
14 answering the question, in this case "Did you have any
15 social life?" And you said "None."

16 THE WITNESS: Oh, sure.

17 THE COURT: That was kind of an answer to the
18 question.

19 THE WITNESS: I can do that.

20 THE COURT: And so while you might want to
21 expand, why don't you let your attorney indicate to you
22 when you should be expanding beyond the answer to the
23 question.

24 THE WITNESS: Of course.

25 THE COURT: Thank you. I appreciate it. You may

1 proceed.

2 MR. FAIRWEATHER: Thank you.

3 BY MR. FAIRWEATHER:

4 Q. Shannon, were you involved with the LGBT community
5 here at UW?

6 A. No. I was too afraid to talk to anyone.

7 Q. And what else did you do to cope with what you were
8 feeling regarding your gender identity issues in college?

9 A. I had a job working in a lab and I focused a lot of
10 my energy on that and my studies in trying to get ready
11 for grad school, because I wanted to get a higher degree.

12 Q. Now, you testified about moving to New Jersey and
13 beginning schooling at Princeton University. How did your
14 gender identity issues develop over your first few years
15 there?

16 A. During the first few years of my studies I kind of
17 reached a point where the stress of keeping that segmented
18 from the rest of my life started to make me have a
19 breakdown. And I thought I really need to get some
20 medical care and at least talk to a therapist and see
21 what's wrong with me.

22 And so I tried to find therapists who were in the
23 area who knew something about dealing with transgender
24 people. And I found out pretty quickly that the health
25 insurance I had as a student wasn't going to pay for that

1 and that while there may have been people in the area, I
2 probably couldn't afford to see them.

3 Q. Now, during the six years you spent at Princeton,
4 when did you decide to go out and try to find a therapist
5 to help you?

6 A. It was probably around the fourth or fifth year.

7 Q. Why did it take you four or five years to make that
8 decision to try to find some help?

9 A. The depression and anxiety I was feeling was just
10 kind steadily getting worse. I was starting to realize
11 that no matter how long I pushed it down or waited, I
12 wasn't going to change or stop having those feelings.

13 Q. Can you describe briefly what kind of work you were
14 doing during those first four or five years at Princeton?

15 A. Yeah, developmental biology. So I was trying to
16 analyze some regulatory mechanisms for embryonic
17 development. I think, you know, I had kind of thought all
18 my life trying to figure out why I am the way I am and
19 that made developmental biology a really appealing field.

20 Q. Did you have specific career aspirations at this
21 point during your time at Princeton?

22 A. I wanted to go on to become a professor and operate
23 in a lab.

24 Q. Were you ultimately able to find a therapist to help
25 you in New Jersey?

1 A. No, I was not.

2 Q. And what happened? You testified earlier that after
3 you received your degree from Princeton, you moved back to
4 Wisconsin. Why is that?

5 A. My family lives here.

6 Q. Shannon, what is your understanding of what the term
7 "transition" means?

8 A. So my understanding of gender dysphoria is that it's
9 the distance between the neurological or mental way that
10 we experience our own gender and the way our body is
11 developed and that transition is a way of bringing those
12 two parts more into alignment so that that distance is
13 resolved.

14 Q. And have you been diagnosed with gender dysphoria?

15 A. I have.

16 Q. Do you recall the first time that a health care
17 provider gave you that diagnosis?

18 A. I do.

19 Q. And when was that?

20 A. That was in probably 2015 I think, right as I was
21 doing the run-up to having surgery.

22 Q. So by that point you had been in Wisconsin for a few
23 years, right?

24 A. That's correct.

25 Q. Were you successful in finding a therapist to help

1 you at the time you moved back to Wisconsin?

2 A. Not when I moved back, but eventually I did in late
3 2012.

4 Q. And who is that?

5 A. Nyle Biondi.

6 Q. How long did you see Mr. Biondi?

7 A. Yes, with some gaps, I saw him from 2012 to -- until
8 he moved to Colorado in 2015.

9 Q. And how was it that you found and identified
10 Mr. Biondi as someone who may be able to assist you?

11 A. When I was a postdoctoral fellow, and this would have
12 been in 2011 and 2012, I had kind of a suicidal episode
13 and this impacted my work. And I was kind of convinced
14 that my options were either get some kind of medical
15 treatment or I was going to die.

16 And so I tried to go through Dean and see a therapist
17 because with my Dean insurance, they would only pay to see
18 someone who was on their staff. But when I looked up
19 their policy for treating transgender people, they had
20 this language that said "Prohibits any coverage for sex
21 transformation."

22 And that term kind of put me on the back for a little
23 bit because I felt like this is a really weird thing to
24 say. This is not a language that anyone else uses. This
25 is not the way that people like me are referred to in the

1 scholarly literature. It's not a medical term. And I
2 thought, okay, so this indicates either they don't know
3 anything about treating transpeople or they know, but they
4 don't want to use any language that would validate or
5 indicate that they we deserve treatment.

6 And so I became very cautious. I still tried to find
7 someone at Dean, but they didn't have anyone on their
8 staff who was experienced with transpeople. So in the end
9 I was kind of reduced to doing an internet research in the
10 area and seeing, okay, what therapists exist who have some
11 expertise with LGBT or trans issues, and of those, what
12 articles have they published, have they written anything
13 that indicates that they know something. And I eventually
14 ended up settling on Nyle on the basis of that research.

15 THE COURT: This is probably a good place for us
16 to break for lunch. So we will break at this time. We
17 will reconvene at 1:30. And you'll get some guidance as
18 to where you might want to go for lunch. I understand
19 it's a beautiful day outside. I encourage you to get
20 outside.

21 Just a reminder that this is not the time to start
22 talking about what's been discussed; it's a time to
23 refresh your own mind and come back at 1:30 with an open
24 mind and we'll continue with testimony.

25 All rise for our jury, please.

1 (Jury out at 12:30 p.m.)

2 THE COURT: And, Ms. Andrews, if you want to step
3 down, you can.

4 If the parties would be seated. I decided to break
5 there for two reasons: because we're almost at the time to
6 break; and also, just to emphasize for you, Ms. Andrews,
7 that you're doing a very good job. I normally would have
8 stopped a witness more often who wasn't sticking to the
9 question. But you do a really good job of answering the
10 question fully with substantial background, but staying on
11 point. So I'm not -- I have given you substantially more
12 leeway than I normally would and I'm not going to start
13 interrupting you, but if you could try to focus on the
14 question that's being asked.

15 This last one might be a good example. The question
16 was, "How was it that you found and identified Mr. Biondi
17 as someone who may be able to assist you?" And you gave
18 an interesting full answer, including sort of backgrounds
19 as to what your thinking was and where you explored.

20 You probably could have answered that question a
21 little bit more succinctly by saying the essentials, which
22 was you had developed this concern, you were suicidal.
23 And you had looked through your insurance carrier, Dean,
24 and decided that it couldn't be transgender, but Biondi
25 seemed to be able to address your immediate need and so

1 that's how you chose him.

2 THE WITNESS: Yes.

3 THE COURT: Just a little briefer. And it's
4 partly in fairness to the other party, which is that they
5 don't really get to object if you just start introducing
6 broader themes or broader background, and also it has to
7 do with relevance.

8 And your counsel's job is to elicit testimony that's
9 relevant. And if you give really long narrative answers,
10 which by the way is an objection that could be posed, it
11 just creates problems in that regard.

12 So trust your lawyer to ask a follow-up question or
13 to get to subjects that aren't contained within that
14 specific question and just a little briefer. But again
15 the reason why I've given as much leeway as I have is
16 you're generally right on point. You're generally
17 answering the question, but with great detail, so if you
18 could expand back.

19 Think of it like the paragraph narrative you might
20 put at the top of the research rather than all the
21 research.

22 THE WITNESS: I understand, Your Honor. I'll
23 ring in my natural inclinations.

24 THE COURT: Thank you. I appreciate it.

25 The second thing is that I'm becoming a little

1 concerned with Mr. Manley, who looks like he may be
2 falling asleep. My experience has been I've only had to
3 ask a jury member only a few times about this.

4 And it's about a 50/50 proposition that he's
5 listening to everything, but closing his eyes. In fact,
6 the judge I clerked for used to do that, to the amazement
7 of attorneys. He would immediately perk up and ask a
8 question when they were not on point. So it could be that
9 or it could be that he actually is nodding off.

10 And with the permission of the parties, I'd like to
11 just, at the break, probably when they return from lunch,
12 speak to him privately in a separate room so as not to
13 call attention to it other than to explore to make sure he
14 has been listening and he doesn't have sleep apnea or some
15 other issue that means he's actually mentally checking
16 out. So do plaintiffs have any objection to that?

17 MR. FAIRWEATHER: No objection, Your Honor.

18 THE COURT: Any objections from the defendant?

19 MR. KILPATRICK: No, Your Honor.

20 THE COURT: All right. I'll do that and then I
21 will -- if I make a judgment that he really is not
22 listening or able to listen closely -- I don't think it's
23 intentional -- then I may excuse him and we'll proceed
24 with seven jurors to deliberate. But if not, then he'll
25 just continue. And I will advise you of that too before

1 we bring the jury back out.

2 Is there anything more for the plaintiffs before we
3 break for lunch?

4 MR. FAIRWEATHER: Nothing, Your Honor. Thank
5 you.

6 THE COURT: Anything more for the defendants?

7 MR. KILPATRICK: No, Your Honor.

8 THE COURT: All right. Then we will break now
9 and reconvene at 1:30 to continue testimony.

10 (Lunch recess at 12:34 p.m.)

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