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EXHIBIT 17

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

MORAN,

Plaintiff,

v

File No. 07-12845-CZ

RISSER,

Defendant.

_____ /

JURY TRIAL VOLUME VI OF XVII

BEFORE THE HONORABLE JAMES M. BATZER, CIRCUIT JUDGE

Manistee, Michigan - Thursday, May 21, 2009

APPEARANCES:

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Reported By: KATHY J. McBRIDE, CSR-2936
Official Court Reporter

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1 Manistee, Michigan
 2 Thursday, May 21, 2009
 3 (Court reconvenes at 9:31 a.m.)
 4 THE CLERK: Moran versus Manistee/Benzie CMH,
 5 07-12845-CZ.
 6 THE COURT: Did we finish with the last witness?
 7 MR. COOKE: Yes, Your Honor, we did.
 8 MR. PARSONS: Yes.
 9 THE COURT: All right. We're ready for the Jury.
 10 (Jury enters courtroom at 9:32 a.m.)
 11 THE COURT: Good morning, Members of the Jury.
 12 THE JURY: (In unison.) Good morning.
 13 THE COURT: Mr. Parsons, do you have another
 14 witness for us?
 15 MR. PARSONS: Yes, we do, Your Honor. Thank you.
 16 THE COURT: All right.
 17 MR. PARSONS: We'd call Mr. Smeltzer, please.
 18 THE CLERK: Please raise your right hand. Do you
 19 solemnly swear or affirm that the testimony you give in this
 20 cause will be the truth, the whole truth, and nothing but
 21 the truth, so help you God?
 22 DONALD SMELTZER: I do.
 23 DONALD SMELTZER,
 24 called as a witness at 9:32 a.m., was examined and
 25 testified as follows:

1 CROSS-EXAMINATION
 2 BY MR. PARSONS:
 3 Q. Good morning, Mr. Smeltzer. I know you're on a short
 4 schedule, so I'll try and be brief here. Would you please
 5 begin by telling the jury your name and address?
 6 A. My name is Donald Smeltzer, 3288 Herron Road, Frankfort,
 7 Michigan.
 8 Q. And you're a -- how are you employed?
 9 A. I guess you'd say I'm self-employed. We have a farm
 10 operation. We grow cherries and apples, operating under
 11 the name of Blackbird Farm. And some of the orchards I
 12 manage as organic production and some as what is called
 13 conventional production.
 14 Q. How long have you been on the Manistee/Benzie CMH Board?
 15 A. I guess officially I've been on the board since April of
 16 2007. I actually attended a few meetings prior to that.
 17 Q. And so you came in April, 2007, just a month or two before
 18 Mr. Moran was fired, right?
 19 A. About two months.
 20 Q. And that was the first time you'd been appointed to that
 21 board?
 22 A. To the CMH Board, yes.
 23 Q. What county are you part of? What county made your
 24 appointment?
 25 A. I was appointed by Benzie County. At that time I was a

1 county commissioner for District 7, which is Blaine,
 2 Joyfield, and Weldon Township.
 3 Q. In Benzie County?
 4 A. In Benzie County, yes.
 5 Q. So you were a Benzie County commissioner with Mr. Tom
 6 Kelley, right?
 7 A. Yes. I was one of the two commissioner appointments to the
 8 board.
 9 Q. You're aware that -- when you got on that board, you were
 10 aware of the local match issue, correct?
 11 A. Yes.
 12 Q. Because Benzie County had had a joint meeting with the
 13 MBCMH personnel, and with a Mr. Mark Kielhorn from the
 14 State of Michigan. Had you attended that meeting?
 15 A. I did not -- I think that meeting was prior to me becoming
 16 a commissioner. I was appointed in 2006 to complete a term
 17 of the commissioner who had been in that seat.
 18 Q. For the county, or for MBCMH?
 19 A. For the -- I was appointed as a county commissioner in May
 20 of 2006 to complete a term that ended in December, 2006.
 21 And then I was elected in November and took office in
 22 January of '07 as an elected commissioner. And I think the
 23 meeting you referred to was prior to me being appointed to
 24 the commission.
 25 Q. Earlier in 2007.

1 Now, you attended the MBCMH meeting May 10, 2007,
 2 that we have discussed at some length, correct?
 3 A. Yes.
 4 Q. And at the May 10, 2007 meeting, this -- Exhibit 35, can
 5 you find that in -- the court staff has put those in
 6 numeric order, I believe. Exhibit 35.
 7 A. Yes.
 8 Q. Exhibit 35, I'm going to have to zoom that just a little
 9 bit. These are the notes that somebody came out of the --
 10 that resulted from that executive committee meeting, right?
 11 A. Yes.
 12 Q. We've discussed this -- that these were brought to the
 13 MBCMH meeting May 10, right?
 14 A. Yes.
 15 Q. And there's been a suggestion that at May 10, Mr. Moran's
 16 contract was voted down once and for all. Is that your
 17 memory?
 18 A. Well, I don't think that's exactly accurate. These were
 19 suggested changes that would be made. But it is not
 20 actually the contract itself.
 21 Q. Right. Mr. Moran's contract itself was not voted on,
 22 right?
 23 A. His contract was not voted on.
 24 Q. And look at Exhibit 35. What is the suggestion that the
 25 executive committee was actually making?

1 A. It said during the next three years the base salary will
 2 remain at the --
 3 Q. Well, could you start up at the bottom of the first
 4 paragraph. The first thing it says at the bottom of the
 5 first paragraph is -- the first paragraph -- it was
 6 suggested that the CEO position be pulled from the study
 7 and looked at separately, allowing for the opportunity of
 8 an accelerated adoption of the study, right?
 9 A. Yes. That's correct.
 10 Q. Now, and in fact, that's what the -- that's what the
 11 vote -- I'm going to show you Exhibit 34. Those are the
 12 May 10, 2007, board meeting minutes. Do you have those in
 13 front of you, sir?
 14 A. Yes, I have those.
 15 Q. All right. And at page 4 out of 6, do you see, under
 16 executive committee, the second vote is made by -- is a
 17 motion moved by Ms. Fenstermacher, and supported by Peter
 18 Barnes?
 19 A. Yes.
 20 Q. That's what we call bipartisan support in this case, right?
 21 A. Yes.
 22 Q. What is that vote to do?
 23 A. She moved to remove Michael Moran's contract from the
 24 recalibration salary study.
 25 Q. And then -- remove from study. And that is what had been

1 recommended by the executive committee, right? It was
 2 suggested that the CEO position be pulled from the study,
 3 right?
 4 A. Yes.
 5 Q. Allowing for what?
 6 A. Well, the intent there would be the other employees that
 7 were the subject of this study had not had a pay increase
 8 since 2005. And it would allow the board to make some
 9 decisions about their pay. And since Michael's salary was
 10 kind of an issue, we felt his salary was too high.
 11 Q. Right.
 12 A. And rather than tie up all of the employees with the
 13 discussion where the primary problem was his salary, we
 14 decided to split -- to remove the discussion of his salary
 15 from that recalibration study.
 16 Q. Okay. And then the executive committee suggested
 17 further -- do you see at the next line -- if indeed -- so
 18 it would appear, wouldn't it, that the executive committee
 19 was leaving the decision to the board whether or not to
 20 pull Mr. Moran's study, right?
 21 A. Yes.
 22 Q. And then the executive committee goes on and says, if
 23 indeed it is decided to pull the CEO's study, the executive
 24 board has suggested these recommendations, right?
 25 A. (No response.)

1 Q. That's the main -- the line?
 2 A. That's not the same -- that's not what I'm looking at here.
 3 Your page on the screen doesn't look the same.
 4 Q. You have the wrong exhibit in front of you. I'm sorry.
 5 A. You want me to look at 35 now?
 6 Q. The question on the floor is --
 7 A. Okay. They said remove the CEO position -- pull from
 8 study.
 9 Q. And then they go on to say, if indeed the board decides to
 10 pull the CEO position from the study, then we would suggest
 11 these recommendations, okay?
 12 A. Yes. That's correct.
 13 Q. So they're allowing more time -- more time to review
 14 Moran's contract. Is that fair to say?
 15 A. Yes.
 16 Q. And in a bipartisan vote with Fenstermacher and Barnes,
 17 everybody, a unanimous board voted to pull Mr. Moran's
 18 contract from the study?
 19 A. Yes.
 20 Q. You understand that what it would appear from that board
 21 vote was that the board is -- or somebody is going to go on
 22 and consider Mr. Moran's salary, adjust it, or not adjust
 23 it, moving towards a contract with him, right, as of May
 24 10?
 25 A. Yes. At that point, I think that's correct.

1 Q. Now, between May 10 and June 14, something changed. And on
 2 June 14, Mr. Moran is fired. We've established that,
 3 right?
 4 A. Yes.
 5 Q. I want to ask you, before you went to that meeting -- were
 6 you in the courtroom yesterday when Mr. Tom Kelley
 7 testified?
 8 A. Yes.
 9 Q. Do you remember Mr. Kelley testifying he never met with
 10 Mr. Barnes, or anyone, before the June 14 resolution date,
 11 right?
 12 A. Yes.
 13 Q. Do you remember Mr. Tom Kelley testifying he talked with
 14 Mr. Barnes once, but he never saw the resolution, right?
 15 A. Yes.
 16 Q. That's not true, is it?
 17 A. That's not correct. That's not --
 18 Q. Okay. Would you explain to the jury why what Mr. Kelley
 19 said is not true?
 20 A. Well, after the May meeting, which I wish we had a
 21 recording of that meeting, it was a hot meeting. People
 22 were really upset that the executive committee had met
 23 without the rest of the board knowing. But after that
 24 meeting, I got a call from Peter Barnes. This was, I
 25 think, a week or two -- a couple weeks after the meeting.

1 He wanted me to meet with him. And I think he said, I
 2 think Tom Kelley will be there too. We were going to meet
 3 at Rosie's Cafe, which is over on 115 going toward
 4 Copenish, and talk about what to do about the way the
 5 executive committee meeting had come about and what had
 6 been done, and about the other issues that we had going and
 7 had been talking about, you know, about the way Michael was
 8 managing the agency, and conducting business with the
 9 board. So we had a meeting.
 10 Q. Could I interrupt you just for a second just so we're
 11 clear? You had a meeting at Rosie's Diner, correct?
 12 A. Yes.
 13 Q. What date was that?
 14 A. I'm pretty sure. Let me work this back. We had a meeting
 15 on June 14th, that was a Thursday. And I'm pretty sure we
 16 had a meeting, it was on either Tuesday or Wednesday of the
 17 week preceding June 14th.
 18 Q. At the time we took your deposition -- have you had a
 19 chance to review your deposition?
 20 A. Yes.
 21 Q. Did you give me a date specific while you were testifying
 22 at your deposition?
 23 A. I think I did, yes.
 24 Q. And what was that date --
 25 A. Well --

1 Q. -- that you met at Rosie's? Could I help you, sir?
 2 A. Let me look at my transcript --
 3 Q. Don't worry. I can help.
 4 A. If it's in there.
 5 Q. May 29?
 6 A. Okay. May 29.
 7 Q. You met with them May 29. And there was Mr. Barnes, and
 8 there was Mr. Kelley, and there was Mr. Smeltzer. Was
 9 there anybody else?
 10 A. Nobody else.
 11 Q. And you remember that date because you had written it down?
 12 A. I had a little calendar book. And at that time I had the
 13 book with me at the deposition, right.
 14 Q. You don't have your book today, do you?
 15 A. I cannot find it. It's at home somewhere, but I cannot
 16 find it.
 17 Q. Okay. And at the meeting, in fact, the resolution that
 18 Mr. Kelley said he never saw, Mr. Barnes had the resolution
 19 there, right?
 20 A. Actually, I think what Mr. Barnes had was a resolution, but
 21 not the one we talked about on the 14th of June. It was a
 22 resolution to place Michael on administrative leave.
 23 Q. All right. You have reviewed your transcript, sir, and you
 24 know -- let me show you what's been marked Exhibit 38.
 25 MR. PARSONS: Have we put Exhibit 43 in?

1 MS. BERRY: Yes.
 2 BY MR. PARSONS:
 3 Q. All right. I'm going to show you Exhibit 38 and Exhibit
 4 43. Just the captions.
 5 A. Yes.
 6 Q. One's about the executive director, and one is about
 7 apparently interim leadership by Mr. Barnes?
 8 A. Yes.
 9 Q. All right. And one of these was eventually voted on to
 10 fire Mr. Moran, and --
 11 A. Yes.
 12 Q. -- the board did not vote to put Mr. Barnes into this new
 13 position, right?
 14 A. Yes.
 15 Q. Are you telling me that you did recognize the resolutions
 16 Mr. Barnes showed you at Rosie's as the resolutions you
 17 eventually voted on?
 18 A. Here's where I'm not able to remember exactly. Because
 19 originally Mr. Barnes had a proposal that we would do an
 20 administrative leave. And as I recollect, we talked about
 21 that at Rosie's. And after that meeting, I got a phone
 22 call from him, and he said we don't have any mechanism in
 23 place, there's no procedures in place to do an
 24 administrative leave. He said I'm going to send you some
 25 other resolutions before the meeting. And those are the

1 ones -- he sent me three. And you just showed me two of
 2 them. And those were mailed to me. But I'm not sure we
 3 talked about those three resolutions that we talked about
 4 at the June 14th meeting. I'm not sure we talked about
 5 them at Rosie's. I think at that point he was discussing
 6 this idea of administrative leave. But after the meeting
 7 at Rosie's, he sent me in the mail these three resolutions,
 8 I got them either the day before the June 14th meeting, or
 9 maybe on Tuesday, which would be two days before. And that
 10 was the first time that I saw those three resolutions.
 11 Q. Let me see if I can show you your deposition transcript and
 12 see if it refreshes your recollection. I'm going to show
 13 you page 31, line 7, through 32, line 6. You can read any
 14 part you want. I've highlighted the questions to see if it
 15 refreshes your recollection. And when you're done, look
 16 up, and I'll ask you questions, okay?
 17 A. Well, I think what I said --
 18 Q. Can I ask -- the way I ought to do this. I asked you this
 19 question for reference and context. We're discussing you
 20 met with Mr. Kelley, Mr. Barnes, in May, right?
 21 A. The date -- yeah, May 29.
 22 Q. And Mr. Barnes had with him some resolutions that he asked
 23 you to look at, correct?
 24 A. That's correct.
 25 Q. And those resolutions that he asked you to look at looked

1 just like the ones that you eventually voted on, correct?

2 **A. I think we did have these three resolutions, in addition to**

3 **one that was pertaining to administrative leave, yes.**

4 **Q.** All right. So before when you said you didn't think you

5 had the resolutions that you actually voted on, like 35 and

6 43, you were mistaken, right?

7 **A. Honestly, I can't recall exactly.**

8 MR. PARSONS: Your Honor, could I publish his

9 answer so the jury can see what he said at the time of his

10 deposition?

11 THE COURT: No. No. There's a -- if you want to

12 impeach, you can impeach. But no, you can't. His

13 deposition? No. You can't publish that to the jury.

14 There's a way to get it into the record, and you haven't

15 done that.

16 BY MR. PARSONS:

17 **Q.** Let me ask you. I'll read the question, and you read the

18 answer at the time, okay?

19 All right. So did Peter Barnes tell you he was

20 working on these resolutions?

21 MR. COOKE: I think --

22 THE COURT: Sustained.

23 MR. COOKE: Thank you.

24 BY MR. PARSONS:

25 **Q.** Did the resolutions --

1 MR. COOKE: Same objection.

2 THE COURT: Sustained.

3 MR. PARSONS: I'm not reading a question at this

4 point. I'm not reading the question.

5 THE COURT: You can't read it. You're not the

6 witness. He's the witness.

7 MR. PARSONS: I know. And I'm not reading the

8 questions. I'll set the deposition transcript down.

9 THE COURT: You don't have to set it down.

10 MR. PARSONS: I'm trying to follow the court's

11 instruction, your Honor.

12 BY MR. PARSONS:

13 **Q.** Maybe you can use this deposition. I won't need it. Do

14 the resolutions -- were the -- did you discuss the

15 resolutions that you eventually voted on on June 14 during

16 your meeting at Rosie's Diner?

17 **A. The ones that we voted on I can't tell you if they -- ones**

18 **we talked about at Rosie's were the same as the ones we**

19 **voted on. I think they were modified.**

20 **Q.** Did they appear to be, to you -- when you read them, did

21 they appear to be the ones that you eventually voted on?

22 **A. Well, the ones you are showing me in the exhibit I received**

23 **in the mail before the May 10th meeting -- before the June**

24 **14th meeting.**

25 **Q.** I understand that. The ones that we're putting on -- that

1 we're introducing at trial?

2 **A. Yes.**

3 **Q.** But the ones that you looked at at Mr. Barnes' request at

4 Rosie's appeared to be the same ones you eventually voted

5 on, right?

6 **A. Today I would say no. I can't say they are.**

7 **Q.** All right.

8 MR. PARSONS: Your Honor, could we approach the

9 bench, please?

10 THE COURT: Sure.

11 (A Bench conference was held off the record 9:56 a.m.)

12 BY MR. PARSONS:

13 **Q.** Were you asked --

14 MR. COOKE: What line and page, sir -- counselor?

15 MR. PARSONS: Line 21, page 31.

16 MR. COOKE: Thank you.

17 BY MR. PARSONS:

18 **Q.** Were you asked: So did Peter Barnes tell you he was

19 working on these resolutions? And did you answer: He said

20 he did. He said, I've got some resolutions that I want to

21 go over with you.

22 THE COURT: No. You're doing --

23 MR. PARSONS: The wrong --

24 THE COURT: Two parts. Ask him --

25 BY MR. PARSONS:

1 **Q.** What was your -- did I ask you: So did Peter Barnes tell

2 you he was working on these resolutions? Did I ask you

3 that?

4 **A. Yes, you asked me that.**

5 **Q.** What was your answer?

6 **A. My answer was: He said he did. He said, I've got some**

7 **resolutions that I want to go over with you.**

8 **Q.** And did I ask you: All right. And these resolutions are

9 exhibit 2, 6, and 7, that you've seen in other depositions

10 today?

11 Did I ask you that?

12 **A. Yes.**

13 **Q.** And what was your answer to my question?

14 **A. My answer was: Yes.**

15 **Q.** And did I ask you: Do those -- let me ask you -- do you

16 recognize these as the resolutions you eventually voted on?

17 And what did you say?

18 **A. I said: Yes. These look pretty much like what Peter had**

19 **brought. He had -- they were like draft form at that time.**

20 **Q.** All right. And while you were looking at those

21 resolutions, why did Mr. Barnes want your input on those

22 resolutions? What did he say to you?

23 **A. Well, he said, I intend to introduce these resolutions. He**

24 **said, I'd like you to look at these. And I want to know if**

25 **you would consider supporting this resolution, or one of**

1 these resolutions.
 2 Q. And one of the resolutions was a resolution to fire
 3 Mr. Moran?
 4 A. To terminate his contract, yes.
 5 Q. Okay. When he asked, I want to know will you support that,
 6 how did you answer him?
 7 A. I didn't answer yea or nay at that time. I said -- I said
 8 send me the final version, and I will look at it before the
 9 meeting. And I didn't say whether I was going to support
 10 it, or not.
 11 Q. Did you eventually support the final version?
 12 A. I think I supported one of them. You mean like a June
 13 14 --
 14 Q. To fire Mr. Moran?
 15 A. At the June 14 meeting, did I support one of them?
 16 Q. Yes.
 17 A. I did support one. I can't remember which one. I think it
 18 was the one to terminate. We'd have to look at the minutes
 19 to be sure.
 20 MR. PARSONS: That's all I have. Thank you.
 21 THE COURT: Mr. Cooke.
 22 MR. COOKE: Thank you.
 23 CROSS-EXAMINATION
 24 BY MR. COOKE:
 25 Q. Good morning, Mr. Smeltzer.

1 A. Good morning.
 2 Q. You're a long-term member of the Benzie County community;
 3 is that true?
 4 A. Of the community?
 5 Q. Yes.
 6 A. Yes. I was born -- and other than four years at college, I
 7 was -- I've lived in Benzie County all my life.
 8 Q. Where did you go to high school?
 9 A. I went to -- I graduated from Frankfort High School.
 10 Q. And you have a family farm in Benzie County?
 11 A. Yes.
 12 Q. And how long have you been -- participated in assisting
 13 around the family farm?
 14 A. Well, in various ways all my life growing up. But really
 15 when I started getting a paycheck, I guess -- a regular
 16 paycheck -- probably since 1979.
 17 Q. And you currently have an ownership interest in the farm?
 18 A. Yes.
 19 Q. And when did you run -- or you were appointed to the Benzie
 20 County Board of Commissioners; is that right?
 21 A. Yes, that's correct.
 22 Q. And that happened when?
 23 A. That was in May of 2006.
 24 Q. And in May of 2006, as part of your -- and then you were
 25 reelected in November of '06?

1 A. I was elected in November. It was interesting. I had been
 2 a township supervisor prior to this for 16 years. And I
 3 had to resign as supervisor the same day that they were
 4 going to make the appointment. There were several names in
 5 the running. There was no guarantee I was going to get
 6 appointed. But I had to resign the supervisor job before
 7 they began drawing names for who they wanted to consider as
 8 commissioner.
 9 Q. Where were you supervisor?
 10 A. I'd been the supervisor in Blaine Township.
 11 Q. For how long, sir?
 12 A. 16 years.
 13 Q. All right. So you've been in public service for some
 14 period of time?
 15 A. Since 1990, yes.
 16 Q. And you were -- sometime after your appointment in May of
 17 '06, were you also appointed to sit on the Manistee/Benzie
 18 Community Mental Health Board?
 19 A. I was appointed after I was elected in 2006, and we
 20 organized our board of commissioners -- I think it was the
 21 2nd day of January in 2007. And then I had -- I had had
 22 some committee assignments during that period from May
 23 through December of 2006 that did not include the CMH --
 24 the assignment to CMH.
 25 Q. All right. And so when did you get your appointment to the

1 CMH Board?
 2 A. That was in January at our regular board meeting, which I
 3 think would have been the third Tuesday of January.
 4 Q. All right. And for a period of time, you attended meetings
 5 before you officially became a member of the board; is that
 6 right?
 7 A. Yeah. There was a little confusion on my part. I thought
 8 the appointments were effective immediately. So I went to
 9 the next CMH meeting, and I showed up at the same time with
 10 Commissioner Mary Pitcher, who was still sitting in that
 11 assignment. So I was a little embarrassed because I was
 12 kind of showing up on her watch. But I did go to a couple
 13 meetings. And then my term as the commissioner delegate to
 14 CMH started in April.
 15 Q. And as part of your responsibilities on the CMH Board, did
 16 you review the duties and responsibilities of the board as
 17 set forth in the Mental Health Code?
 18 A. Well, I did -- I did -- I've got -- Michael conducted a
 19 little bit of an orientation program where he called the
 20 new appointees in, and he gave us the -- a copy of the
 21 Mental Health Code. But I also found out there was more --
 22 we had this interlocal agreement -- and there were duties
 23 assigned to the board under the terms of the interlocal
 24 agreement.
 25 Q. And interlocal agreement is what allows Manistee and Benzie

1 to work together to form this other governmental CMH unit;
 2 is that right?
 3 A. Yes.
 4 Q. So you studied what your duties and responsibilities are as
 5 a board member?
 6 A. Yes.
 7 Q. And did you learn that some of your duties and
 8 responsibilities were to oversee the formation of
 9 contracts?
 10 A. Yes.
 11 Q. And to oversee costs associated with the agency?
 12 A. Yes.
 13 Q. And to oversee salaries associated with the agency?
 14 A. Yes.
 15 Q. Now, before you got on the board -- the CMH Board -- you
 16 were an active member of the Benzie County Board of
 17 Commissioners; is that true?
 18 A. Yes.
 19 Q. And when you were an active member of the Benzie County
 20 Board of Commissioners, did some issues get raised
 21 regarding the salary of Mr. Moran?
 22 A. Yes. That's -- that issue came up -- there were -- the
 23 beginning of my awareness that his salary was an issue was
 24 apparently during that summer, or the year 2006, Manistee
 25 County was conducting a salary study of all county

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1 officials. And one of the commissioners pointed out to me
 2 that when they asked to get the salary information from
 3 Manistee/Benzie CMH, they refused to give him the
 4 information, which I was a little astonished by, given that
 5 they're dealing with public money. I felt they owed that,
 6 if a county asked them to tell them this information, they
 7 should give it. In the end, Manistee County had to file a
 8 Freedom of Information request to get the salary
 9 information from CMH.
 10 Q. And was this Mr. Moran's salary information you were
 11 looking for?
 12 A. And all -- well, yes. I guess it was just his salary. As
 13 far as I know.
 14 Q. All right. And did you ultimately learn what his salary
 15 was?
 16 A. We did. And there again, I was kind of astonished. It was
 17 the highest. It was higher than the circuit court judge's
 18 salary. And I felt, given the duties and responsibilities,
 19 that was a little out of line. I think the circuit court
 20 judge deals with people's lives and property, and probably
 21 should be reflected. And so it was -- out of -- out of
 22 proportion.
 23 Q. All right. Did you also, at the same time you learned
 24 about the salary of Mr. Moran that you felt was out of
 25 proportion, were you also dealing with supplemental

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1 requests by the CMH to increase the contribution that
 2 Benzie County had to make towards the board?
 3 A. Yes. After I became a commissioner -- the chairman of the
 4 board at that time was Don Howard -- he had me go to lunch
 5 with him. And he went over several issues that were
 6 currently kind of issues the board of commissioners was
 7 dealing with. One of them was the fact that Benzie County
 8 was not paying in the amount of money that was being
 9 requested. And he said there's a statutory requirement.
 10 He said I think we're not meeting the statutory
 11 requirement. And he said we're working on trying to get
 12 this problem resolved. And he said you're going to be
 13 hearing more about it going forward.
 14 Q. All right. And that was -- that discussion where you had
 15 where Mr. Howard indicated that we're working towards
 16 getting that resolved, roughly when did that occur?
 17 A. That occurred in May of 2006. Right after I was appointed.
 18 Q. Okay. All right. Did it occur before the May 10th board
 19 meeting of the CMH?
 20 A. Well, he took me to lunch in May of 2006. And the May 10th
 21 meeting was in 2007.
 22 Q. I'm sorry. 2006. So a year before --
 23 A. Yes.
 24 Q. A year before the May 10th, 2007, meeting, the chairman of
 25 the Benzie County Board of Commissioners said we're working

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1 towards complying with our match requirement?
 2 A. Yes.
 3 Q. Did you ever get any sense at all for that whole year
 4 period of time up until the May 10 of 2007 meeting that
 5 Benzie County was refusing to do their best to try to make
 6 this match requirement?
 7 A. No. I had the feeling from the other commissioners they
 8 knew there was a problem, and they intended to do the right
 9 thing. However, doing the right thing also had to be in
 10 the context of all the other demands on the county budget.
 11 And Benzie County had a lot of demands on their budget. So
 12 in the end, I think doing the right thing was doing the
 13 right thing, looking at all of the public interests
 14 involved.
 15 Q. And is it fair to say that Benzie County doesn't have a lot
 16 of extra money in their budget?
 17 A. No, we don't.
 18 Q. Is it always that kind of a decision when the budget comes
 19 up as far as how you deal with competing interests for the
 20 money?
 21 A. It's a very difficult decision. In 2006, I was not on the
 22 budget committee. In 2007 and 2008, I was on the budget
 23 committee. And I learned quite a bit. Well, that's not
 24 correct. I was on the budget committee in 2006, but I was
 25 not chairman of that budget committee.

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1 Q. All right.
 2 THE COURT: Do you know what a mandated
 3 expenditure is?
 4 THE WITNESS: Yeah. That's one that's required
 5 under statute, I would say, yes.
 6 THE COURT: Okay. And a non-mandated expenditure
 7 is?
 8 THE WITNESS: Something the counties have liberty
 9 to choose what to do.
 10 THE COURT: Okay.
 11 MR. COOKE: Thank you. Thank you, your Honor.
 12 THE COURT: Go ahead, counsel.
 13 BY MR. COOKE:
 14 Q. Rolling forward, then, to the '07 time period when you
 15 began to attend board meetings and ultimately sat in April
 16 of '07 on the board --
 17 A. Yes.
 18 Q. -- were you present for the May 10th, 2007 meeting?
 19 A. Yes.
 20 Q. And that was the meeting where Mr. Moran tried to get his
 21 contract extension; is that true?
 22 A. Yes.
 23 Q. And that was actually -- we see it in the minutes -- that
 24 was a motion made by the executive committee to approve
 25 this contract extension; is that true?

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1 A. Yes.
 2 Q. So although the document says recommendation, what happened
 3 is the executive committee came into that meeting and tried
 4 to get that contract extension passed by the board; is that
 5 true?
 6 A. Yes.
 7 Q. Now, before that May 10th of 2007 meeting, did you have an
 8 occasion to speak with the chairman of the board,
 9 Mr. Kadlec?
 10 A. Oh, yes, I did.
 11 Q. All right. And Mr. Kadlec was also on the executive
 12 committee?
 13 A. Yes.
 14 Q. And was your understanding that Mr. Kadlec had met with
 15 Mr. Moran before the May meeting, with Janice McCraner, and
 16 Ray Nichols, to go over this proposed contract extension?
 17 A. I didn't really know who he had met with. It was -- one of
 18 my committee assignments as commissioner was -- I was
 19 assigned as the commissioner and liaison to the Benzie
 20 County Soil and Water Conservation District. And Ray
 21 Kadlec was the chair of the Conservation District. And we
 22 had a meeting the first Monday of May. And at the end of
 23 our meeting -- and they were in Beulah, down at the
 24 Conservation District offices -- at the end of our meeting,
 25 I stepped over and I said -- I told -- we had -- I told

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1 Mr. Kadlec we had looked at the preliminary results of this
 2 Sullivan Cotter wage study that was going on at CMH, and I
 3 said, Ray, I think Michael's salary is excessively high.
 4 And I think something needs to be done. I said, the
 5 management salaries are all too high at that organization.
 6 They're very well taken care of. The reason I said that is
 7 the Sullivan Cotter study, we had looked at, and on one
 8 page, I can remember the picture of the page, there was a
 9 chart, and it was talking about management salaries, and
 10 how they were related to what would be -- what they called
 11 a market -- an equivalent market rate for that kind of
 12 work. And in the management category, the managers were
 13 getting paid 125% of what would be typical or market level
 14 salaries for that kind of work. On the next page, when you
 15 turn to it, they talk about clinical staff, and people that
 16 were working directly with consumers, and they were getting
 17 paid 88% of a market rate. And that confirmed to me
 18 what -- I had been hearing it from the community and
 19 hearing from other commissioners that management was top
 20 heavy -- the salaries at management level were top heavy at
 21 CMH. So that's why I told Ray, I said, I think his salary
 22 is too high, and I think the management salaries in general
 23 are too high at this organization.
 24 And Ray Kadlec said, well, that's all worked out.
 25 Michael's not going to take a pay increase for three years.

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1 And in exchange, we're going to add on one month to his
 2 severance pay for each year that he doesn't take a pay
 3 increase. At the end of three years, he'll have had three
 4 months additional added on to his severance pay.
 5 But the way he talked about it -- the way he
 6 talked and described it, it was like a done deal. It's all
 7 worked out. That's the way it's going to be. And I
 8 thought in my mind, this is not right. I said, the board
 9 hasn't talked about this at all. I said, we haven't
 10 discussed this. I said -- and I was thinking, when did
 11 this get all worked out? But I didn't want to confront him
 12 then because other Conservation District board members were
 13 still there. And I didn't want to have a confrontation in
 14 front of them. It wasn't really their business.
 15 So in my mind, I said, what's going on? How is
 16 this all worked out? It was confusing to me how it could
 17 be all worked out.
 18 Q. All right. So when you came into the May meeting, the
 19 executive committee did come in with a proposal; is that
 20 right?
 21 A. That's right.
 22 Q. And was it the same proposal that Ray Kadlec told you was a
 23 done deal?
 24 A. Pretty much, yes.
 25 Q. And is that where you learned that the executive committee

937

1 had met with Mr. Moran without notice to anybody and talked
 2 about this salary?
 3 **A. That's the first we heard about it, yes.**
 4 **Q.** And how did you feel about that?
 5 **A. Well, at first I was just kind of -- you know, I thought**
 6 **this is something the whole board should have been talking**
 7 **about, at least. So I was -- I was angry. I thought this**
 8 **isn't -- you know, this is a major issue. A contract with**
 9 **the CEO. And we've had no discussion at the board level,**
 10 **and all the details worked out. And Michael called the**
 11 **meeting, and he's the one that's going to benefit from it.**
 12 **Q.** It was your understanding that Michael called the meeting
 13 of the executive committee?
 14 **A. Yes.**
 15 **Q.** And did you feel that that -- well, an executive committee
 16 is a standing committee of the board; is that right?
 17 **A. It's under the bylaws.**
 18 **Q.** And was it your impression that that executive committee
 19 was governed by the Open Meetings Act?
 20 **A. Well, at first -- at the May meeting, I really didn't**
 21 **understand that, except some of the other board members**
 22 **were pointing out that if the executive committee meets, we**
 23 **were supposed to be notified. So I just became aware of it**
 24 **at the May meeting.**
 25 **Q.** And how did you vote on that resolution to extend

1 Mr. Moran's contract for an additional three years?
 2 **A. I voted no.**
 3 **Q.** And that was defeated by a majority of 7-5; is that right?
 4 **A. That's correct.**
 5 **Q.** Okay. Now, as of the time of that vote, when you voted May
 6 10th of 2007, 7-5 not to extend his contract, this contract
 7 would expire of its own terms in December of 2007; is that
 8 right?
 9 **A. Yes.**
 10 **Q.** And there were no -- in your mind -- no further
 11 negotiations of any kind to write a new contract for
 12 Mr. Moran between May and June; is that true?
 13 **A. As far as I know, there was -- no. The board didn't go**
 14 **into any negotiating after May.**
 15 **Q.** All right. I want to step, then, to the meeting at Rosie's
 16 Cafe. You got a phone call from Peter Barnes; is that
 17 true?
 18 **A. Yes.**
 19 **Q.** And Peter Barnes came there and he had some proposals that
 20 he wanted you to look at; is that true?
 21 **A. That's correct.**
 22 **Q.** And it's your recollection Mr. Kelley was there as well?
 23 **A. Yes, he was there.**
 24 **Q.** All right. Now, other than you three, was there anybody
 25 else there?

1 **A. Nobody else. There were other people in the restaurant.**
 2 **But there was nobody else from the CMH Board.**
 3 **Q.** Board. All right. And a quorum is seven people; is that
 4 right?
 5 **A. That's correct.**
 6 **Q.** And you gentlemen were not the executive committee; is that
 7 true?
 8 **A. We were not the executive committee.**
 9 **Q.** And you weren't a standing board; is that right?
 10 **A. No.**
 11 **Q.** All right. So at this meeting, you were shown some
 12 documents by Mr. Barnes and asked -- he asked you how you
 13 might -- would you consider this, and how you might vote on
 14 it; is that true? That's your recollection?
 15 **A. He didn't ask how we would vote on it at that meeting. He**
 16 **said I intend to introduce these motions. He said**
 17 **someone's going to have to support it.**
 18 **Q.** Oh, support the motion?
 19 **A. Support the motion. Get it on the floor so we can have a**
 20 **discussion.**
 21 **Q.** All right. And did you commit to vote one way or the other
 22 on any of these resolutions?
 23 **A. No.**
 24 **Q.** All right. Now, Mr. Parsons showed you an excerpt from
 25 your transcript when you were having difficulty remembering

1 what resolutions Mr. Barnes had with him at that time?
 2 **MR. PARSONS:** Object to the characterization of
 3 the difficulty remembering at that time.
 4 **BY MR. COOKE:**
 5 **Q.** Well, he showed you an excerpt of your transcript; is that
 6 right?
 7 **A. Yes.**
 8 **Q.** Where you talked about this Rosie's Cafe incident; is that
 9 true?
 10 **A. Yes.**
 11 **Q.** And when you first testified this morning, you thought that
 12 Mr. Barnes was talking about possibly an administrative
 13 leave at Rosie's Cafe?
 14 **A. Yes.**
 15 **Q.** Is that right? Do you have a specific recollection as you
 16 sit here right now as to what resolutions were indeed
 17 talked about at Rosie's Cafe?
 18 **A. Well, I believe --**
 19 **Q.** A specific recollection. Do you have a specific --
 20 **A. I remember talking about resolutions, yes.**
 21 **Q.** And was your memory more fresh at the time your deposition
 22 was taken in January of '08 than it is as we sit here right
 23 now?
 24 **A. Yes. It probably was more fresh, yes.**
 25 **Q.** I'm going to ask you to start -- just to refresh your

1 memory with the transcript, beginning at line 7, the line
 2 after Mr. Parsons pointed out to you on page 32, and read
 3 down through line 4 on page 33, and see if that refreshes
 4 your memory, sir, of the documents that were at the cafe?
 5 A. Page 33, you said?
 6 MR. COOKE: With the court's permission?
 7 BY MR. COOKE:
 8 Q. Start right here where -- and read down through 33, middle
 9 of the page.
 10 A. You want me to read this --
 11 Q. To yourself.
 12 A. To myself. (Witness reading.) Okay.
 13 Q. Does that refresh your memory as to what you told
 14 Mr. Parsons at your deposition about these resolutions?
 15 A. Yes.
 16 Q. And is it true you told him at your deposition that you
 17 didn't really recall what resolutions Mr. Barnes had with
 18 him?
 19 A. That's correct.
 20 Q. And is it true you told him at your deposition, you've told
 21 this jury, that you received the resolutions that were
 22 voted on on the June 14th meeting a day or two before the
 23 meeting?
 24 A. Yes.
 25 Q. And this meeting would have been -- at Rosie's -- was

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1 after -- the May 10th meeting was a couple of weeks before
 2 you got those resolutions in the mail?
 3 A. Yes.
 4 Q. So Barnes did not have the resolutions with him that were
 5 voted on at the June 14th meeting?
 6 A. No. He had a working draft that he had at that point.
 7 That's how he had described it.
 8 Q. All right. After that meeting at Rosie's Cafe, did you
 9 have any other communication with board members as to how
 10 you might vote on a given resolution?
 11 A. No.
 12 Q. Did you tell any board member as to how you might vote on a
 13 given resolution?
 14 A. No.
 15 Q. Tell the jury, please, as you were driving down -- once you
 16 received the resolution in the mail before the meeting, you
 17 knew there was going to be a resolution to terminate the
 18 contract; is that right?
 19 A. Yes.
 20 Q. All right. And tell the jury how you came to your
 21 conclusion about how you were going to vote?
 22 A. Well, I knew this was a difficult decision to make. We had
 23 an employee, he had been there a long time. There'd been a
 24 lot of problems as far as how he handled the board, treated
 25 board members, communicated with the board. And in my own

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1 mind, in the meetings I had gone to, frequently it was
 2 pointed out the board only has one employee. That's the
 3 one we contract with. That was Mr. Moran. And I kept
 4 thinking this just isn't right. This board is in charge of
 5 a body that's dealing with public money. And we keep being
 6 told over and over we have nothing to say except as regards
 7 our one employee. And I said this is not right. The
 8 public interest is not served by that. We've got an
 9 interest as a CMH Board in the operation -- entire
 10 operation. That doesn't mean we get into the day-to-day
 11 details. But it's our responsibility to deal with this
 12 public money.
 13 And the board was not being treated properly. So
 14 anyway, I -- I was driving down. And I hadn't decided,
 15 when I left the house, how I was going to vote. I wasn't
 16 even sure if I was going to support any of these motions.
 17 But the more I drove, and I was thinking about how the
 18 executive committee had met, and people had pointed out if
 19 it's a defined committee there's supposed to be public
 20 meetings posted with 18 hours notice, and the rest of
 21 the -- the rest of the board should be there, and any
 22 public that wants to be there should be there.
 23 So you know, I had been a township supervisor,
 24 and run several -- you know, 16 Board of Reviews. I'd been
 25 the clerk for that. I was the assessor of the township for

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1 ten years, and having to eat dinner at home and run down to
 2 the township hall and put out a notice at least 18 hours
 3 ahead that we're going to have a Board of Review, a special
 4 work meeting. I had to always post these things. And here
 5 I'm thinking this guy has staff on hand, it's no problem
 6 for them to post a public notice that they're going to be
 7 having a public meeting. So I got madder and madder about
 8 that. I thought all the time I'm running the township all
 9 by myself, I have no secretary, or anything, and I'm having
 10 to put these notices out. And here they're having
 11 meetings, and they're not being noticed properly. It just
 12 wasn't right. And then I was thinking about terminating a
 13 long-time employee. And a lot of times I go back and I
 14 think about -- I learned a lot from my father. He was a
 15 great guy. And I didn't tell you, but I'm also director at
 16 Smeltzer Orchard Company. I'm sitting in the chair that my
 17 father used to occupy as a director. And we had a problem
 18 with our president at Smeltzer Orchard Company. And
 19 there -- he had -- he engaged occasionally in outrageous
 20 behavior. For years it was overlooked. And finally he had
 21 an episode that was just one time too many. And it was a
 22 family corporation. But they had to get rid of the guy.
 23 And it wasn't an easy decision. I asked my dad, how did
 24 you guys do this? And he said, well, we just didn't -- we
 25 told him. He wanted to be reappointed as president of the

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1 corporation. And he said, we told him we just don't have
 2 the votes to put you in anymore. So he was out. That was
 3 my uncle. He had been there for 40 years. And I thought,
 4 well, if my father could do that -- and that's just a
 5 family business -- and here we're dealing with millions of
 6 dollars, taxpayer dollars. They come from the county, they
 7 come from the State of Michigan, which we all pay state
 8 income tax, sales tax, excise tax. And then they come from
 9 the federal government. This is our money. And it was
 10 just -- in my mind, it was one outrage too many that he had
 11 called this executive committee meeting, and he was the
 12 sole beneficiary of what they talked about. And I said,
 13 it's just the same as we had at Smeltzer Orchard Company.
 14 The guy's got to go. And that's when I pulled in the
 15 parking lot at the CMH offices, and that's how I came to my
 16 decision.

17 Q. All right. Thank you, sir. I want to address your
 18 attention to this letter that we've seen of April 18 of
 19 2007. Did you get that letter?

20 A. Yes.

21 Q. Did you get that letter after the May 10th board meeting
 22 where Mr. Moran's contract extension was voted down?

23 A. Yes. I got that meeting -- that letter -- I can tell you,
 24 the May 10th meeting was on a Thursday. I got that letter
 25 in Saturday's mail. And I know it was in Saturday's mail

1 because during the week day, my mail comes around 1:30 to
 2 2:00 in the afternoon. But the day I got that letter, I
 3 was coming home for lunch. It was a little bit after
 4 12:00. On Saturday the mail usually comes around 12:00.
 5 And this letter was in the mail on Saturday. So it would
 6 have been May 12th that I got that letter.

7 Q. And did you open the letter and read it?

8 A. Yes. I thought, what is this? We just had a board
 9 meeting, something must have happened. So I opened the
 10 letter. And I read it. And then I -- I said, well, you
 11 know, they were talking about Dennis Risser, and he was
 12 talking about the county match. And I thought, we just had
 13 a board meeting, and neither of these topics was talked
 14 about. And then I looked, and I saw that it was dated
 15 April 18th. So then I thought, well, why am I getting this
 16 now? So I looked at the envelope. I said, when was this
 17 mailed? Well, it was mailed -- I think the post mark was
 18 the 11th -- it had been mailed on Friday. We had had a
 19 board meeting on Thursday. It was mailed Friday. I
 20 received it Saturday. But it was dated April 18th. I
 21 thought is this -- I thought it had been off in somebody
 22 else's mailbox, maybe up the street, or something. But
 23 that wasn't the case. It had been mailed the day after our
 24 board meeting.

25 Q. Was it a solitary letter, nothing else in the envelope?

1 A. There was no cover letter, no explanation. Just the letter
 2 that's been introduced as an exhibit.

3 Q. All right. And other than -- is it a confusing letter for
 4 you to receive at that time?

5 A. Well, it was confusing for me. It was confusing, because
 6 that was the first time I'd ever heard any allegation
 7 against Dennis Risser. And it was confusing because I
 8 thought he's threatening to report that we're not making
 9 the county match. And I said this is -- we've talked about
 10 this. This is well known. We know the counties are not
 11 paying what is being asked for. So I thought, what -- I
 12 thought, there's some meaning to this letter appearing
 13 today. I said, I don't know what it is. This is odd that
 14 I'm receiving it like this. It just seemed very odd.

15 Q. All right. And when you went into -- you talked about the
 16 decision-making process that led you to vote to terminate
 17 the contract. Did any part of that decision-making process
 18 include any information that you received in this April 18
 19 of '07 letter?

20 A. No. That letter -- first of all, the letter had no effect
 21 on me. I thought if Dennis is doing these things, he
 22 should get reported. It's not my problem. And the county
 23 match issue was well known. Don Howard had already talked
 24 to me about it. I had seen it in the budget discussions --
 25 budget committee discussions. And I said, go ahead. We're

1 not making the report -- we're not making the match, go
 2 ahead and report us. What's going to happen? The Board of
 3 Commissioners is going to get led off in handcuffs? I
 4 don't think so. The State of Michigan has their own
 5 budgetary problems. I said, certainly they can be
 6 sympathetic to what we're going through. So it did not
 7 bother me at all.

8 MR. COOKE: Thank you, sir. I have no further
 9 questions. Thank you.

10 RECROSS-EXAMINATION

11 BY MR. PARSONS:

12 Q. Thank you. Let's start with that last point. Do you
 13 recall Mr. Kelley indicated that letter played, he
 14 thought -- or he told the jury yesterday -- a 5% factor in
 15 his decision to fire Mr. Moran?

16 A. Yes.

17 Q. And can you tell the jury of any other commissioner other
 18 than yourself who -- you said it didn't play a factor in
 19 your decision, right?

20 A. It played no effect -- it had no effect on my decision.

21 Q. Are you aware of another commissioner who it played a
 22 factor in their decision to fire Mr. Moran?

23 A. No.

24 Q. Do you know -- you -- I mean, I'm talking 5% or --

25 A. Any element.

1 Q. You aren't aware of any other?

2 A. **No, I'm not.**

3 Q. Are you aware that a 6-6 vote would mean that Mr. Moran

4 would still be employed, right?

5 A. **Well, it would mean he would be employed past June.**

6 Q. Right. So you do agree that if one of those commissioners

7 had not viewed -- had changed their vote on Mr. Moran's

8 firing, he wouldn't have been fired on June 14, right? You

9 need seven votes to fire him?

10 A. **He would not have been fired on June 14th.**

11 Q. Right. Let me go back to an issue of mandated funding. A

12 mandated funding, is that something the counties can do or

13 not do, or do you know?

14 A. **Well, I think if it's mandated, we are supposed to do it.**

15 Q. And I've previously marked as Exhibit 67 this state law.

16 You understand the local match is a mandated requirement,

17 right?

18 A. **It's -- the amount is spelled out in the Mental Health**

19 **Code, yes.**

20 Q. And it's 10%, correct?

21 A. **A county is financially liable for 10% of the net cost of**

22 **any service that is provided.**

23 Q. Okay. And as a mandated funding, that means mandatory,

24 right?

25 A. **Yes.**

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1 Q. And do you know if, under the law -- did you ask Mr. Moran

2 why he was so concerned about that 10% -- the \$128,000

3 deficit?

4 A. **I never asked him directly, no.**

5 Q. But do you understand that behind 10% of -- \$128,000 is

6 10%, it's 10% of a million two hundred eighty thousand,

7 right?

8 A. **I won't argue with your math.**

9 Q. Now, if somehow the county -- if the state people decided

10 to enforce that, are you aware that the state could

11 withdraw the funding -- the 90% of the funding?

12 A. **Yeah. The portion that would correspond with the**

13 **deficit -- the shortfall.**

14 Q. And so -- now Mr. Moran -- you didn't talk about this, I

15 know, with him. But do you understand that what he was

16 concerned about was not only the \$128,000, but the \$1.28

17 million funding from the state?

18 A. **I'm sure, yes. That would be a concern.**

19 Q. And you know the State of Michigan is -- for several years,

20 we've been on hard times, right?

21 A. **Yes.**

22 Q. You talked about being sensitive to taxpayer's concerns,

23 right?

24 A. **Yes.**

25 Q. And do you know the State of Michigan has been looking for

951

1 ways to cut funds to agencies?

2 A. **Yes. And they've made a cut this year.**

3 Q. Yes. And what do you think -- what do you think might --

4 well, let me put it this way. Isn't it true if the State

5 of Michigan is looking to find ways to cut the budget, they

6 could say you haven't made your mandated local match,

7 therefore, we are cutting \$1.28 million from

8 Manistee/Benzie community funding?

9 MR. COOKE: Your Honor, that calls for an answer

10 based on speculation.

11 MR. PARSONS: He's a member of the board. I'm

12 asking him if that's his understanding.

13 THE WITNESS: Well, actually, as it was described

14 in --

15 THE COURT: I'll sustain the objection. You can

16 ask him if Mr. Moran ever informed the board when he was on

17 the board that they stood to lose approximately \$1.28

18 million if the 10% match wasn't made. You can ask him that.

19 BY MR. PARSONS:

20 Q. Mr. Smeltzer, did Mr. Moran ever inform you that the

21 Manistee/Benzie CMH Board risked losing \$1.28 million in

22 state funding if it didn't make the local match?

23 A. **Honestly, I don't believe he ever told us at a board**

24 **meeting that might be a consequence.**

25 Q. Well, from your -- did somebody else tell you as a

952

1 Manistee -- or as a Benzie County commissioner, or when you

2 sat in on board meetings, or when you discussed this, did

3 anybody -- were you -- did you know that?

4 A. **No, I did not know that.**

5 THE COURT: I'll take judicial notice that the

6 state is on hard times. That's why the circuit judges

7 haven't had a raise since 2002.

8 MR. PARSONS: Yeah.

9 BY MR. PARSONS:

10 Q. And on that issue, Mr. Smeltzer, you realize Mr. Moran

11 hadn't had a raise since 2004, right?

12 A. **Yes.**

13 Q. And he was willing to freeze his pay for an additional

14 three years, right?

15 A. **Yes. That was that proposal that had come from the**

16 **executive committee, yes.**

17 Q. Right. And you were aware that -- that on this issue,

18 there was a salary study going on --

19 A. **Yes.**

20 Q. -- when you came on that board. And when was your first

21 board meeting?

22 A. **I first attended a board meeting in January of 2007.**

23 Q. Okay. When was your first --

24 A. **When I had official capacity was in April.**

25 Q. And did you have an understanding why the salaries were

953

1 being studied?

2 A. Well, I think I had an understanding, yes.

3 Q. You understood that periodically the agency recalibrated,

4 or studied its salaries, right?

5 A. Yes.

6 Q. Did you understand this was a very successful innovative

7 mental health agency?

8 A. That was the impression I had, yes.

9 Q. And the way you find out if you're staying up to snuff on

10 your salaries is to do a salary study, right?

11 A. Yeah. I think lots of organizations probably do that, yes.

12 Q. Okay. And so the purpose of the salary study is to make

13 sure you're still able to attract the kind of people that

14 you want to have in your agency, right?

15 A. Yes.

16 Q. And so the fact that there's a salary study going, that

17 isn't any strange thing?

18 A. No. That would be, I think, in an organization of that

19 size and being a public body, that would be a normal

20 function, yes.

21 Q. Were you aware that if you don't keep up with salaries, if

22 you lose a staff member, do you know what the cost of

23 losing a staff member is -- about one year of their pay?

24 A. Yeah. You got to bring somebody on board and get them up

25 to, you know, programmed up to what you're doing and get

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1 them aware. I mean, it's not good to lose long-term

2 employees.

3 Q. Now, you thought Mr. Moran's salary, or somebody thought,

4 Mr. Moran's salary was too high, right?

5 A. Many people thought that.

6 Q. Right. And I'm going to show you Exhibit 98. Did --

7 Exhibit 98?

8 MR. COOKE: Has this been admitted? All right.

9 Thank you.

10 BY MR. PARSONS:

11 Q. Exhibit 98 was, recommendation from the compensation

12 recalibration group. Did you see that, or no?

13 A. This is dated April 11th of 2007 on the bottom. Well, the

14 front page is. Then the other page is May 9 of '07.

15 Q. Do you recall --

16 A. I think the -- I think the board did see this.

17 Q. All right. And if you were concerned Mr. Moran's salary

18 was too high, do you know, how much was it too high?

19 A. I don't know how much it was too high.

20 Q. Are you aware that this salary study -- this is attached to

21 Mr. Barnes's memo. Mr. Moran was not making as much as the

22 highest salary. Were you aware of that?

23 A. Well, no.

24 THE COURT: As the highest salary of what? Of

25 anyone in the study?

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1 BY MR. PARSONS:

2 Q. In the outside study, in the comparison study. For

3 purposes of background, the salary recalibration study

4 brought in other agency salaries around the state and

5 compared those, correct?

6 A. Okay. I'm confused. Now, this recalibration study is not

7 the same as the Sullivan Cotter study.

8 Q. Right. Right. Just in a general sense, can you tell the

9 jury that the purpose of the salary study was to compare

10 the local salaries with salaries at other agencies

11 similarly located around the state?

12 A. Just within the state.

13 Q. Within the state, right?

14 A. Yes.

15 Q. And can you tell the jury that Mr. Moran's salary was not

16 at the top of that heap?

17 A. I think that's probably correct.

18 Q. And perhaps somebody like Wayne County would have a --

19 A. Yeah. There's other agencies you have bigger budgets,

20 probably it is a higher salary at those agencies.

21 Q. And so there's a range. And did anybody ever say what

22 salary Mr. Moran -- what level Mr. Moran's salary should be

23 at?

24 A. That was not ever a defined idea, no. We did not have an

25 idea. All we knew was a feeling and a sense that it was

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1 too high.

2 Q. And did anybody ever ask Mr. Moran, would you be willing to

3 take a pay cut if for the good of the cause?

4 A. Well, I think evidence of that --

5 Q. Do you know if anybody has?

6 A. -- would have been in 2005. If management is taking some

7 cuts at the time of those budgets cuts.

8 Q. Do you think there were -- well, I'll come back to that.

9 Did anybody ask Mr. Moran if he would take a salary cut in

10 2007? And if so, how much?

11 A. I don't know that.

12 Q. And instead, what was done was -- you made a statement --

13 you were outraged because Mr. Moran was the sole

14 beneficiary of this executive committee meeting?

15 A. Yes.

16 Q. The sole beneficiary of that meeting was that the -- that

17 his was set aside, and the staff's salary could move on

18 from the recalibration study, right?

19 A. That -- after we had our discussion in May, we decided to

20 pull him out of the recalibration study.

21 Q. Right.

22 A. So --

23 Q. But that was the recommendation of this panel. It was

24 suggested that the CEO position be pulled from the study so

25 that the staff's salaries could go on and be finalized;

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1 wasn't that right?

2 A. It was one of the recommendations.

3 Q. So in your anger at the time you thought Mr. Moran was the

4 sole beneficiary. But in fact, what that executive

5 committee was saying was we got to move -- let's move on

6 with the staff salary recalibration, set Mr. Moran aside?

7 A. Yes. They did say that.

8 Q. And so the staff was going to be benefited by the

9 completion of this salary recalibration, wasn't it?

10 A. Yes. And that's the action the board took.

11 Q. Yeah. And that's what the executive committee recommended?

12 A. One of the recommendations.

13 Q. Right. And that's why there was a unanimous vote, remove

14 Michael Moran's contract from the recalibration study, so

15 that the salary could get their recalibration.

16 Now, when you were that angry about that, were

17 you attending your first or second official meeting?

18 A. It was my second official meeting.

19 Q. Is it fair to say you came on that board ready to be angry

20 at Michael Moran?

21 A. I wasn't ready to be angry at the man.

22 Q. Let me ask you. Let me go back to Mr. Kelley. I forgot to

23 ask you this. When you met -- defense counsel had asked --

24 triggered me. When you said you and Mr. Kelley,

25 Mr. Barnes, were meeting, Mr. Barnes asked you if you would

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1 support the resolution, right?

2 A. Yes. He asked me that.

3 Q. And support -- when you're taking an official vote, support

4 is a technical name, right?

5 A. Yes.

6 Q. Technical word. Support means, are you willing to second

7 the motion?

8 A. Second the motion. To put it on the floor for discussion.

9 Q. And so what Mr. Barnes was asking you in simple language

10 was, if I or somebody introduces this resolution, will you

11 second it?

12 A. Yes.

13 Q. So he was asking you in advance of that meeting what you

14 would do -- he was trying to line up your second for the

15 motion, right?

16 A. He -- yes. He wanted to know if -- but I -- he didn't know

17 if I was going to or not. He didn't have the final

18 version.

19 THE COURT: Tell the jury -- tell the jury what

20 would happen to a motion that a board member makes that no

21 one -- no one seconds it, what happens to the motion?

22 THE WITNESS: If there's no second, it doesn't get

23 discussed. It dies for lack of second.

24 THE COURT: Go ahead, Mr. Parsons.

25 BY MR. PARSONS:

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1 Q. And conversely, if someone supports it, then the motion has

2 life and it goes on?

3 A. It goes on, further discussion, and a vote will be taken.

4 Q. So that's what Mr. Barnes was trying to figure out if he

5 raised this, at least did he have your support so the

6 motion could come to a vote, right?

7 A. Yes.

8 Q. And when you said you want to look at the final draft of

9 it, did he turn to Mr. Kelley, sitting at the table at

10 Rosie's, and say, well, Mr. Kelley, will you support it?

11 A. No. He did not say that.

12 Q. What did he say to Mr. Kelley in terms of what he was

13 looking -- why had he invited him to the meeting? What did

14 he say?

15 A. As I recall, he did not ask Tom if he would support a

16 motion, or second a motion.

17 Q. Well, you said -- you gave that story about your family

18 farm and your uncle, and you said --

19 A. Yes.

20 Q. -- you realized this was a very significant moment, very

21 significant issue, right?

22 A. Yes.

23 Q. It stands out in your mind to this day this is significant?

24 A. I remember driving down vividly, yes.

25 Q. And you would think Mr. Kelley would have remembered this,

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1 because this is, again, a pretty significant moment, right?

2 MR. COOKE: No foundation so what Mr. Kelley would

3 remember.

4 THE COURT: I'll sustain that objection.

5 BY MR. PARSONS:

6 Q. All right. Do you remember what Mr. Barnes had invited

7 Mr. Kelley to that meeting for?

8 A. Well, like I said, he had some ideas. Peter had some

9 ideas. He wanted to talk -- get our reaction to what his

10 ideas were. The one idea was an administrative leave --

11 going down a road of administrative leave. The other was

12 these three draft resolutions that he had. He wanted to

13 have our reaction on them, or if there was something more

14 to be added, or, you know, that was -- as I recall, that is

15 what he wanted.

16 THE COURT: All right. We'll recess for about 20

17 minutes.

18 (Court in recess at 10:51 a.m.)

19 (Court reconvenes at 11:19 a.m.)

20 THE COURT: All right. We're ready for the Jury.

21 MR. PARSONS: Your Honor, after Mr. Smeltzer,

22 we're going to talk about redactions that we're agreeing on

23 disagreeing on in the Babcock deposition. Could we stick

24 around for a few minutes before the lunch with the court and

25 get the court's rulings on these objections, or no?

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1 THE COURT: What are you going to have next?
 2 (Jury enters courtroom at 11:20 a.m.)
 3 BY MR. PARSONS:
 4 Q. Mr. Smeltzer, we're back.
 5 A. Yes, sir.
 6 Q. I want to ask you something -- you just gave some testimony
 7 about you were concerned about the staff salaries versus
 8 the management salaries at the agency, right?
 9 A. Yes.
 10 Q. And you know there was a June 14, 2007, in addition to the
 11 fact that later in the meeting Mr. Moran was fired, right?
 12 A. Yes.
 13 Q. But the meeting for a long time was about the Sullivan
 14 Cotter study, right?
 15 A. I could believe that that's true. I don't recall exactly
 16 that it was.
 17 Q. Do you remember, sir, at June 14, 2007, that the Sullivan
 18 Cotter salary study was presented to the board for the
 19 first time?
 20 A. To my memory, it was the month before, or maybe April. It
 21 was not the same meeting where we terminated Mr. Moran.
 22 Q. All right. Then let's skip the date. Let's go to the
 23 salary study. This salary study, it compared -- do you
 24 remember how many salary studies were part of that -- were
 25 referred to in the salary study for the comparison of the

1 salaries?
 2 A. I don't recall exactly. There were a few, I guess.
 3 Q. Maybe as -- could it be as many -- they had sampled as many
 4 as 14 salary studies to find out what the average pay rates
 5 were for staff and management?
 6 A. I could believe it could be, yes. There was a panel of
 7 studies they used.
 8 Q. And you believed that the staff salaries were what -- how
 9 low were they?
 10 A. I think I said that 88% of what would be a market value
 11 for -- by comparison.
 12 Q. 88% of the average?
 13 A. Well, they -- what I remember about the presentation on
 14 that study, they had what -- it's the same as when you're a
 15 township assessor, you got different ways to come up with a
 16 number. You got replacement cost, market value, you know,
 17 income production, things like that. They had different
 18 ways of comparing salaries. And one of them was to look at
 19 what is the market level for that kind of job duties. So
 20 the -- what I recall is that for staff job duties, compared
 21 with the broad market, at MBCMH, they were getting 88%.
 22 Q. Of what?
 23 A. Of what you would call typical market value.
 24 Q. Average?
 25 A. Yeah. Maybe it's an average, I guess, yes.

1 Q. And then what was your -- what did you tell the jury that
 2 you thought the salary study showed the management salary
 3 level?
 4 A. I think the management class overall, and that was taking
 5 seven or nine, maybe, management positions was 125% of
 6 average.
 7 Q. 125% of the average. Correct?
 8 A. Yes.
 9 Q. And this upset you, you said, right?
 10 A. Well, it confirmed all the rumors I'd heard that they were
 11 paying -- management was very well paid at CMH.
 12 Q. And again, I'd ask you, isn't it true when you first sat
 13 down on that board, based on rumors you had heard -- well,
 14 who did you hear the rumors from?
 15 A. Well, I'd heard them from several of the county
 16 commissioners. Mike Jones. He represents the City of
 17 Frankfort. Mary Pitcher. She was from a district up in
 18 the northwest part of the county. I'd heard them from
 19 people in the community. You know, just generalized
 20 grumbling about they're very well paid, they're overpaid,
 21 compared to what their duties are.
 22 Q. All right. And then when you got on there, your first
 23 official board meeting was April 17?
 24 A. Yes.
 25 Q. And then the next --

1 A. Meeting was in May.
 2 Q. May 10. So you'd come to two meetings, and already
 3 Mr. Barnes asks you whether you're going to support this
 4 motion to fire Mr. Moran, right?
 5 A. Yes.
 6 Q. All right.
 7 MR. PARSONS: That's all the questions I have.
 8 Thank you.
 9 **RE-CROSS-EXAMINATION**
 10 BY MR. COOKE:
 11 Q. Mr. Smeltzer, when you talked to the jury about looking at
 12 salaries, and saying this 88%, or 125%, disparity, that was
 13 before you got on the board, wasn't it?
 14 A. Well, when I actually saw -- I saw a document that Sullivan
 15 Cotter had put together about 3/8ths of an inch thick. It
 16 was passed out at a board meeting. Someone from Sullivan
 17 Cotter was there to explain this document. And I believe
 18 they also had someone from their headquarters in Chicago on
 19 the speakerphone so we could talk to them about this
 20 document. And that's the document now -- when it was -- I
 21 believe it was probably April. Because I was sitting at
 22 the board -- at the table. And as I recall, I was a
 23 full-fledged member then.
 24 Q. And that's when you saw the disparity that you're talking
 25 about?

1 A. Yes.

2 Q. Now, the Sullivan Cotter study, was that a national study

3 done of CMH agencies throughout the nation?

4 A. Well, it was not only CMH. It included government

5 agencies, and private industry.

6 Q. And private industry?

7 A. Yes.

8 Q. Throughout the nation?

9 A. Throughout the nation.

10 Q. And did you have a concern as a board member that

11 Manistee/Benzie salary structure shouldn't be on the same

12 competitive level as average salaries in the private

13 industry throughout the nation?

14 A. Yeah. I thought that's true. If people want to go after

15 the big salary, then move to the parts of the country where

16 they pay these kind of salaries.

17 Q. Were you more concerned with the way the salary structure

18 looked within Manistee/Benzie County?

19 A. I would have liked to have seen a study for these kind of

20 management jobs that reflected the area where we live.

21 Q. Comparable areas?

22 A. Comparable areas.

23 Q. Throughout Michigan?

24 A. Yes, throughout Michigan.

25 MR. COOKE: Thank you. No further questions.

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1 MR. PARSONS: One follow-up, if I could, your

2 Honor.

REXCROSS-EXAMINATION

4 BY MR. PARSONS:

5 Q. The problem with that, isn't it, that all counties in

6 Michigan operate with the same set of rules under state

7 mental health law, right?

8 A. If it's a state law, it applies to all the counties.

9 Q. You can't say the citizens of Manistee and Benzie County

10 were only going to give them a local quality of service,

11 right?

12 A. Well, I think you could. Why should we be paying somebody

13 for a management job here the same as they might get in

14 Grand Rapids or Detroit?

15 Q. Are you aware under the Mental Health Code, there are a lot

16 of regulations how you have to provide services. You have

17 to have a psychiatrist, you have to have a counselor, you

18 have to document. You have to provide Medicaid

19 substantiation. You have to provide federal substan --

20 A. Yes.

21 Q. In other words, isn't it true all Community Mental Health

22 agencies have to satisfy the same state regulations?

23 A. Well, it doesn't mean they need to all be paid the same.

24 Q. No. But --

25 A. And they aren't paid the same.

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1 THE COURT: Okay. Correct. But doesn't --

2 Manistee/Benzie Community Mental Health, when it hires

3 mental health professionals, it has to compete in a

4 marketplace, does it not -- let's say the position requires

5 a master's level degree. You can't -- Manistee/Benzie

6 Community Mental Health can't go out and hire anyone off the

7 street. They have to hire someone who has a master's level

8 degree; is that fair?

9 THE WITNESS: That's fair, yes.

10 THE COURT: Okay. So on some level, aren't you

11 competing in a marketplace that's larger than just Manistee

12 and Benzie Counties to hire people with that credential?

13 THE WITNESS: You're -- you are competing -- I

14 know it's hard to find employees sometimes that match what

15 you need. So, yes, sometimes you have to compete over a

16 wide area. Sometimes you don't.

17 MR. PARSONS: Thank you.

18 MR. COOKE: Thank you, your Honor.

19 BY MR. COOKE:

20 Q. Mr. Smeltzer, a Mental Health Code doesn't require you to

21 pay a certain salary; is that true?

22 A. No.

23 Q. And in fact, you were able to find a chief executive

24 officer that had the requisite salary credentialing that is

25 paid, in your mind, a more reasonable rate; is that true?

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1 A. Yes.

2 MR. COOKE: No further questions.

3 MR. PARSONS: All set.

4 THE COURT: Thank you, you may step down.

5 (Witness steps down at 11:30 a.m.)

6 THE COURT: How long is this going to take?

7 MR. PARSONS: Okay. If we could have five minutes

8 to talk about these -- if the --

9 MR. PARSONS: Mr. Cooke has marked the objections

10 that he needs rulings on, we could present that to the court

11 in five minutes.

12 THE COURT: Okay. I've give the jury a recess of

13 about five minutes.

14 (Jury exits courtroom at 11:30 a.m.)

15 THE COURT: Is this going to be video or read?

16 MR. PARSONS: Video. All right. Page 24 the

17 question is.

18 THE COURT: Where is it?

19 MR. PARSONS: We filed the original of his

20 transcript with the court this morning.

21 THE COURT: Okay.

22 THE CLERK: It's in the file.

23 MR. PARSONS: This is Ms. Babcock.

24 THE COURT: Okay. What page?

25 MR. PARSONS: Page 24, your Honor, the first

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1 objection is -- begins at line 12, runs through the
 2 discussion of mid page of 25.
 3 THE COURT: I'll overrule that, you want to
 4 publish that he had some kind of special or -- you're trying
 5 to -- it's relevant to his motive. Okay.
 6 MR. PARSONS: Next --
 7 MR. COOKE: Page 40, and this is a general
 8 objection I have about the way the presentation is made
 9 here. And that is, your Honor, Mr. Parsons takes statements
 10 made at the back end of the meeting, or towards the latter
 11 part of the meeting, plays those first, then he rolls back
 12 to the earlier part of the meeting and plays those second,
 13 and they add together in a sequential fashion that is
 14 different than the meeting as far as the way the meeting
 15 occurred.
 16 THE COURT: Well, you can -- but you know, that's
 17 just like a -- I suppose that's just like a deposition. You
 18 can have -- you can run the whole thing from front -- from
 19 beginning to end if you like in response.
 20 MR. COOKE: All right.
 21 MR. PARSONS: Could we delete, then, on page 40
 22 line 3 through 16. Is it possible to redact that?
 23 MR. COOKE: Could we just X through. Thank you.
 24 MR. PARSONS: The next one is at page 41.
 25 MR. COOKE: I'm just maintaining that same

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1 objection.
 2 THE COURT: Okay. Let's just take out that part,
 3 then, can we do that? Lines 7 through --
 4 MR. COOKE: 14, Your Honor.
 5 THE COURT: All right.
 6 MR. COOKE: 13, I guess.
 7 THE COURT: Through 13. Okay.
 8 MR. PARSONS: The next one is page 57.
 9 MR. COOKE: There's just some dialogue there
 10 between Mr. Parsons and I. Mr. Parsons is going to object
 11 to these board minutes coming in. That's what that was all
 12 about.
 13 MR. PARSONS: Can we delete line 2 through line
 14 12?
 15 MR. COOKE: Yeah.
 16 MR. PARSONS: All right.
 17 THE COURT: Okay. That's easy.
 18 MR. PARSONS: The next one is page 58.
 19 MR. COOKE: That's really your objection to the --
 20 and there's some dialogue there to the minutes.
 21 MR. PARSONS: All right. Delete from page 58,
 22 line 6, through page 59, line 8.
 23 MR. COOKE: Great.
 24 THE COURT: Okay.
 25 MR. PARSONS: The next is page 79. I object to

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1 counsel testifying -- and he pretty quickly stops, or
 2 whatever. I mean --
 3 MR. COOKE: Do you want to just strike that
 4 dialogue there?
 5 MR. PARSONS: I am moving to strike at line 20 on
 6 page 80. So your Honor, if you could quickly review -- or
 7 review page 79, line --
 8 THE COURT: Why don't you just take out lines 18
 9 through 22.
 10 MR. PARSONS: All right.
 11 THE COURT: And now, what else?
 12 MR. PARSONS: I'm looking at the next page where
 13 Mr. Cooke --
 14 THE COURT: That's on 79. I'm sorry.
 15 MR. PARSONS: It's a continuation on page 80, from
 16 line 2 -- well, let me see. All right. I'm sorry. Page 80
 17 really line 8 where Mr. Cooke is saying because Mr. Parsons
 18 didn't point that out to us, did he, we didn't see anything
 19 that he showed on the excerpt. It just counsel arguing,
 20 from my perspective.
 21 MR. COOKE: No. I'm asking the witness to testify
 22 that the excerpts that are being shown by Mr. Parsons do not
 23 include another excerpt in the meeting that I find is
 24 important.
 25 MR. PARSONS: It's the form of the question.

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1 MR. COOKE: So I want to be able to establish to
 2 the jury that the selected excerpts are being selected by
 3 plaintiff's counsel.
 4 MR. PARSONS: But at line 14, your Honor, he's
 5 saying, and if I were to tell you after reading through
 6 this, I don't find that in here anywhere, could you be
 7 mistaken as to having heard a motion -- a comment like that
 8 from Mr. Kelley. And the witness winds up saying, am I
 9 supposed to still answer, but all this question is is an
 10 argument.
 11 MR. COOKE: I will agree to strike part of that,
 12 line 14. I will strike, and if I were to tell you after
 13 reading through this, I don't find it in here anywhere. And
 14 just start with -- I don't know if they can pick up here.
 15 Could you be mistaken as having heard a comment like that
 16 from Mr. Kelley?
 17 THE COURT: Well, then.
 18 MR. COOKE: I think it's --
 19 THE COURT: Okay.
 20 MR. COOKE: I don't think I'm testifying. It's
 21 for the jury to --
 22 THE COURT: You can -- let's start it after the --
 23 anywhere. Start it at "could you be mistaken?"
 24 MR. PARSONS: All right.
 25 THE COURT: And then get that question.

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1 MR. PARSONS: Could --
 2 THE COURT: Could you be mistaken as having heard
 3 a comment like that from Mr. Kelley. Then strike lines 17
 4 and 19, and then go to 22.
 5 MR. PARSONS: Okay. So we're striking line 8
 6 through the middle of line 15. We're picking up the
 7 question, "could you be mistaken as to having heard a
 8 comment like that from Mr. Kelley?" And then Mr. Cooke
 9 again at line 22, "could you be mistaken, correct?"
 10 THE COURT: Okay. Now just let me look at that.
 11 Okay.
 12 What else?
 13 MR. PARSONS: All right. So that's it, your
 14 Honor.
 15 THE COURT: All right.
 16 MR. PARSONS: All right. Now I have one last
 17 question for housekeeping. We have Mr. Kielhorn, believe it
 18 or not, the Muhammad is coming to the mountain, at 1:00 this
 19 afternoon. That's an hour and 20 minutes. This deposition
 20 is an hour and 20 minutes, I think. We could start it now,
 21 get in 15 minutes, if Mr. Cooke doesn't object, we could
 22 interrupt it, put Mr. Kielhorn on and then send him on his
 23 way. Or would you prefer to take an early lunch?
 24 THE COURT: I'll run it for 45 minutes -- this
 25 deposition. Then we'll break at about 12:30, or if you

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1 think there's a good break point in the deposition as we
 2 approach 12:30, say so. We'll send the jury to lunch. And
 3 you can have your next witness. And then we'll continue
 4 with the deposition after him.
 5 MR. PARSONS: Super.
 6 THE COURT: Is that --
 7 MR. COOKE: That's fine.
 8 THE COURT: -- acceptable?
 9 MR. COOKE: I would ask that we now that we've
 10 marked this up, this transcript, because we don't -- we're
 11 going to play this video, and not, I presume, the court
 12 reporter won't take a transcription of this. If we could
 13 have --
 14 THE COURT: That's correct. But I think we've
 15 stated -- I mean, you can mark it if you like, this is the
 16 original for the record. But I also think that it's been
 17 stated on the record here all of the lines that are coming
 18 out, has it not?
 19 MR. PARSONS: Yes.
 20 MR. COOKE: I did object to a few of the issues in
 21 the transcript, so to preserve that I think I need actually
 22 probably the transcript entered at least as a separate
 23 record for what we've done.
 24 MR. PARSONS: I would have no objection to that,
 25 your Honor.

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1 MR. COOKE: But not substantive evidence,
 2 certainly.
 3 MR. PARSONS: Well, it would be entered as a side
 4 record, it wouldn't be entered as something to go to the
 5 jury.
 6 MR. COOKE: That's what I'm saying.
 7 THE COURT: All right.
 8 MR. PARSONS: All right. And we'll -- could -- a
 9 drive-in movie.
 10 THE COURT: You can, if you like, Mr. Cooke, as
 11 part of the deposition, or at close of the deposition, you
 12 can have this tape run from beginning to end if you like.
 13 MR. COOKE: Well, thank you very much, your Honor,
 14 for an offer. It's a five-hour meeting, so I don't intend
 15 on doing that. And I think because of the way it was
 16 recorded, it's not digitally recorded where you can jump to
 17 certain areas. But my thought was if I could introduce the
 18 entire transcript, I do have a court reporter subpoenaed if
 19 we need to lay a foundation that this was the transcript
 20 taken from the tape. And then -- I don't intend to have the
 21 jury read the whole thing, but I would refer the jury to
 22 certain parts of that transcript rather than play through a
 23 five-hour meeting.
 24 THE COURT: Okay. Did you want to do that
 25 right -- as part of the -- right after the deposition as

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1 putting those in context, or a fuller context? Or are you
 2 going to do that in your case?
 3 MR. COOKE: I think I can wait until my case to do
 4 that.
 5 THE COURT: All right. Okay. Then we're ready
 6 for the Jury.
 7 (Jury enters courtroom at 11:44 a.m.)
 8 THE COURT: All right. Members of the Jury,
 9 plaintiff's next witness is -- you're going to hear that
 10 witness and see through a video deposition. And you can
 11 consider this was testimony under oath, both attorneys were
 12 there, there was an opportunity to examine and cross-examine
 13 the witness. So you can consider this just as if the
 14 witness had been here in court and testified. All right.
 15 MR. PARSONS: Your Honor, then, during the course
 16 of this deposition, we admit exhibits 40-A, 40-B, 40-C,
 17 40-D, 40-E, and 40-F, which are the recording, and the
 18 written part of the transcript.
 19 THE COURT: All right.
 20 MR. PARSONS: And we'd move their admission.
 21 MR. COOKE: Well, I had no objection, I think, to
 22 the recordings, the actually recordings themselves. But I
 23 think the transcript is only partial. So I would object to
 24 having just a partial transcript of the proceedings.
 25 MR. PARSONS: That's made clear in the

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1 introduction of it. We dropped off the first
 2 hour-and-a-half where the salary study was presented.
 3 THE COURT: You can put in the whole transcript if
 4 you like.
 5 MR. COOKE: Thank you, your Honor.
 6 THE COURT: All right. So they're received.
 7 MR. PARSONS: Thank you.
 8 THE COURT: We're ready. House lights.
 9 MR. PARSONS: Popcorn.
 10 THE COURT: Mr. Cooke, your client can move his
 11 chair around.
 12 (The video deposition of **KAREN BABCOCK** is played
 13 to the jury 11:47 a.m. to 12:22 p.m.)
 14 MR. GRANT: Tracy, that's out.
 15 THE COURT: I'm going to send the jury to lunch at
 16 this point. Let's turn on the lights.
 17 THE COURT: Members of the Jury, the Manistee
 18 County jury bus is going to be pulling up here in just a few
 19 minutes. When you see it, make your way down, get aboard
 20 the bus, it's going to take you to lunch on Manistee County.
 21 So we'll see you after lunch.
 22 (Jury exits courtroom at 12:23 p.m.)
 23 THE COURT: Let's wake your operator up,
 24 Mr. Parsons. If she's not going to do the job that we said
 25 on the machines, I'm going to remove the machines.

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1 MR. PARSONS: Okay.
 2 THE COURT: \$50 fine, \$50 court costs.
 3 MR. PARSONS: Okay.
 4 THE COURT: We'll resume after lunch.
 5 (Court in recess at 12:24 p.m.)
 6 (Court reconvenes at 2:09 p.m.)
 7 THE COURT: All right. We're going to take a live
 8 witness now; is that right?
 9 MR. PARSONS: Yes. One housekeeping matter. I
 10 told Mr. Cooke -- he had objected to the yellowed
 11 highlighted copy of Exhibit 47 going to the jury. So we've
 12 gotten a clean copy of Exhibit 47 to go to the witnesses.
 13 THE COURT: Not only 47. Any exhibits.
 14 MR. PARSONS: We will currently called
 15 Mr. Kielhorn live.
 16 THE COURT: All right. We're ready for the Jury,
 17 then.
 18 (Jury enters courtroom at 2:11 p.m.)
 19 THE COURT: All right. Members of the Jury, we're
 20 going to interrupt the video deposition of Ms. Babcock. And
 21 Mr. Parsons, at this time, is going to call Mr. Kielhorn
 22 live. So that we can get his testimony in, and he can get
 23 back to Lansing, or the Lansing area.
 24 Mr. Parsons.
 25 MR. PARSONS: Thank you. Mr. Kielhorn.

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1 THE CLERK: Please raise your right hand. Do you
 2 solemnly swear or affirm that the testimony you give in this
 3 cause will be the truth, the whole truth, and nothing but
 4 the truth, so help you God.
 5 THE WITNESS: I do.
 6 MARK KIELHORN,
 7 called as a witness at 2:12 p.m., was examined and
 8 testified as follows:
 9 **DIRECT EXAMINATION**
 10 BY MR. PARSONS:
 11 Q. Good afternoon, Mr. Kielhorn.
 12 A. **Good afternoon.**
 13 Q. Would you begin by telling the jury your name and address,
 14 please?
 15 A. **Sure. My name is Mark Kielhorn. And I live in 836 Sunset**
 16 **Lane, East Lansing. And I work for the Department of**
 17 **Community Mental Health.**
 18 Q. How long have you been with the Department of Community
 19 Mental Health?
 20 A. **Since 1973.**
 21 Q. What is your position at this time?
 22 A. **I direct the division that provides the funding for**
 23 **Community Mental Health from the state and federal**
 24 **government and manage the contracts, the vehicle for --**
 25 THE COURT: You couldn't have been with the

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1 Department of Community Health since 1973, because it didn't
 2 exist back then; is that right?
 3 THE WITNESS: That is correct, your Honor. It was
 4 the Department of Mental Health at that point. We've
 5 subsequently change our name through consolidation.
 6 BY MR. PARSONS:
 7 Q. But you've been -- and when you say managing the contracts,
 8 do you manage the contracts with Manistee/Benzie CMH?
 9 A. **Correct.**
 10 Q. And what is your job title? I may have missed it. What do
 11 you call yourself?
 12 A. **I'm the program director for the division of program**
 13 **development, consultation, and contracts.**
 14 Q. And as a part -- and were you that also in 2007?
 15 A. **Yes.**
 16 Q. And what are your job duties generally? Can you tell the
 17 jury?
 18 A. **It actually falls in four parts. And I have four sections**
 19 **within my division that deal with the following: We apply**
 20 **for and receive federal grants. We have a group of**
 21 **professionals who help to implement different and new**
 22 **different types of mental health services. And we have a**
 23 **customer services division to receive complaints. And the**
 24 **largest portion of what we do has to do with funding**
 25 **Community Mental Health and managing the contracts.**

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1 Q. In just the most general introductory way, do you know the
 2 term "local match?"
 3 A. I do.
 4 Q. And does administration of issues concerning local match
 5 come under your jurisdiction at your division?
 6 A. Yes.
 7 Q. Has the Department of Community Health, that's who -- what
 8 it's currently called -- Department of Community Health --
 9 has it ever taken over the providing of services from a
 10 county CMH?
 11 A. Not yet.
 12 Q. Has it ever threatened to do so?
 13 A. Yes.
 14 Q. Could you tell the jury, do you contract or assign
 15 contracts to the agencies like Manistee/Benzie CMH? How
 16 does that work?
 17 A. It falls back onto the Mental Health Code. And in 1974-75,
 18 a provision was made that enabled local county governments
 19 to assume direct responsibility for the citizens who needed
 20 mental health services in the area. When they
 21 demonstrated -- when the local people demonstrated a
 22 willingness and ability to assume that responsibility, the
 23 state backed away, and under the terms of the code, we
 24 transferred direct responsibility for the provision of
 25 local services to Community Mental Health Boards.

1 Q. Is the ability to provide those services locally, and
 2 comply with state mental health laws, a predicate to local
 3 control?
 4 A. Yes, it is.
 5 Q. The state, in other words, says if you do it correctly, you
 6 can do it; if you don't do it, we retain regulatory
 7 oversight?
 8 A. Not only retain, but we would put in motion a provision
 9 that's also in the law to take back the provision of those
 10 services on behalf of the citizens in that county.
 11 THE COURT: Well, would you charge the county,
 12 then, if you were going to provide the services?
 13 THE WITNESS: Yes. It --
 14 THE COURT: Because otherwise, all the counties
 15 would give it all back, right, and not take it?
 16 THE WITNESS: We would charge them. But in fact,
 17 we would probably end up charging them more than what
 18 they're currently paying, because it will be an added cost
 19 for the state to get involved in that process.
 20 BY MR. PARSONS:
 21 Q. All right. I want to talk to you about the matching funds.
 22 What percent is the local match supposed to be?
 23 A. It's a formula that says, after you deduct all first- and
 24 third-party revenue, what somebody would pay to receive
 25 mental health services as like a co-pay, after you receive

1 any federal reimbursements such as Medicaid, what remains
 2 will end up being paid for on a 90% state, 10% local basis.
 3 And that's the 90/10 formula.
 4 Q. Whose got to come up with the 10 or the 90 first?
 5 A. The local county has to come up with the first 10% to
 6 remain in play with that funding formula.
 7 Q. At least as far as the law is concerned, if the county does
 8 not first come up with its 10%, what could happen with the
 9 state money?
 10 A. The state money would not have been matched, and would no
 11 longer be available.
 12 Q. Is it fair to say that if the state doesn't first come up
 13 with its 10%, the county -- or the -- let me strike that.
 14 Excuse me. Is it fair to say that if the local county
 15 agency does not first come up with a 10%, then the state
 16 does not kick in its 90%?
 17 A. That is correct.
 18 Q. So is it fair to say, or not, that there's a lot more
 19 riding than just the 10% from the counties?
 20 A. It can make a difference of whether the CMH stays in
 21 business or not.
 22 Q. Is the 10% match an unmandated, or a mandated requirement?
 23 A. It's mandated in law.
 24 Q. What does that mean?
 25 A. The law requires that the counties assume a 10% obligation

1 on every dollar that is spent on public mental health
 2 services.
 3 Q. Have you had occasions before where counties have said, I'm
 4 sorry, we got better places to spend, or we've got other
 5 places to spend?
 6 THE COURT: I thought you said the 90/10 only
 7 applies after all first-party and all third-party payments.
 8 THE WITNESS: That's correct.
 9 THE COURT: So it isn't 10% of all public mental
 10 health services.
 11 THE WITNESS: It is not of all mental health
 12 services. It is for approximately 3% -- 2.5, 3% -- of all
 13 people that are seen by Community Mental Health. May I
 14 explain what I mean by that?
 15 BY MR. PARSONS:
 16 Q. Yeah. Because I'm not sure I'm following you.
 17 A. If someone comes in who is a Medicaid beneficiary, there
 18 are no local dollars involved in that arrangement, and so
 19 that individual -- there would be no 10% requirement.
 20 However, if that person loses Medicaid and wants to
 21 continue services, if that person was never Medicaid
 22 eligible, it may be that they have to pay again based on
 23 administrative rules and law three or four dollars for that
 24 outpatient appointment that cost \$50 or \$60. And that
 25 remainder would have to be matched by the county in order

1 for the state to provide dollars to match that. And make
 2 them available for service.
 3 Q. All right. In this case, in the past, I've referred to the
 4 local match as 10%. Is that in fact the correct
 5 percentage?
 6 A. That is the correct percentage.
 7 Q. But apparently the 10% and the 90% come after some other
 8 deductions?
 9 A. There is the formula.
 10 Q. Okay.
 11 A. And the formula basically says for a given service,
 12 whatever that cost may be, you first attribute deducts for
 13 first-party copays, third-party insurances, and what
 14 remains has to be provided by state and local government.
 15 Q. Okay. So 10% -- I would ask you to assume, Mr. Kielhorn,
 16 for purposes of this, that there was a \$128,000 deficit in
 17 the local match in Manistee/Benzie CMH at least in the year
 18 2006. \$128,000.
 19 A. Okay.
 20 Q. \$128,000 deficit. Are we able to -- do you -- is there a
 21 simple way for you to tell how much money in state funding
 22 that is risking?
 23 A. Approximately ten times that amount -- I'm sorry, nine
 24 times that amount.
 25 Q. Nine times that amount.

1 So is it fair, or not, to say if the county
 2 doesn't pay the \$128,000, then the state doesn't pay nine
 3 times that?
 4 A. Correct.
 5 Q. That's been in place since 1974, that formula, correct?
 6 A. Correct.
 7 Q. Would it be unusual or would it be routine for a county CMH
 8 agency not to meet its local match obligation?
 9 A. It would be unusual.
 10 Q. Would it be legal or would it be legal -- legal or illegal?
 11 I'm sorry.
 12 A. I can't answer that as being legal or illegal. What
 13 happens is when the -- should the county reduce the amount
 14 that it provides, the state dollars go down
 15 proportionately. And at some point, the CMH is not in a
 16 financial situation to keep going.
 17 Q. Were you called in to a board meeting with Manistee/Benzie
 18 CMH to discuss the local match issue in 2007?
 19 A. Yes.
 20 Q. And during that meeting did you become aware that
 21 Manistee/Benzie CMH was not -- or -- it's not the CMH
 22 agency that makes the local match, right?
 23 A. Correct.
 24 Q. All right. Did you become aware during that meeting that
 25 Manistee County or Benzie County, one or the other, or

1 both, are not making the local match?
 2 A. Yes.
 3 Q. How did you become aware of that?
 4 A. That was the discussion at the meeting.
 5 Q. And I'm going to show you what's been marked Exhibit 28 in
 6 this case. That's an April 4 memo written by yourself?
 7 A. Yes.
 8 Q. Do you recall that memo?
 9 A. Just a moment, please. Yes.
 10 Q. Did you write that and send that out in April of 2007 to
 11 CMH as -- CMH service providers?
 12 A. Yes.
 13 Q. And were you explaining in that -- what were you explaining
 14 in that memo briefly?
 15 A. This had to do with -- this had to do with how they finance
 16 their operations. There are different conditions and
 17 different items that the complicated various funding
 18 sources impose upon how a CMH operates. You can, for
 19 instance, pay for one service with one type of funding
 20 source, and maybe not pay for it with another. In this
 21 case, it had to do with using what was called an ISF. ISF
 22 is basically a risk fund. It's a rainy day fund when
 23 things go bad. And it would be something that needs to be
 24 preserved for those times when obligations would otherwise
 25 not be met.

1 Q. Such as if there were a sudden change in state funding, or
 2 private pay revenue, that kind of thing?
 3 A. It could be those. But more likely it has to do with a
 4 greater use of inpatient care. And between \$700 and \$900 a
 5 day for an inpatient day in a hospital, several individuals
 6 there for several months can eat up dollars real fast.
 7 Q. And you call that an internal service fund?
 8 A. Correct.
 9 Q. And what did you tell the CMH providers about the using of
 10 that rainy day fund to satisfy the local match?
 11 A. We said that it had to be -- the fund had to be matched to
 12 begin with, and it could not be used for anything other
 13 than the intended purpose of ISF.
 14 Q. So you couldn't use it for a local match?
 15 A. No, you could not.
 16 Q. And what if the local CMH had a bunch of extra Medicaid or
 17 federal funds, and they put it in a bank account that
 18 generated interest, could they use those funds to satisfy
 19 the local match?
 20 A. No.
 21 Q. Why can't you use interest from those funds?
 22 A. Each funding source controls how its money can be used. In
 23 terms of the federal government, interest earned on its
 24 money, either will come back to the feds and the state, or
 25 it will be used to further the delivery of services to the

1 individuals that are covered by that funding source, like
 2 Medicaid.
 3 Q. So is it true, or not, that the local tax matching -- the
 4 local match has to really originate locally, and it cannot
 5 be the product of interest on federal or state funds?
 6 A. That is correct.
 7 Q. Did you become aware of an April, 2007, letter, in which
 8 Mr. Moran advised his board he was going to have to report
 9 them for being out of compliance with the local match?
 10 A. Yes.
 11 Q. Have you taken action -- let me -- did you take action
 12 prior to June 14, 2007, when Mr. Moran was terminated?
 13 A. No.
 14 Q. Did your knowledge of that letter cause your division to do
 15 anything different regarding Manistee/Benzie CMH?
 16 A. Only to report to our accounting office to start tracking
 17 the amount of appropriation that was being made available
 18 for mental health services.
 19 Q. Has your division cut off or reduced funding yet to
 20 Manistee?
 21 A. Not yet. I need to clarify that.
 22 Q. Yes.
 23 A. We have reduced funding, but not for that reason. We
 24 are -- the state, as you know, like everybody, is going
 25 through some really rough budget times, and we are imposing

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1 cuts statewide.
 2 Q. But you said at this time, as yet, you have not penalized
 3 MBCMH in any way because of the local match issue yet,
 4 right?
 5 A. No.
 6 Q. I'd like to just briefly ask you, during your time in your
 7 division, has it been part of your routine to receive
 8 feedback on how Manistee/Benzie CMH has operated itself as
 9 an agency?
 10 A. Yes.
 11 Q. And what has been your understanding about how this agency
 12 has operated in the past?
 13 A. It is typical. And meeting all minimum requirements that
 14 we impose in terms of program, as well as finance. In some
 15 ways, we hold them out to be exceptional, particularly when
 16 it comes to the delivery of services to persons with
 17 developmental disabilities. Overall, it would be an agency
 18 in good standing.
 19 Q. Prior to the time in April of 2007, when Mr. Moran wrote
 20 this letter about the local match, had MBCMH previously had
 21 to keep an extra eye -- had your division previously had to
 22 keep an extra eye on MBCMH?
 23 A. No.
 24 Q. Did Mr. Moran's letter of April, 2007 somewhat change the
 25 relationship with the state division and the local MBCMH?

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1 A. Yes.
 2 Q. At this time, is the state division monitoring the MBCMH?
 3 A. Yes.
 4 MR. PARSONS: Thank you. That's all the questions
 5 I have, sir.
 6 THE COURT: Mr. Cooke.
 7 CROSS-EXAMINATION
 8 BY MR. COOKE:
 9 Q. Good afternoon, Mr. Kielhorn.
 10 A. Good afternoon.
 11 Q. How are you? I'm Chris Cooke. I'm defending
 12 Manistee/Benzie CMH and Mr. Risser, and we met before at
 13 deposition, correct?
 14 A. Correct.
 15 Q. It is my understanding that you are really kind of the
 16 administrator who is at the top of the pyramid as far as
 17 looking at the way local CMHs are contributing in the local
 18 match, and thereby receiving funds from the state for their
 19 budgets; is that a fair statement?
 20 A. That would be fair.
 21 Q. And as I -- and you've been dealing with local CMHs for
 22 many, many years; is that true?
 23 A. True.
 24 Q. All right. And so you know, other than the state funding,
 25 you know that there's another pot of money through

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1 Medicaid, correct?
 2 A. Correct.
 3 Q. And then there can be a local funding source, for instance,
 4 you said first-party and third-party benefits were --
 5 there's insurance money?
 6 A. Correct.
 7 Q. All right. So can you see this board over here? Maybe
 8 I'll just move it.
 9 Now, as far as the Medicaid money, sir, does your
 10 department have any responsibility for the Medicaid?
 11 A. We do.
 12 Q. Okay. What's your responsibility for the Medicaid money?
 13 A. We have a contractual relationship with the federal
 14 government to make those funds available for local
 15 services.
 16 Q. And do those federal moneys, those Medicaid moneys, do they
 17 go directly to the CMH, or do they go through a PIHP kind
 18 of organization?
 19 A. They go through a PIHP, a prepaid inpatient health program.
 20 Q. And a PIHP is really a -- as I understand it, an umbrella
 21 group of mental health organizations that have some
 22 oversight responsibility with respect to that pot of
 23 federal dollars; is that true?
 24 A. The simple answer is yes. But it would be a closer analogy
 25 to think of them as a managed care organization like an

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1 insurance company.
 2 Q. Okay. All right. So here it is, really your -- so your --
 3 Department of Community Mental Health -- you're really kind
 4 of at the top of the pyramid of the distribution of money
 5 to the local CMHs; is that true?
 6 A. Correct.
 7 Q. And so this is you right here, in your office, really,
 8 right?
 9 A. That's much too important for me.
 10 Q. Anyway, you're the spokesman today for your part of that
 11 office?
 12 A. Yes, sir.
 13 Q. And the State of Michigan has what's called appropriations
 14 from the state legislature for mental health; is that true?
 15 A. Correct.
 16 Q. And is that what's called general funding?
 17 A. It is.
 18 Q. All right. So -- and that is something that the
 19 legislature approves every year as part of their budget
 20 process; is that right?
 21 A. Correct.
 22 Q. All right. This is Michigan legislature. And all those
 23 dollars flow into your department for distribution
 24 downline; is that true?
 25 A. Correct.

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1 Q. And then the federal government has the Medicaid program;
 2 is that true?
 3 A. Correct.
 4 Q. And the federal government also puts money, at least to say
 5 it simply, flows money into your department for
 6 distribution down the line?
 7 A. Correct.
 8 Q. And then down at the local level -- and we'll put
 9 Manistee/Benzie down here -- at the local level, there can
 10 be dollars here that come from insurance money, what have
 11 you, is that right, fair statement, that come into the
 12 organization?
 13 A. Yes. Although very little.
 14 Q. Very little. So the bag is a little bit --
 15 A. Right.
 16 Q. Insurance. And in the grand scheme of things when you're
 17 dealing with mental health services, the greatest majority
 18 of the money that gets spend at the local level is the
 19 Medicaid money?
 20 A. Correct.
 21 Q. In fact, I think you mentioned 2.5 or 3% of the folks
 22 really are serviced through the state funds; is that right?
 23 A. No.
 24 Q. What's the percentage there?
 25 A. Give or take 15.

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1 Q. 50%?
 2 A. 15.
 3 Q. 15% is serviced by state?
 4 A. Working poor.
 5 Q. So that would be -- ultimately this general funding is
 6 going to service about 15% of the community?
 7 Q. And subtracting out whatever private insurance -- let's
 8 just take the private insurance out of picture to make it
 9 easy. 85% of the noninsured folks are going to be handled
 10 through Medicaid?
 11 A. Yes.
 12 Q. And when we talk about the local match responsibility that
 13 you oversee, it's this general funding piece; is that
 14 right?
 15 A. Yes.
 16 Q. Because for the federal Medicaid, that money flows through
 17 this CEI organization, or the PIHP?
 18 A. That's correct.
 19 Q. And when I say CEI, I'm specifically talking about Clinton,
 20 Ingham, and Eaton; are you familiar with that?
 21 A. Clinton/Eaton/Ingham, that's correct.
 22 Q. Clinton/Eaton/Ingham. That's called CEI, or that's the
 23 moniker for it. And there's a fellow who runs that
 24 organization by the name of Mr. Sheehan; is that right?
 25 A. That's correct.

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1 Q. Bob Sheehan?
 2 A. Bob Sheehan.
 3 Q. Bob Sheehan. And Manistee/Benzie is affiliated with this
 4 group; is that true?
 5 A. It is a subcontractor of CEI.
 6 Q. Subcontractor. There's other mental health agencies like
 7 Manistee/Benzie that are subcontractors of this group?
 8 A. Correct.
 9 Q. And the federal money comes from your department into this
 10 PIHP organization; is that right?
 11 A. Correct.
 12 Q. And what is that? Prepaid --
 13 A. Prepaid inpatient health program.
 14 THE COURT: And clarify something just for me.
 15 MR. COOKE: Yes.
 16 THE COURT: Does this -- the Medicaid that goes
 17 into this prepaid inpatient health program, is that limited
 18 to inpatient health programs? Can it also be used for
 19 outpatient?
 20 THE WITNESS: It actually can be used for
 21 outpatient as well. I should explain that that is a federal
 22 term for the type of organization we negotiated with them to
 23 create in order for Medicaid funds to flow through local
 24 county government programs.
 25 BY MR. COOKE:

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1 Q. All right. So when we talk about the particular local
 2 match that you were called in to discuss with the
 3 Manistee/Benzie folks, we're talking about this general
 4 funding piece; is that right?
 5 A. **In part, indirectly.**
 6 Q. All right. Well, yeah, okay. There's two pieces to that,
 7 right?
 8 A. **There are.**
 9 Q. Okay. There is a state local match piece, and there's a
 10 federal -- what's called a draw down; is that right?
 11 A. **Correct.**
 12 Q. All right. But in the Michigan Mental Health Code, your
 13 authority to come in and take over a CMH organization comes
 14 out of the Michigan code; is that right?
 15 A. **Correct.**
 16 Q. And in the Michigan code, there is a formula that requires
 17 a minimum amount of match money to be paid by the local
 18 county governments; is that right?
 19 A. **Correct.**
 20 Q. And if that minimum amount of local match money is not paid
 21 by the local governments, then you have this authority to
 22 come in and take over?
 23 A. **Not quite.**
 24 Q. Well, you have an authority to reduce state dollars?
 25 A. **To the point where they would end up not being able to**

1 **deliver services. And then we would have to take them out.**
 2 Q. Then you could. But in any event, what gives you that
 3 authority is the Michigan Mental Health Code?
 4 A. **That is correct.**
 5 Q. If -- and we'll talk about that federal piece in a minute.
 6 So this -- the formula, as I understand it, is you --
 7 the -- in our case we have two counties, Manistee and
 8 Benzie, that got together and formed a separate
 9 governmental entity, Manistee/Benzie Community Mental
 10 Health, correct?
 11 A. **Correct.**
 12 Q. And there is a local match minimum obligation for that
 13 organization; is that true?
 14 A. **Correct.**
 15 Q. But that has the responsibility of the counties that formed
 16 that unit of government, not of the CMH Board itself; is
 17 that right?
 18 A. **That's correct.**
 19 Q. Okay. Now, the local match money has to be accounted for
 20 in the budget at the beginning of the year before the state
 21 money comes down to it; is that true?
 22 A. **It should be that way. But because of delays and when**
 23 **appropriations take place at the state level, when delays**
 24 **have happened locally, sometimes there is a lapse of a few**
 25 **weeks, a couple of months, before that is all sorted out.**

1 Q. All right. So look at Manistee/Benzie. If you have -- if
 2 you're working on the budget for them locally, the agency's
 3 working on the budget, and say they're working on a budget
 4 for the 2007 fiscal year, and say they have to start that
 5 process in October of 2006. Like any budgeting situation,
 6 those people working on the budget have to predict how much
 7 money they're going to spend by the end of the year; is
 8 that true?
 9 A. **That's -- would be true.**
 10 Q. Okay. Because the formula for the local match says that
 11 for every -- after you take out the federal money, and
 12 after you take out the private insurance money, for every
 13 dollar of care spent on services, the county government has
 14 to pay in 10 cents?
 15 A. **I think you're getting the sequence of how that works**
 16 **misconstrued.**
 17 Q. All right. Run that by me again?
 18 A. **The law requires that there be an annual county**
 19 **appropriation. Within that appropriation, that is then**
 20 **given to the Community Mental Health agency, they have to**
 21 **live within that appropriation. And the way that they do**
 22 **that would be through any funds that they may have held in**
 23 **their rainy day account to moderate what changes may**
 24 **have -- may occur throughout the rest of the year.**
 25 Q. Oh, I understand what you're saying, but I'm talking about

1 how we get to -- I want to get us to the formula of how the
 2 CMH determines what the minimum local match requirement is
 3 for each budgetary year that they have to put into the
 4 budget?
 5 A. **That amount actually can be fixed by the county government**
 6 **at the front end. But they'll end up using matched county**
 7 **and state dollars held in these rainy day accounts to**
 8 **moderate it.**
 9 Q. Understood. But isn't there a minimum amount in the Mental
 10 Health Code that's -- that was set at the inception of
 11 the -- and like 1970, that's a minimum amount plus a
 12 certain percentage of other expenses to give you a base
 13 amount that must be paid in?
 14 A. **There is a base amount that was agreed to by the counties**
 15 **when they establish their Community Mental Health agency.**
 16 **And the only other obligation would be on inpatient care**
 17 **where the county would have to pay 10%, if not otherwise**
 18 **covered by the CMH.**
 19 Q. All right. I have something called, in my hands, a state
 20 facility actual, and a 90/10 general fund actual. Are you
 21 familiar with those terms?
 22 A. **I would have to see the paper.**
 23 MR. PARSONS: What is that marked?
 24 THE WITNESS: It's county funding -- it looks like
 25 a work paper from the county.

1 MR. PARSONS: Does it look like this?
 2 MR. COOKE: That's it.
 3 MR. PARSONS: Okay. Thank you. Exhibit 23?
 4 THE WITNESS: It's not labeled.
 5 BY MR. COOKE:
 6 Q. Do you see where it has different divisions of numbers,
 7 state facility, 90/10. And federal drawdown?
 8 A. Yes.
 9 Q. Are you familiar with those terms?
 10 A. Yes.
 11 Q. What's the 90/10?
 12 A. **90/10 goes back to the formula we talked about before.**
 13 Q. Okay. And that's a formula for setting part of the minimum
 14 amount required by the state before -- for local match; is
 15 that true?
 16 A. Yes.
 17 Q. All right. And then there's another one called state
 18 actuarial on there; is that right?
 19 A. **State facility actual.**
 20 Q. Actual. Are you familiar with that term?
 21 A. Yes.
 22 Q. And is that you add those two together and that's the
 23 minimum amount of the local match that has to be paid into
 24 the budget for the year to qualify for those funds to draw
 25 down; is that right?

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1 A. **It would appear that Manistee/Benzie is separating out in**
 2 **detail -- actually more detail than what we would expect to**
 3 **see them get involved with. These would be the kind of**
 4 **things that a community mental health board would do.**
 5 MR. PARSONS: Can I see that exhibit just for a
 6 second?
 7 MR. COOKE: Sure, go ahead.
 8 MR. PARSONS: It doesn't appear to be what --
 9 maybe it is Exhibit 23. But --
 10 MR. COOKE: It is the actual fiscal year 2006; is
 11 what I'm looking at?
 12 MR. PARSONS: I think -- okay. Is that -- okay.
 13 Thanks very much.
 14 BY MR. COOKE:
 15 Q. All right. Let me just put these numbers on the board. In
 16 fact, what I think I'm going to do I'm going to switch
 17 gears a little bit and go to this fiscal year estimated
 18 2007 since we're talking about the 2007 budget. It's a
 19 very similar-looking worksheet with those numbers broken
 20 off; is that true?
 21 A. **Yes. That's very similar.**
 22 Q. The 90/10, and the state facility?
 23 A. Yes.
 24 Q. And what does the 90/10 say?
 25 A. **90/10 general fund estimate \$132,684.**

1003

1 Q. \$132,684?
 2 A. **Correct.**
 3 Q. And then the state facility?
 4 A. **\$33,453.**
 5 Q. \$33,453?
 6 A. **And that's an estimate.**
 7 Q. And that's an estimate for -- it looks to be an estimate
 8 for what they're going to need for the budget year 2007,
 9 correct?
 10 A. **Uh-huh.**
 11 Q. Yes, sir.
 12 A. **Yes.**
 13 Q. All right. Then there's another number called federal
 14 drawdown obligation, or local match drawdown?
 15 A. **Yes.**
 16 Q. And a local match drawdown is on the federal side of the
 17 piece, isn't it?
 18 A. **It's -- federal dollars are not free. Federal dollars have**
 19 **to be bought by the state using state and local dollars in**
 20 **order to provide local services.**
 21 Q. All right. So in order to get federal moneys down to
 22 MBCMH, it looks like the drawdown obligation is about
 23 \$253,000; is that right?
 24 A. **Correct.**
 25 Q. Could you give me the number what it is?

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1 A. **\$253,200.**
 2 Q. Okay. So were you aware that before the fiscal year -- let
 3 me ask the question this way. This federal drawdown money,
 4 you're using those funds similar to what's happening at the
 5 state level. Those funds have to be used to draw down
 6 federal money of a certain amount?
 7 A. **Correct.**
 8 Q. So the state has to allocate from state and local funds a
 9 certain amount of money to their budget to bring this
 10 federal Medicaid money in?
 11 A. **If I was to estimate, probably about \$280,000 in federal**
 12 **money will be coming in to match -- to use that 253 match.**
 13 Q. There would be another 280 of federal coming in. So if you
 14 were to pay \$253,200 into this federal budget, you would be
 15 able to draw in about 280,000 in federal money, correct?
 16 A. **Right.**
 17 Q. So this draws \$280,000.
 18 Now, the -- for the federal money, this PIHP
 19 program, are you aware that any of these PIHP groups were
 20 paying this federal match instead of the local county
 21 governments?
 22 A. **Actually we all pay.**
 23 Q. We all pay?
 24 A. **(Nods head.)**
 25 Q. So the PIHP can be the source for the \$253,200 to draw down

1005

1 the federal money; is that true?
 2 MR. PARSONS: Is this as of 2007? I'm just --
 3 MR. COOKE: I'm just asking hypothetically right
 4 now.
 5 MR. PARSONS: I'm wanting to know if it was the
 6 case in 2007, or is this a hypothetical, just so we can keep
 7 track.
 8 MR. COOKE: It is the number from the 2007
 9 estimate, but I'm asking hypothetically now, what his
 10 understanding of the drawdown is.
 11 BY MR. COOKE:
 12 Q. And so I guess my question is on the federal side of the
 13 coin, when we have these -- this is like -- called a hub
 14 group; is that right?
 15 A. Correct.
 16 Q. And this hub group has certain responsibilities over the
 17 various other local CMHs; is that true?
 18 A. For Medicaid purposes only.
 19 Q. For Medicaid purposes only. All right. And part of that
 20 is distribution of the Medicaid moneys through these
 21 various other smaller entities like Manistee/Benzie, true?
 22 A. Correct.
 23 Q. So there's nothing that would prevent, for this federal
 24 drawdown, nothing prevents the hub group from paying this
 25 money to draw the federal dollars down; is that correct?

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1 A. Except probably the county commissioners for Clinton,
 2 Eaton, and Ingham County.
 3 Q. They might object?
 4 A. They might object.
 5 Q. But if this is drawing down \$280,000, it would only draw
 6 down to their budget, right?
 7 A. It would be drawing down for the agencies that are coming
 8 up with the funds. And that includes Manistee/Benzie. As
 9 I said, we've all contributed to that.
 10 Q. It depends on how much Manistee/Benzie contributes to this
 11 pot how much federal money they'll draw down; is that
 12 correct?
 13 A. It -- it's so complicated.
 14 Q. Let me ask it simpler.
 15 A. Okay.
 16 Q. Before 2006, are you aware that Clinton, the CEI,
 17 Clinton/Eaton/Ingham, was paying the \$253,200 drawdown?
 18 A. In 2006, that wouldn't surprise me.
 19 Q. Okay. All right. So if -- if the Clinton/Eaton/Ingham CEI
 20 was paying it, that wouldn't be a financial obligation of
 21 MBCMH, would it?
 22 A. It would, if in fact Clinton/Eaton/Ingham decided they
 23 would each keep the lion's share of that and not pass it up
 24 to the agency up here, which would then end up with people
 25 not being served, reported to the feds, jeopardize that

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1 contractual relationship with CEI.
 2 Q. Well, I guess the question I'm driving at is the \$253,200
 3 paid by CEI, are you saying they could not do that?
 4 A. If they were flush, and they had plenty of funds, of course
 5 they could.
 6 Q. And do you know if they were doing that?
 7 A. I do not know that.
 8 Q. All right. Okay. Let's just assume for a minute that up
 9 until 2006, the CEI was paying the federal drawdown of
 10 \$253,200. Assume that for a minute.
 11 MR. PARSONS: This is understood as a
 12 hypothetical, correct, your Honor, not as -- testifying
 13 that?
 14 MR. COOKE: I said assume.
 15 THE COURT: He said assume.
 16 BY MR. COOKE:
 17 Q. Assume. So the -- what -- the local match obligation in
 18 that scenario would be the sum of these two numbers here;
 19 is that correct?
 20 A. Could you repeat?
 21 Q. If prior to October of 2006, the CEI was paying the
 22 \$253,200 in federal drawdown, the local match
 23 responsibility of Manistee/Benzie would be these state
 24 dollars; is that true?
 25 A. Yes.

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1 Q. Okay. And that would be, if my math is right, \$166,137
 2 that would have to be accounted for by the two counties,
 3 Manistee and Benzie, into the 2007 budget before these
 4 general funds would draw down; is that correct?
 5 A. Yes. It appears to be.
 6 Q. All right. Okay. All right. Okay. And what happens is
 7 that money -- this money has to be allocated for the
 8 budget, and you have to receive some certification that
 9 it's allocated before you pay in your state dollars?
 10 A. It has to be attested to by the CMH, that's correct.
 11 Q. All right. Now if Manistee/Benzie decided to shoulder the
 12 burden of the federal drawdown, they'd have to pay another
 13 \$253,200 into the budget to get the benefit of the federal
 14 drawdown money; is that correct?
 15 A. Using that math, yes. But this is giving a distorted
 16 picture.
 17 Q. All right. What's distorted about my picture?
 18 A. In an effort to save money in Manistee/Benzie, Medicaid has
 19 been used as a resource. And in doing that, it is to
 20 Manistee/Benzie's operation to participate. Because
 21 otherwise the services would cost 60% more.
 22 Q. So it's in their best interest to participate --
 23 A. It is.
 24 Q. -- in the federal draw down?
 25 A. Yes.

1009

1 Q. But let's assume that up until 2006, they were not
 2 participating, they wouldn't have that obligation to pay in
 3 the federal draw down; is that correct?
 4 A. We have been doing this since 2002.
 5 Q. Understood.
 6 A. So are you saying they dropped out for four years?
 7 Q. I'm saying that I think the record will show that they
 8 didn't participate into the federal drawdown in 2002, or
 9 2003, or 2004, or 2005, that the CEI was paying it; are you
 10 aware of that?
 11 A. No.
 12 Q. Okay. Well, whenever they decided to participate in the
 13 drawdown, then -- then they'd have this additional
 14 obligation at the front end of the budget; is that right?
 15 A. CEI would have that obligation.
 16 Q. The CEI would have it, and the CEI would decide how much to
 17 pass on to Manistee?
 18 A. Right. Based on utilization, how many people came in the
 19 door.
 20 Q. Based on how many people were being utilized?
 21 A. Right.
 22 Q. Let's just say this is the utilization number that the CEI
 23 came up with?
 24 A. Okay.
 25 Q. Okay. All right. So if Manistee/Benzie decides to

1010

1 participate in the drawdown, this increases the obligation
 2 at the front end of the budget?
 3 A. Yes.
 4 Q. All right.
 5 A. And to my knowledge, it's never been an option. The
 6 drawdown is required.
 7 Q. You know, it's never been an option. Can you explain to me
 8 why it wasn't being done for three years?
 9 A. I don't know that it hasn't.
 10 Q. Okay. Well, if the record ultimately shows that it hasn't
 11 been done for three years, do you have any explanation as
 12 to why it wasn't done?
 13 A. It probably was some local arrangement with CEI.
 14 Q. All right. So Sheehan might have agreed to be paying that
 15 for a period of time, through his CEI group. But you're
 16 not aware of that one way or the other?
 17 A. I'm not aware of that.
 18 Q. He could do that if they wanted to?
 19 A. They could do that if they wanted.
 20 Q. So if that arrangement changes in 2005 where
 21 Manistee/Benzie now pays in -- the CMH has to pay in the
 22 \$253,200, that would increase this number?
 23 A. Yes.
 24 Q. And that, then, would be the number of the local match?
 25 A. Yes.

1011

1 Q. At least that seems to be a projection on this budget we're
 2 looking at; is that true?
 3 A. That's on the sheet.
 4 Q. Okay. All right. And so in our case, Manistee/Benzie had
 5 to do this in 2006, the agency, Manistee/Benzie Community
 6 Mental Health agency, through Mr. Moran, or whoever, would
 7 have to go to the two county boards, and say this is the
 8 amount of local match that you have to start paying in. So
 9 they can get it in the budget; is that a fair statement?
 10 A. No. The question would be how much had Manistee/Benzie
 11 been paying all along before 2002, three, four, and how
 12 that changed, if it changed.
 13 Q. All right. So if we see that in 2002, and three, and four,
 14 they had been paying in the required match, and then that
 15 match jumps up, because of an addition of \$253,200, however
 16 that increased, for the budgeting purposes, that money
 17 would have to be accounted for at the beginning of the
 18 budget for Manistee and Benzie; is that true?
 19 A. If there was an increase requested by the CMH, then the
 20 county commissioners would have to decide upon how much
 21 that they would support it. The question, I guess, that
 22 still keeps coming back to my mind is they would have saved
 23 money in serving Medicaid people. And by these numbers,
 24 the way they're laid out, it looks as though they stopped
 25 serving Medicaid patients. And that didn't happen.

1012

1 Q. Well, unless there's an arrangement like you said with
 2 Sheehan paying the 253?
 3 A. Again, going back one step further, where would the county
 4 commissioners for CEI be, the other counties?
 5 Q. I don't know that, sir. I don't know that piece of the
 6 puzzle. Do you know anything about Bob Sheehan's group
 7 agreeing to pay that local match for Manistee/Benzie for a
 8 period of time?
 9 A. I don't.
 10 Q. Now, the -- as for the records at the State of Michigan, we
 11 talk about the local match obligation?
 12 A. Uh-huh.
 13 Q. Is there a minimum local -- this would be the minimum local
 14 match obligation without the federal piece; is that true?
 15 A. Probably.
 16 Q. Okay. Has that minimum local match obligation always been
 17 paid by Manistee/Benzie Community Mental Health to the
 18 state?
 19 A. It's been reported that way, yes.
 20 Q. And you have no reason to doubt that it's been paid?
 21 A. I have no reason to doubt it.
 22 Q. And even with this increased, if in fact, as we see our
 23 fiscal year, this is the increased projection, \$253,200 and
 24 this state piece, your records at your department show that
 25 that's been paid, too, correct?

1013

1 A. Correct.

2 Q. I mean, Manistee/Benzie Community Mental Health is in no
3 danger of being taken over by the state, are they?

4 A. I can't say that.

5 Q. Well, as of now, they're in good standing with the state;
6 is that true?

7 A. They are presently in good standing with the state.

8 Q. Okay. And they've never been in bad standing with the
9 state as far as paying the local match, have they?

10 A. In discussions, they could have been. In reality, that
11 doesn't seem to have been a problem.

12 Q. Not a problem. All right. So this meeting that you were
13 called into in October of 2006, it was your understanding
14 that the match was being paid, but one of the two counties
15 was not paying their full share; is that correct?

16 A. Correct.

17 Q. So it was a dispute between, at least told to you, it was a
18 dispute between Manistee and Benzie as to who wasn't paying
19 their fair share, true?

20 A. True.

21 Q. But the total pie, matching pie, was always paid in?

22 A. Well, the question was raised of whether Manistee would
23 continue to subsidize Benzie. How long that would
24 continue.

25 Q. All right. And that's really not -- I mean that's between

1014

1 Manistee and Benzie, until such time as the local match
2 doesn't get paid in, right?

3 A. Correct.

4 Q. Then you get involved?

5 A. That's correct.

6 Q. And Mr. Moran is the person who brought you into that
7 discussion; is that right?

8 A. He asked me to outline the consequences of not meeting the
9 federal obligation -- the match obligation.

10 Q. All right. So when you came down to the work study session
11 in 2006, I think the summertime of 2006, you met with
12 commissioners from Manistee and Benzie, true?

13 A. There were a number of people in the room, some of them
14 were commissioners.

15 Q. In the discussion that you had you were asked to discuss
16 this topic by Mr. Moran, right?

17 A. He was the one who invited me to the meeting.

18 Q. And what you told those county commissioners is these are
19 the bad things that can happen if you don't pay in the
20 local match; is that true?

21 A. Yes.

22 Q. But did you also tell the county commissioners, look,
23 you've been paying the local match for years as far as I'm
24 concerned at the state? Did you tell them that?

25 A. I would have assumed that everyone in the room knew that.

1015

1 Q. What if they didn't? My question is did you tell them, but
2 our records show you had been paying every year?

3 A. It was never raised as an issue by any of the county
4 commission.

5 Q. Do you think the county commissioners might have thought
6 during the context of your discussion with them that
7 there's some danger that the state's going to come in and
8 take over the organization?

9 A. I think that that would be a reasonable understanding.

10 Q. Even though at the state level, all these local match funds
11 have been paid in year after year, as far as your records
12 show?

13 A. Correct.

14 Q. So in April of 2007, April 18 of 2007, would have been
15 certainly after money had poured into the budget for 2007;
16 is that correct?

17 A. I don't know where they were at with their appropriation,
18 but in fact most of the money would have started flowing,
19 yes.

20 Q. Let's just say in October of 2006 is when the two counties
21 set their budgets, in October of 2006 they agreed to pay in
22 matching funds?

23 A. Fine.

24 Q. So by April of '07, you know, six months later, we can
25 assume that all this money was in the budget already?

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1 A. Correct.

2 Q. Local match had been paid, all the state money was in the
3 budget and being spent?

4 A. Correct.

5 Q. So on April 18 of 2007, if someone says, you know, Manistee
6 and Benzie County, I'm going to report you to Mr. Kielhorn,
7 for not paying in your matching funds, that wouldn't be
8 true, would it?

9 MR. PARSONS: You're asking --

10 MR. COOKE: That's a fair question, that wouldn't
11 be true as of that moment.

12 MR. PARSONS: I'm just asking him -- is he asking
13 him to comment on somebody saying they're going to report,
14 or there was no local --

15 THE COURT: He's asking whether it's true that
16 they weren't paying their matching funds.

17 MR. PARSONS: Oh, all right.

18 THE COURT: Is that fair?

19 MR. COOKE: That's what I'm asking.

20 BY MR. COOKE:

21 Q. As of April 18 of '07, was it true that Manistee/Benzie
22 Community Mental Health, according to your records, had not
23 paid the matching funds for that year?

24 A. I don't know specifically on the dates. I know that there
25 is an obligation by the CMH board or director to report

1017

1 when there is a risk here.

2 Q. I'm just asking you, sir, as of that date, according to

3 what you know about the matching funds being paid --

4 A. To my knowledge, they were okay.

5 Q. They were okay. Okay. All right. Because they've always

6 been okay, right?

7 A. Somebody has worked it out locally to make sure they are

8 okay.

9 Q. So as far as you're concerned, you have -- you have no

10 authority as the state to come in and do anything to

11 Manistee/Benzie right now, right?

12 A. Correct.

13 Q. And you didn't have that authority April 18 of 2007 either,

14 did you?

15 A. Nope.

16 Q. Okay. I want to show you -- do you have a white book up

17 there that says defendant's exhibits on it, sir?

18 A. I don't think so.

19 MR. COOKE: With the court's permission.

20 BY MR. COOKE:

21 Q. If you would open that book for me, Mr. Kielhorn, and look

22 at Exhibit Q. You see that document?

23 A. Yes.

24 Q. And that appears to be an April 18 of 2007 letter from

25 Mr. Moran to various people who have been identified as the

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1 executive committee at the Manistee/Benzie Community Mental

2 Health agency. This is the letter you've seen before;

3 isn't that true?

4 A. I may have. I don't recall it.

5 Q. Okay. You don't recall seeing this letter?

6 A. Correct.

7 Q. So when you talk about getting a letter from the

8 Manistee/Benzie Community Mental Health Department that

9 puts you on some sort of watch, you don't know if it's this

10 letter?

11 A. I don't.

12 Q. All right. And after Mr. Moran was terminated in June of

13 2007, you were notified of that immediately; is that

14 correct?

15 A. I was notified that he was no longer the executive

16 director.

17 Q. And that of course is going to be a concern for you for a

18 variety of reasons; is that true?

19 A. Correct.

20 Q. A lot of them to do with your oversight of funding?

21 A. Funding and liability.

22 Q. And provision of services of those funds?

23 A. Correct.

24 Q. So you don't know if this was the letter that you had

25 received that put you on some sort of alert to watch the

1019

1 agency?

2 A. I put them on alert after our meeting up north.

3 Q. After your meeting?

4 A. Up north where there was discussion over whether there was

5 going to be a problem about local match, or not.

6 Q. All right. So you already started watching them after

7 Mr. Moran called you in to talk to the county boards of

8 county commissioners about the local match?

9 A. Yes.

10 Q. That was that same session where nobody said to the county

11 commissioners, by the way you've been paying the match for

12 years?

13 A. I had nothing to accuse them of, but I wanted to make sure

14 that that didn't get lost.

15 Q. So that's when you started watching what was going on?

16 A. Uh-huh.

17 Q. It wasn't any letter of April 18, 2007?

18 A. We have talked about a letter of April 18. I was asked to

19 find one, and I was unable to find one.

20 Q. I asked you to find one.

21 A. Yeah.

22 Q. You couldn't find one over at the CMH?

23 A. Yeah.

24 MR. COOKE: Sir, I have no further questions for

25 you. Thank you very much.

1020

1 REDIRECT EXAMINATION

2 BY MR. PARSONS:

3 Q. You followed defense counsel's questions about if this is

4 the case, and if this is the case, and if this is the case,

5 do you know if -- if that was the case?

6 A. I do not.

7 Q. And would it -- am I correct -- it seems to strike you as

8 odd, does it not, that the citizens of Clinton/Eaton/Ingham

9 would want to contribute the local match for

10 Manistee/Benzie, right?

11 A. It does.

12 Q. Have you ever heard of that happening before?

13 A. No.

14 Q. Now, do you know a person by the name of Ruth Miekle? Have

15 you ever heard that name before?

16 A. I have -- I cannot place what position she holds. It might

17 have been a finance position.

18 Q. I'm going to show you what has previously been marked

19 Exhibit 110 in this case. And that's a -- a letter from

20 Ms. Miekle who is purportedly chief financial officer,

21 correct?

22 A. Yes.

23 Q. And in that letter, what is the date on that letter?

24 A. June 13, 2007.

25 Q. She is reporting to whom?

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1 A. She's reporting to Thomas Kaminski, who is the Manistee
 2 County controller administrator.
 3 Q. And what is she saying about the local match?
 4 A. She is saying that --
 5 MR. COOKE: This is a hearsay document he's
 6 reading, your Honor. I object to the hearsay nature.
 7 MR. PARSONS: We've had one set of hypotheticals.
 8 I'm going to ask another based upon the evidence here.
 9 THE WITNESS: It outlines what the local match
 10 will be for Manistee County. And it -- and Manistee/Benzie
 11 Community Mental Health no longer has the capacity to earn
 12 local funds to cover the county's local match obligation.
 13 BY MR. PARSONS:
 14 Q. And this document defense counsel offered you, Exhibit 23,
 15 this worksheet?
 16 A. Yes.
 17 Q. That -- the bottom line on that document says county local
 18 funding deficit. Can you read the number on that?
 19 A. Yes. \$128 thousand, it looks like, 386.
 20 Q. I would like to ask you to assume that, in fact, in the
 21 Spring of 2007, the Manistee/Benzie CMH agency had a
 22 good-faith belief that it was running a deficit of \$128,000
 23 in the local match, all right? Assume that. And if they
 24 in good faith believed they were running \$128,000 deficit,
 25 did they have a duty under law -- did -- specifically did

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1 Mr. Michael Moran have a duty under law to notify you of
 2 that fact?
 3 A. Yes, he did.
 4 Q. Now, have you ever known county governments on occasion not
 5 to notify your division and admit that they were breaking
 6 the local match law?
 7 A. I have heard of no cases, although I'm sure it's possible.
 8 Theoretically it's possible that we would not learn until a
 9 later date.
 10 Q. And you indicated there were ways that funding could be
 11 flowing, or different dates, or different timing of
 12 revenues, and different fiscal years, correct?
 13 A. Correct.
 14 Q. And so if a county was trying to cover up the lack of a
 15 local revenue for the local match, they could assume they
 16 could report to you differently than what the actual facts
 17 are, right?
 18 A. Correct.
 19 Q. And until somebody were to make a report that the county
 20 was not accurately reporting it's local match, how would
 21 you know?
 22 A. We might have some idea 15 to 18 months after the fact
 23 simply because of the way cash flow would work, but we
 24 would find out as a result of an audit.
 25 Q. Somewhere down the line?

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1 A. Down the line.
 2 Q. But you can't tell in real time immediately -- your
 3 division is not in an actual management role as a routine
 4 matter with MBCMH, right?
 5 A. We are in a trust relationship with county government and
 6 county government agencies to accurately report.
 7 Q. Okay. Let me ask you about this -- at the time you came up
 8 here and discussed it, was it your understanding at that
 9 time that there was a concern about not making -- not
 10 having the ability to make the local match?
 11 A. Yes.
 12 Q. Is there any -- is there any question in your mind about
 13 that that that was what you understood?
 14 A. No, no. That's why I came up. And the issue had to be --
 15 had also went on to talk about, you know, each county's
 16 obligation to meet that match. And so on that premise,
 17 that's why I came up.
 18 Q. So this system up here, assuming this, and this, and this,
 19 was that the way it was presented to you when you were up
 20 here in person meeting?
 21 A. Not at all.
 22 Q. No. Okay. If you put all the pieces in place and did it a
 23 certain way, and CEI paid the local match for
 24 Manistee/Benzie, then you could come up with a system to
 25 explain how you could think Manistee/Benzie had made its

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1 local match, right?
 2 A. Correct.
 3 Q. But when you were up here in 2007, what was the
 4 understanding about the local match, was it being made, or
 5 was there a good-faith concern about it not being made?
 6 A. There was a good-faith concern about it not being made.
 7 Because one county was paying more than its fair share
 8 against another county, and that both would be impacted by
 9 that potential reduction in funding.
 10 Q. And Mr. Kielhorn, just for background here on the sources
 11 of funding, do you -- were you aware that in 2005
 12 Manistee/Benzie suffered a \$2.5 million funding cut?
 13 A. Yes.
 14 Q. And did you become aware that as a result of that -- the
 15 need to make local \$2.5 million cuts, Mr. Moran lost some
 16 staff?
 17 A. Yes. As many CMHs did.
 18 Q. And would it make sense to you that when he lost the staff,
 19 he may have lost the ability to go out and do locally-based
 20 revenue raising to satisfy the local match?
 21 A. I'm now aware that that is a problem, yes.
 22 Q. All right. And did you -- how did you become aware of
 23 that?
 24 A. Well, at that point, we were experiencing cuts statewide.
 25 And agencies were doing a variety of things to make ends

1025

1 meet. And in many cases that meant that staff had to be
 2 reduced. What -- looking at the figures that are being
 3 thrown out today, even though they're hypothetical, if
 4 that's true, then what we're really talking about is
 5 they've been potentially underfunding their CMH for many
 6 years. I said that this diagram doesn't depict well. The
 7 reason I said that is that for a typical CMH, they would
 8 free up, give back, in this case, draw down, federal
 9 dollars using dollars that were 100% state local and it was
 10 a way to tide them through so many rough times because they
 11 could maintain services through Medicaid that otherwise
 12 that they would lose if they stayed with a reduced GF-only
 13 funding base. It was -- there were financial advantages to
 14 do it for the counties. And so when we -- you look at what
 15 they were doing, it looks as though they were trying to
 16 cover all the bases they could. And if there was some
 17 major fundraising going on to reduce local match, then in
 18 fact, the original match to support that agency was too
 19 low. Something was wrong.

20 Q. Right. And have you since learned that in fact Mr. Moran,
 21 when he had the staff before the cuts, he was struggling to
 22 make the local match for the counties. But that after he
 23 lost that staff, he no longer had the ability to cover the
 24 counties' local match?

25 A. I knew he was having serious financial problems.

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1 MR. PARSONS: Thank you very much.
 2 RE-CROSS-EXAMINATION
 3 BY MR. COOKE:
 4 Q. Sir, were you aware that there was about a \$3 million
 5 reserve for the CMH in 2006?
 6 A. I'm not surprised.
 7 Q. And are you saying that you cannot use interest at all on
 8 any account to make the local match?
 9 A. It's -- when a county appropriates funds, it is done in the
 10 light of day, and the appropriation is very public. In
 11 asking a CMH to give up part of its rainy day fund, it's
 12 kind of out of the light. And that was money that was
 13 reserved for the provision of services. It wasn't to give
 14 a kickback -- give money back to county government to
 15 reduce what it had originally appropriated.
 16 Q. Are you saying no interest can be used on any fund?
 17 A. Those funds are intended for the provision of services.
 18 They shouldn't go back and reimburse county government.
 19 Q. Well, doesn't the Mental Health Code allow for investment
 20 interest to be used to make up the local match?
 21 A. When it's a department of county government. These were
 22 not county departments.
 23 Q. Okay. So a department of -- say that to me again.
 24 Department of county government. So as long as it's a CMH,
 25 an interlocal group, they can't do it?

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1 A. If this had been a department of county government, county
 2 government can charge back certain kinds of proportion -- a
 3 proportional share of its costs. And some of the interest
 4 can be used to cover that. I say some. So, for instance,
 5 if the accounting is handled by county government as a
 6 county department, then, in fact, a portion of the funds
 7 could be used to pay for writing out the payroll slips.
 8 When you're talking about this kind of organization, it's
 9 separate from the county, and the county shouldn't be
 10 benefitting from that. It should be the people with that
 11 CMH who are obtaining that service. There's a loss of
 12 control by county government when they create this kind of
 13 mental health agency.

14 Q. All right. Can you help me with this part of the Mental
 15 Health Code. 7.2.5 investment interest. And it begins on
 16 the preceding page. It says the kinds of money that can be
 17 used to make the local match. It does say investment
 18 interest can be used, right?

19 A. 7.2.5?
 20 Q. Yes, sir.
 21 A. Uh-huh. Also interest earned on mental health funds by
 22 contract agencies and/or network providers as specified in
 23 the contract. That's true.
 24 Q. And that only pertains if the CMH is a branch of the county
 25 government and not an independent?

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1 A. It's very clear when it comes to county government
 2 departments. In this case, the interest has to do with OMB
 3 circular 87. It is an accounting requirement. And the
 4 expectation is that that accounting will show how that
 5 interest is used for the delivery of services. It is not
 6 to be used for giving back money to county government.
 7 Q. So that \$3 million reserve couldn't be used at all -- the
 8 interest on that couldn't be used at all to assist in
 9 paying part of that local match?
 10 A. Only to the degree that we would have to examine it against
 11 those federal requirements.
 12 Q. I'm sorry. I don't know what you mean.
 13 A. There are two that are referenced in here in terms of
 14 interest. One is called the general accounting practices.
 15 And the other has to do with office of management and
 16 budget circular 87. And how interest can or cannot be used
 17 is controlled by those two documents, and it's referenced
 18 as such in this.
 19 Q. So the federal moneys would have their own strictures on
 20 how the interest from the federal money can be used?
 21 A. Actually, it extends to state funds as well, by contract,
 22 for seven, maybe eight years. Just so that it would reduce
 23 overall accounting practices. We've used the same standard
 24 as the fed in our state dealings.
 25 Q. So is it your testimony that it doesn't matter if these are

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1 federal funds or state funds, you can't use the interest on
 2 them?
 3 **A. Except as allowed by these two documents.**
 4 **Q.** All right. So there's some allowances?
 5 **A. There's some allowances.**
 6 **Q.** We don't know sitting here right now what those allowances
 7 might be?
 8 **A. No. I'd need a CPA to do that.**
 9 **Q.** This \$128,000 deficit that plaintiff's counsel said --
 10 Mr. Moran would be the one to have the duty to report;
 11 isn't that true?
 12 **A. Typically, yes.**
 13 **Q.** So it wouldn't be Manistee or Benzie Counties reporting, it
 14 would be Mr. Moran?
 15 **A. It would be Mr. Moran.**
 16 **Q.** And he's the one that reported to you that the CMH was
 17 in -- that the matching funds had been paid in year after
 18 year; is that right?
 19 **A. Correct.**
 20 **Q.** And so if he's reporting to you that the matching funds had
 21 been paid in, but he's telling the Manistee and Benzie
 22 Counties that there's \$128,000 deficit, one of those two
 23 things isn't right -- isn't correct -- is it?
 24 **A. I'm looking at two different documents. One's '06, one's**
 25 **an estimate for '07.**

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1 **Q.** Do you see one that says actual fiscal year '06?
 2 **A. I do.**
 3 **Q.** Actual fiscal year '06?
 4 **A. Yes.**
 5 **Q.** And it says actual fiscal year '06 running a deficit of
 6 \$128,000 in the local match?
 7 **A. Yes.**
 8 **Q.** And if there's testimony on this record that shows this was
 9 a document put together by Ms. Miekle to give to the two
 10 counties to illustrate that there was a \$128,000 deficit in
 11 the local match for the fiscal year of 2006, it would have
 12 been incumbent on Mr. Moran to report that to you, wouldn't
 13 it?
 14 **A. I'm sure that he did.**
 15 **Q.** Do -- I thought you told us that the local match was all
 16 taken care of?
 17 **A. Well, he's also going to be reporting on what's known as an**
 18 **FSR. It's a financial reporting form that describes where**
 19 **he is at at year end.**
 20 **Q.** FSR. But this is for 2006 actual year, correct?
 21 **A. Again, I don't know what actual year is. It varies from**
 22 **county to county how they operate. And what years -- what**
 23 **time period we're talking about. I don't know.**
 24 **Q.** Let's just say that that is for the CMH, that's
 25 Manistee/Benzie CMH document there where it's being

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1 reported to the two counties that the CMH is running at the
 2 end of the year with a local match deficit of \$128,000. Do
 3 you see that deficit that's being reported?
 4 **A. Yes.**
 5 **Q.** What we can say is that for the end of 2006, as far as the
 6 state government was concerned, there was no deficit?
 7 **A. He has made it up in some way according to what he's**
 8 **reported.**
 9 **Q.** That's not my question, sir. What he reported to the state
 10 government was local match is paid?
 11 **A. Yes.**
 12 **Q.** And I think you corrected this for me, but that meeting in
 13 summer of '06, you thought it was because one county or the
 14 other was not paying its full freight?
 15 **A. Correct.**
 16 **Q.** Was that true? This April 18 of 2007 letter that we've
 17 seen says: I will be reporting -- writing to the Michigan
 18 Department of Community Mental Health to inform their
 19 compliance officer that Manistee and Benzie Counties are
 20 currently out of compliance with the county local funding
 21 requirement.
 22 Did anybody at your meeting that they called you
 23 down to -- did Mr. Moran say both counties are out of
 24 compliance? Or was it just one?
 25 **A. We don't look at individual counties, and maybe that's why**

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1 **it's phrased that way. I'm speculating. But we look at it**
 2 **by CMH Board, and it is Manistee/Benzie CMH. If there's a**
 3 **problem, it affects them both. And I spoke to that at the**
 4 **meeting.**
 5 **Q.** Well, I understand that. But as to this report, I'm going
 6 to report Manistee County and Benzie County. What you
 7 learned in the meeting in '06 was that the representation
 8 was one county was out of compliance, right?
 9 **A. I learned that that was potentially a problem. I never got**
 10 **to the source of hearing from a Manistee or Benzie County**
 11 **commissioner where exactly they were coming from.**
 12 **Q.** Because all your information came from Mr. Moran, didn't
 13 it?
 14 **A. But that would be normal.**
 15 **Q.** Well, I'm just saying, whether it was normal or not, it
 16 came from Mr. Moran. Mr. Moran is the one who said one of
 17 these counties isn't paying their full freight?
 18 **A. Yes.**
 19 MR. COOKE: I have no further questions. Thank
 20 you.
 21 MR. PARSONS: No further questions.
 22 THE COURT: We'll give the jury a recess.
 23 (Jury exits courtroom at 3:28 p.m.)
 24 (Witness steps down at 3:28 p.m.)
 25 THE COURT: Mr. Kielhorn, you don't have to sit

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1 down if you're more comfortable standing up and stretching
 2 your legs a little.
 3 I'm curious about something here. Who controls
 4 the budgeting process for the CMH Board in terms of the
 5 county match? Is it the CMH Board?
 6 THE WITNESS: It should be the CMH Board.
 7 THE COURT: Or is it the county commissions?
 8 THE WITNESS: How it should work is that the
 9 county makes the appropriation, the CMH lives within that
 10 budget to the extent that it can, most usually do. And the
 11 only time it would usually go out is if they had a very high
 12 number of inpatient hospital days, at which point the county
 13 would have to come back in and cover that piece.
 14 THE COURT: Well, I'm wondering about something
 15 here. In your experience, is it commonplace for county
 16 commissioners to sit on CMH boards?
 17 THE WITNESS: Yes. But usually it's limited to
 18 like four, I believe.
 19 THE COURT: By statute?
 20 THE WITNESS: Statute. I don't know what the
 21 exact formula is, but by statute it defines how many can
 22 serve.
 23 THE COURT: So it's in the statute?
 24 THE WITNESS: Yes.
 25 THE COURT: Okay. That's what I wanted.

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1 MR. PARSONS: Again, sir, thank you for driving.
 2 We appreciate it very much.
 3 THE COURT: Thank you. We're off the record.
 4 (Court in recess at 3:30 p.m.)
 5 (Court reconvenes at 3:50 p.m.)
 6 THE COURT: Well, that was prompt. I'd a given
 7 you until the end of the trial.
 8 MR. PARSONS: Yeah. But I don't want to take a
 9 chance. Thank you for the opportunity to contribute,
 10 though. I won't do that again.
 11 THE COURT: We're ready for the Jury.
 12 MR. PARSONS: I do apologize, your Honor, for
 13 that.
 14 (Jury enters courtroom at 3:51 p.m.)
 15 THE COURT: All right. Are we going to continue
 16 with the video dep -- house lights, please.
 17 MR. PARSONS: This is Karen Babcock again.
 18 THE COURT: Right. Continuing from where we left
 19 off. All right.
 20 (Video Deposition of **KAREN BABCOCK** played at 3:51
 21 p.m. to 3:53 p.m.)
 22 THE COURT: Wait a minute. Haven't we been
 23 through this?
 24 MR. PARSONS: Could we stop for a second?
 25 THE COURT: I thought we had been through this?

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1 VIDEO OPERATOR: No.
 2 MR. PARSONS: In my -- maybe in my opening, or in
 3 the past. But --
 4 THE COURT: In this deposition, we hadn't been
 5 through this?
 6 MR. PARSONS: No.
 7 THE COURT: Go ahead.
 8 (Tape done at 4:37 p.m.)
 9 THE COURT: All right. Members of the Jury, we'll
 10 see you back here tomorrow morning. Ask you to be back at
 11 9:15. We'll get started shortly thereafter. Don't discuss
 12 the case. Leave your notes, and they'll be there for you in
 13 the morning. Hope you have a good evening.
 14 (Jury exits courtroom at 4:37 p.m.)
 15 THE COURT: Anything else?
 16 MR. COOKE: I had one question of the court.
 17 Mr. Wisniski, weren't you going to head out tomorrow to see
 18 a wedding?
 19 MR. WISNISKI: Supposed to go to my grandson's
 20 graduation in Indiana.
 21 MR. PARSONS: That's fine. I will release -- this
 22 is a request for me to release him.
 23 MR. COOKE: Yeah. I'm just wondering if we could
 24 accommodate his schedule.
 25 MR. PARSONS: Go ahead.

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1 THE COURT: Sure.
 2 MR. WISNISKI: Thank you.
 3 MR. PARSONS: Yeah. Have a good trip.
 4 THE COURT: When is it?
 5 MR. WISNISKI: Beg pardon?
 6 THE COURT: Is it tomorrow or Saturday?
 7 MR. WISNISKI: Saturday. But we were going to
 8 leave -- if I have to be here, I'll be here. I mean, I
 9 don't have a problem. We'll just leave later.
 10 THE COURT: No. You don't have to be here. Whose
 11 going to call him? You're going to call him?
 12 MR. PARSONS: I'm not going to call him tomorrow
 13 anyway, for sure.
 14 THE COURT: Yeah.
 15 MR. WISNISKI: Okay. Thank you.
 16 MR. PARSONS: I'm going to call Ms. Pechacek. We
 17 can talk with --
 18 MR. COOKE: She's been here all day. We'll talk
 19 about it.
 20 MR. PARSONS: I think we're all set, your Honor.
 21 THE COURT: You're satisfied that you're going to
 22 have some idea before you leave of who you're going to call
 23 tomorrow?
 24 MR. PARSONS: Yes.
 25 MR. COOKE: I think Mr. Parsons plans on telling

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04:39 1 me, so.

04:39 2 MR. PARSONS: Yes, absolutely. I'm saying yes.

04:39 3 THE COURT: Okay. Then we're adjourned, then.

04:39 4 (Court adjourned at 4:39 p.m.)

04:47 5 (Marked Defendant's separate record exhibit with

04:47 6 today's date, no number.)

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