Florida Gulf Coast University Board of Trustees  
January 17, 2012

SUBJECT: Transcripts to the Executive Sessions of June 16, 2009, April 20, 2010 and January 18, 2011

PROPOSED BOARD ACTION

For Information Only.

BACKGROUND INFORMATION

The Florida Gulf Coast University Board of Trustees met on June 16, 2009, April 20, 2010 and January 18, 2011 in Executive Session regarding Bonnie Yegidis vs. Florida Gulf Coast University Board of Trustees. As the aforementioned litigation has been concluded and as required by law, these transcripts are being presented to be made a part of the public record.

Supporting Documentation Included: Transcripts to the Executive Sessions of June 16, 2009, April 20, 2010 and January 18, 2011

Prepared by: Fort Myers Court Reporting

Legal Review by: N/A

Submitted by: General Counsel Vee Leonard
FLORIDA GULF COAST UNIVERSITY

BOARD OF TRUSTEES

EXECUTIVE SESSION

DATE: June 16, 2009
TIME: 8:40 a.m. to 9:45 a.m.
PLACE: Florida Gulf Coast University
10501 FGCU Blvd., South
Fort Myers, Florida
REPORTER: LISA M. BOYD, Registered
Professional Reporter, Notary
Public, State of Florida at Large

ORIGINAL

FORT MYERS COURT REPORTING
2231 First Street
Fort Myers, Florida 33901
(239) 334-1411 Fax (239) 334-1476
MEMBERS PRESENT FOR EXECUTIVE SESSION:

Dr. Wilson Bradshaw, President
Scott Lutgert, Board of Trustees (via telephone)
Lindsay M. Harrington, Board of Trustees
Dr. W. Bernard Lester, Board of Trustees
David Lucas, Chair, Board of Trustees
Dr. Halcyon St. Hill, Board of Trustees
Isaac Roman, Board of Trustees
Michael Villalobos, Board of Trustees (via telephone)
Jaynie Whitcomb, Board of Trustees
Doug St. Cerny, Board of Trustees
Jerry Starkey, Board of Trustees

ALSO PRESENT:
Theresa M. Gallion, Esquire
Vee Leonard, Esquire
MR. LUCAS: Let's call the executive session to order. Michael and Scott are on the phone. Is anybody else on the phone?

PRESIDENT BRADSHAW: For the record, Mr. Chair, maybe they can say who is there. Could you say your names, please?

MR. LUTGERT: Good morning. I'm Scott Lutgert.

MR. VILLALOBOS: Michael Villalobos.

MR. LUCAS: Nobody else on the phone? All right, I'll turn it over to you.

PRESIDENT BRADSHAW: All right. Mr. Chair, Trustees, we're here on an executive session to discuss pending litigation. At this point I would like to turn it over to general counsel to talk about the protocol for this executive session, and then we will hear from our outside counsel on the matter at hand.

MS. LEONARD: Thank you. At this time we will discuss the pending litigation that was recently filed against Florida Gulf Coast University Board of Trustees by Bonnie Yegidis. We have not yet been served with that, and our outside counsel, Theresa Gallion, will speak to the significance of that and let you know how this matter is progressing.
She will also give you some information about herself and her firm and provide a background for the litigation. After she has made her comments I am asking that this board ask any questions they may have regarding the litigation and provide some guidance on how you want to proceed.

Ms. Gallion is not under contract with the State, she is only under contract with the University. We have not submitted this case as a claim to the State. So we would also like you to speak to that issue as to what your thoughts are, what your current concerns would be regarding whether or not this should be submitted to the State.

If it is submitted to the State, then they will pay a portion of the legal fees and expenses. They would have a separate contract with Ms. Gallion. And they have informed us that they would expect to be involved in the litigation. We would have to pick up the difference between what the State pays and what Ms. Gallion's fees are.

If they are not involved we would incur the full cost of that, as well as if there is any settlement or if we go to trial and there is a judgment, then we would have to pay the full cost of
that. So I would like your input on that. But at
this time I would like for Ms. Gallion to speak.

MS. GALLION: Good morning. Thank you, Ms.
Leonard. I'm Theresa Gallion. I hope you can hear
me okay. It's a pleasure to be here. It's a
privilege to be representing the University and the
Board, and I thank you very much for that
opportunity.

My primary purpose is to be a resource to all
of you and to make myself available to answer any
questions or concerns that you may have. Just very
briefly, a little bit of information about myself.
This is my 28th year as a labor and employment
lawyer. That is the only work I have ever done.

I am with a national law firm called Fisher &
Phillips. We have twenty-two offices nationwide. I
opened the Orlando and Tampa offices, and I am
primarily a resident in Tampa. I have tried
approximately forty employment cases in my
twenty-eight years as an employment lawyer, and two
of those have been against opposing counsel in this
case, Rod Smith. Rod and I have known each other
since the late '80s.

For a number of years, in the late '80s and
through the early and mid '90s, I represented the
Florida Sheriffs Self Insurance Fund, which means that I represented all sixty-seven sheriffs in the state of Florida in the defense of employment type of litigation. And it was in that context that I tried two cases against Rod Smith, who is an able opponent, a nice man, and a very good lawyer.

I have not had cases with him in the past ten or twelve years, although we do litigate against his firm. You'll be interested to know that we did get a defense verdict in both of the cases against Rod Smith, and he and I still have a friendly relationship in spite of that.

This is the nature of the work I do. Most of the cases that I handle I usually have between fifty and seventy-five or eighty cases on my docket at any time. My practice is national. I represent public entities, as well as constitutional officers such as sheriffs, and private entities as well. But I am a defense side, which means representing management, labor and employment lawyer by trade.

I have never done any other work. And I sometimes jokingly say that if I were involved in a divorce or an accident or needed a will, I would most certainly have to hire someone else to provide those services, I could not provide them for myself.
I wanted to address again my experience. I would invite you to take a look at our website. It is www.labollawyers.com. Also I had mentioned my history with Rod Smith. I think I have a cordial relationship with him, which is always a helpful and good thing.

I should note, perhaps a little out of sequence, that I did receive a confidential communication from opposing counsel, Bonnie Yegidis's attorney Rod Smith, yesterday. I will read it to you. He sent it to me for purposes of compromise and settlement of this case. And he indicated that he was sending it -- he says, "I have sent this only to you in order to avoid release of this compromise and settlement offer to the press and public."

And he then goes on to say that he is authorized by Bonnie Yegidis to settle all of her claims against the University for $500,000. This is somewhat of a surprise to me, because he and I have had several communications where we had candid discussions about the allegations in the complaint. I expressed my view to him that a number of them were not only affirmatively false, but very weak and lacking in merit, and likely would not survive a
motion for summary judgment.

I'll talk to you about some of the tools and mechanisms that we might use if the decision is made to defend this case. And my recommendation is that you do defend the case, because I do believe it is defensible. In any event, in some of my discussions with him, and these are some quotes that he used, he said, oh, this is nothing like the other cases. We don't value her claim in that range. She knows that this case is not worth that much.

And my comment to him was, I really don't know that there is any climate at the University that would support or tolerate settlement, but if there is you better be coming back with a five-figure proposal. I can guarantee you that anything else would be met with a very negative response. So again I was very surprised to get this. It's suggestive to me that maybe he really is not interested in settlement.

As Dr. Bradshaw and Vee Leonard and some others know, this has been percolating or brewing for some months. Rod Smith had reached out to the general counsel a number of months ago and had threatened this litigation. And then I think about six weeks ago had sent us a draft, a proposed
complaint, but indicated he did not want to file it, but instead wanted to participate in settlement or compromised discussions.

When we informed him that we would not be authorized, it would not be appropriate for us to do that without an active existing litigation, only then did he reluctantly agree to file it. So I was on vacation, which he well knew, and I had asked him to hold in abeyance any action in the case during the period when I was out of the country.

He sort of did that. He filed a lawsuit, but I still was gone for about eight more days. But he has not served it. And I believe the reason he has not served it -- it's easy to accomplish service, that's not a significant legal hurdle, but his indication to us is that he has not served it because he wishes to explore settlement.

So, again, I would note that given the two or three or four months of communications that Vee Leonard and I have had with him, his reluctance to file the complaint at all, his stated preference not to file it but instead to engage in discussions oriented toward compromise, I was frankly befuddled to receive late yesterday afternoon a $500,000 demand.
Other things that I would just mention to you, and then I would open it up and make myself available for as long as you would wish me to answer any questions or to comment on any matters, I believe the case is defensible. There are three independent claims. I believe that the one for the alleged creation of a sexually hostile work environment, it's basically a sexual harassment claim, I don't know how much more there will be to it.

There is really only one allegation in the complaint that supports it, it is the so-called comment of Dr. Merwin about her attire featuring too much boob. I can give you an assurance that that one statement alone, even if made, even if true, will not support a hostile work environment claim as a matter of law.

If she is not able to meet the legal standard -- and the legal standard is frequent, repeated, severe, pervasive. The United States Supreme Court uses those four words over and over in the description of what it takes to establish a hostile work environment claim on the basis of an equal employment opportunity classification such as sex.
Again, frequent, repeated, severe, pervasive. And I think all of us, and even those who are lay people and are not attorneys or not practitioners in this area, can easily conclude that one remark of that sort does not meet the standard.

Secondly, there are a number of things that she alleges that are affirmatively false. And we have independent, neutral, third-party documentation which will show those things are not true. The manifest of the airplane flight, for example.

We have records, e-mailing phone records showing her contact with Dr. Bradshaw during the interim period when she claims she was denied access. I have not had the opportunity to review all of that, but I know we've gathered it and it shows significant contact. Again, these are independent third-party records.

So in light of that, and in light of my belief that even her sex discrimination claims, which again are not sexual harassment, this would be the business of were women treated differently in her case. I believe we have a very good chance of obtaining an early dismissal, what we call summary judgment, where you submit your papers to the court and ask the court not to permit those claims to go
forward because they are not as a matter of law
sufficient to be presented to a jury.

None of this is quick. The typical timeframe
for federal court litigation of this sort, if you
are serious in defending it, is eighteen to
twenty-four months. A summary judgment motion
probably would not be filed during the first six or
eight months of the case, because that time would be
devoted to discovery and exploration, the taking of
depositions, the defense of depositions, and the
like. But in the first year you could expect that
the judge would rule.

I must be candid. I think the chances of
obtaining an early dismissal of Count 1 for
retaliation are not good. Not because I think that
we did anything wrong, but retaliation claims are
notoriously difficult to obtain an early dismissal
of.

There's quite a bit of significant case law in
this circuit, which is called the Eleventh Circuit,
it's most of the southeast, and the main appellate
court, federal appellate court for us sits in
Atlanta. And it has published over the past
twenty-five years a number of opinions suggesting
that district judges need to be extremely cautious
in granting an early dismissal of a retaliation claim.

So I think we could easily knock out significant portions of the case. Maybe easily is not the right word. I think we have a great probability of doing so, but not the entire case. So I would urge you in your consideration and deliberations to be mindful that nothing is quick. It does take time.

If you make the decision that you wish to defend it, while I think it is very defensible, and I think there is a lack of commitment on the other side that Vee Leonard and I have seen some flashes of over the past few months, we might be able to work that to our advantage in a significant way.

But if anyone is results-oriented and hoping for a quick early resolution of a case like this in litigation where we are putting forward a defense, I would not expect that. I would urge you to have a sense of patience if this is the course you wish to pursue.

A few other things that I would mention before I turn it over for any further discussion or examination of any issues, I do not think that it is helpful to us to say negative things about Bonnie
Yegidis. That is not what this case is about. So often in employment discrimination cases, whether they're under Title VII, the more traditional employment discrimination law under the federal scheme, or Title IX, so often it's about performance based problems.

So you by necessity, by definition, end up with significant amounts of testimony and evidence that show incompetence on the part of the plaintiff or poor performance on the part of the plaintiff. This is really not that type of case. Dr. Bradshaw, of course, is a better spokesman for himself than I am, but I believe he had very good reasons. He had very, very good reasons for the decisions that he made. They were not in any way retaliatory, but they are not necessarily because she was incompetent or unqualified. I don't think that we will be putting forward that type of a defense.

It is simply that taken against the totality of the circumstances he simply had better candidates whose philosophy, whose mission, whose statement of what they wanted, he wanted to achieve for the University, were more akin and more in line with his own core goals and values and his own mission than her. I think that he will be able to eloquently
express that in a way that is not disrespectful of her.

I would also mention that attorney/client privilege issues are very important in this case. It is not unlikely that a number of the persons in this room will have their depositions taken. There is a reference, there are several references to the board of trustees in the complaint. So I would urge all of you and everyone in this room, and those who are witnesses, not to talk about this matter outside of the presence of an attorney.

All of those communications are discoverable. You can be examined about them in deposition. And although there is no reason to think that anyone would engage in any misconduct, I'm not suggesting that, it is so much better for us if all of our communications about this are official and feature the presence and participation of an attorney. I would urge everyone to keep that in mind.

The final comment that I thought might be helpful to you is to maybe suggest what is the linkage if any between Bonnie Yegidis's claim, and Wendy Morris, Coach Flood, Coach Vaughn, what is the linkage likely to be? That will be something that we'll be fighting about very significantly. But the
good news is that the case law highly suggests that all that will really be admissible at trial is that which pertains to Bonnie and her case.

And unless these individuals have personal knowledge of what happened to Bonnie, and that's not Bonnie saying, hey, they did this to me, this happened to me, can you believe this statement was made, can you believe I was excluded from this meeting, that's not personal knowledge.

Personal knowledge is seeing or hearing for yourself what allegedly happened to the plaintiff. I do not believe that Wendy Morris or others will be able to render much assistance to Bonnie Yegidis. Will the background of the other cases be relevant to this case? Yes, but I believe at trial to a very limited degree.

My experience has been, and I handled hundreds of retaliation cases, and the usual rule in the Middle District of Florida, which is the federal district that we are in, the usual rule is that only enough information about those prior cases to establish that they existed and that the plaintiff did participate in them or complain about them, only that will be permitted to be heard by a jury.

Because to permit more would taint the jury
and prejudice the jury. Because, after all, we're not trying Wendy Morris's case, we're not trying the coaches' case, those cases are resolved. We're trying Bonnie's case, and ultimately Bonnie Yegidis has to stand on her own with her own allegations, which I believe are fairly thin. And we'll see where that takes us.

I hope that these few comments have been helpful and give you a framework for further discussion.

MR. LUCAS: Rod Smith is Bonnie's attorney?

MS. GALLION: Yes, Rod Smith is Bonnie's attorney.

MR. LUCAS: Does he work on a contingency? What is his usual fees?

MS. GALLION: For those of you who can't hear Mr. Lucas, he was asking what type of fee basis would he have. I think what would be customary in this case is a contingency fee arrangement. I was aware he takes up to one-third if the matter resolves.

I don't know exactly what Rod's agreement looks like, but what is customary for firms such as his is to have a written contract with Bonnie Yegidis, where if the case resolves at different
stages his percentage will go up. If he has to try
the case, he'll probably take forty-five percent of
any recovery. If he settles it early on, probably
in the first few months, he'll probably take a
third.

I would not be surprised, in fact I would
expect, that his firm would require her to put
forward a deposit, probably $5,000 toward the
expenses. A single deposition transcript is $1,000
to $1,500 for an all-day deposition. So you can see
that his firm would most likely not wish to incur
all of those expenses. So I'm sure he has required
that of her.

MR. LUCAS: What would you consider a
reasonable amount of money to spend on this case if
it goes all the way to trial for us?

MS. GALLION: If it goes all the way to
trial -- you know, again, a lot of this is driven by
opposing counsel. How many depositions does he wish
to take? Does he provoke fights over the production
of documents and access to information? But
typically this is what I tell people, you can
expect -- because this is a summary judgment case.
We have a great opportunity to pare this complaint
down and to get rid of two of these claims.
We should pursue it. Through summary judgment, probably fifty, $55,000. That would include the depositions, the early stages, and the submission of the papers to the court asking that Counts 2 and 3 be dismissed. Beyond that, if the view of this board was whatever remains we wish to try it, we're committed to do that, and you can expect it would cost at least another $75,000 to prepare this case for trial, and probably another $50,000 to try it.

So you can see that it's very expensive. To take a case in federal court over eighteen to twenty-four months to trial, I just don't see how it can be done under $150,000. So that's another important thing for you to consider. If you take the view that a dollar is a dollar is a dollar is a dollar, you may want to consider what you should do with your dollars now.

I don't know where Rod Smith is in terms of settlement. I don't know where his client is. We have heard anecdotally that there may be some changes at the University of Tennessee system. It could be that her employment is in some kind of jeopardy. We really don't know, that's just anecdotal, that there are some regime or
administration changes anticipated there. So that
could place some pressure.

DR. LESTER: Theresa, just clarify the
expense. Of course we would attempt summary
judgment, that's the fifty. And then if that's not
successful, you're saying seventy-five to get ready
for trial, and then another seventy-five for --

MS. GALLION: Another fifty to try it, that's
correct. I think you're looking --

DR. ST. HILL: That's $180,000.

MS. GALLION: I think you're looking at
$150,000 to $175,000 if you take this case to its
logical total conclusion, through a trial. It's
very costly, it's very expensive. We're giving you
significantly discounted rates. It's just that this
is a case with a lot of witnesses. I could easily
see twenty depositions being taken.

DR. ST. HILL: There is something I think we
need to consider. It's not just the money, but our
reputation. If you think you have a case, deal with
it.

MR. LUCAS: I agree.

MS. WHITCOMB: I concur.

MR. LUCAS: We have to toe the line on this
one. And I can't see that we cannot settle this.
MR. STARKEY: I agree. Also I think if the facts supporting her claims are rather thin, her attorney is not likely to subsidize her defense as we go. So as you have discovery, as you develop more weaknesses in her case, her lawyer is more likely to encourage her to go away.

MS. GALLION: I would -- I agree with all of your comments. Just again based on my experience, it's not my money, it's not my decision. I don't encourage people to get involved in litigation lightly. I sometimes jokingly say, I'm fifty-four, I've never been sued, and I've never sued anybody. And there's a reason. It's not a pleasant business, it's not for the feign of heart. It is like a black cloud following you around for a significant period.

But I think you have very unusual circumstances here. I think what Mr. Lucas said is very important about drawing the line. This is a crime of opportunism. That's my view. She is piling on, to use football language, she sees money for free out there. And unless there is a strong signal, that's going to continue.

I don't think she'll be the last one. You can see how late this is. She is late to the party, and it's suggestive of something that's going on with
her, perhaps fear for her future, and a feeling that there's guaranteed money here. I know that's not the reputation that you want.

MR. LUCAS: That's for sure.

MR. STARKEY: I have a question regarding the timing that's required to submit the claim to the State in order for the State to participate in the costs. Is there a statutory time that's required, or can that be submitted anywhere along the line and incremental costs would then be shared by the State?

MS. LEONARD: Of course they would not be responsible for any costs incurred before they come in. I don't believe there is a statutory timeframe for the submittal of the claim, but it does affect how much they participate. And in talking with them, it's just like, you know, any insurance claim. If you have a car accident and you don't want to submit the claim, you'd rather pay, then you don't -- since they're our insurance company, it would flow the same way.

MR. STARKEY: If, for instance, the board wanted to incur up to $100,000 of fees to take this through summary judgment and discovery, and if at that point we elected to go forward, but felt like we had a strong case and wanted to have future costs
shared, at that point we could submit it to the State and going forward they would participate?

MS. LEONARD: I don't believe that that would be feasible for them, primarily because their position has been that if you want our money, then you have to allow us to participate. And if decisions have been made beforehand that will affect the outcome, then they were not allowed to participate in those decisions.

So if you bring them in on the back end when decisions have already been made, then it is possible that they can say, you know, we haven't been involved, and if we were involved we may have gone in a different direction.

MR. STARKEY: It's hard to assess a summary judgment until you have the discovery. And so unless the decision was simply settle now, I don't know that there is any incremental costs that we would be incurring that the State would probably agree would incur if the outside counsel says it's a flimsy case.

MS. LEONARD: I would have to find out from them. I know that statutorily they do have some say in settlement. For example, if we didn't want to settle and they believe that it was in our best
interest to settle, and our views were vastly
different, then the statutes do allow them to settle
anyway. They said that would not likely occur, they
would go with whatever the agency wants to do. But
the statutes do allow them that authority.

MR. STARKEY: In comparison to potential
settlements or awards, this is a pretty small cost
we're talking about to go forward up until summary
judgment?

MS. LEONARD: Yes.

DR. ST. HILL: Another thing to consider, a
follow-up on your comments and questions, is that we
would also need to look at the benefits, the pros
and cons for not involving the State early. I think
if we were to even consider that decision, what
would be the benefit of not --

PRESIDENT BRADSHAW: I'll tell you my opinion
about that. In my mind the only reason to at this
point on this case to include the State is because
we have concerns about our ability to pay costs.
Other than that, and I don't have a concern about
that, if we can find a way to do this, we'll find a
way to do it without using any State and tuition
dollars in getting it done.

I should also point out, and I think I'm
correct on this, Vee, if the State is involved, they
too will have a contract with Ms. Gallion. Right
now she has a contract with us. And if it's the
board's pleasure, with that contract we call all of
the shots. Now, we incur all of the liability,
that's a real potential. But we get to make the
decisions without any pressure.

Also, if the State is involved contractually,
they have the ability to contact not only Ms.
Gallion, but Rod Smith as well. You can't stop them
from having those interactions. Our experience has
been that often -- it's possible that we won't know
what is actually occurring in those conversations.
Ms. Gallion will know all of that.

DR. LESTER: I'd say the kind of money we're
talking about here, I think we want to maintain that
control.

DR. ST. HILL: Yeah.

MR. STARKEY: Once you determine what claim is
out there, then you can assess potential liability
and whether it's something you want to share.

MR. LUCAS: Is any of this discussion
discussable, and at what point in time is it?

MS. LEONARD: This meeting here? Yes, at the
end of the litigation, if it's settled, whenever the
court has an order of dismissal, we go to trial and
we get a judgment, or we win, it is not discoverable
until the end. Now, if we appeal, then it is still
closed.

PRESIDENT BRADSHAW: I have a question, Vee.
In this meeting we're not taking a vote? I just
want to be clear on that.

MS. LEONARD: That's correct. You're only
providing advice to Theresa.

PRESIDENT BRADSHAW: I want to make sure we
all understand.

MR. ST. CERNY: Mr. President, by bringing in
the Board of Governors do we relinquish our control?
In other words, do they take precedence over us as
far as direction?

MS. LEONARD: I asked them that question
yesterday. They said they would have to get back to
me, because we have two contracts, and which one
takes precedence. If we tell Ms. Gallion one thing
and the State is not in agreement, who gets to run
the show? And they said they would call me back.

MR. STARKEY: That puts an attorney in
conflict. I don't know that we would want the same
attorney representing this board and that board
because you're setting up a conflict.
PRESIDENT BRADSHAW: When we talk about the State, Doug, we're talking about the secretary of finance division of risk management, not the Board of Governors.

MS. LEONARD: And it wouldn't be representation of two boards, it would only be representing this board.

MR. ST. CERNY: One entity?

MS. LEONARD: One entity, yes.

DR. LESTER: But we do have conflict that Jerry is bringing up. If they're telling Theresa one thing and we're wanting to tell her something else, I don't see how that works.

MS. LEONARD: I don't believe that that is likely, but it is a possibility. And it does create on its face a conflict, that's why I asked them who's going to control, who's going to get to decide these issues, and they didn't have an answer for me. I'm still waiting to hear back.

MR. ST. CERNY: That concerns me. The other point I want to make is I want to go back to your opening remarks for a second on the prior cases. You contend that probably would not be admissible. So that couldn't be used against this board for the cases that were settled, that there is a pervasive
attitude at this University that would contribute to
the evidence in that case. This is totally on the
merits of this case, no other case involved
whatsoever.

MS. GALLION: I think there will be some
linkage. To be clear, she would be -- there will be
testimony, she will take these people's depositions.
There will probably be media coverage. We'll
probably relive all of this. But what comes out in
discovery, which is the deposition phase, the
interrogatories, request for production, is not the
same thing as that which is admitted at trial.

I believe that what will be admitted at trial
based on the Eleventh Circuit precedent will only be
testimony from these women or other persons that is
of a personal knowledge nature, and I don't think
there's a whole lot there. In other words, they
have to know about Bonnie's claim. But yes, the
judge would let the jury hear a little bit that
there were other people, because that is a support
to Bonnie Yegidis's retaliation claim.

In other words, one of the key elements to
even state a retaliation claim is that you either
participated in or supported or complained about
some illegal action. So as a matter of law she's
permitted to testify that in her opinion there was
something going on. But where the court will draw
the line, the court will just permit her to say
there were these other claims, there were these
other people. Very quickly stated here's what their
cases were about.

But we will not try their cases, we will not
hear that at trial in depth. It will be reversible
error if that were to happen, because look how
tainted the jury would be. We resolved these other
matters, yet we'd be trying them again. And no
sensible district judge would permit that to happen.
Now, where the district judge would draw the line, I
can't be any more specific than that. But just the
basic story would come in, not the details.

I wouldn't expect Wendy Morris to be on the
stand for four hours at trial telling her entire
story. I would expect her to be on the stand for
thirty minutes talking about anything she knows
about Bonnie, and then saying yes, I did have a
claim. No, she couldn't talk about the resolution
of it. All of that is inadmissible. She would just
say, I feel I was mistreated as well, and here's
why, blah, blah, blah. That's all she would be
permitted to do.
MR. ST. CERNY: I would think from one trustee's point of view, after hearing what you had to say this morning, and I really do appreciate that, I think it's incumbent on this board, looking at the settlements that have taken place prior to this point, that it's time to close the door and defend the rights and privileges of the taxpayers as well as the administration and staff of this University, and let them know that they have a board that cares and are willing to fight for it rather than roll over.

After these other cases have been settled and becomes public record, that's when I feel harmful comment follows. And I don't think this University deserves that type of treatment. I think that it's really important for us to, number one, accept your recommendations at this point, but to show that we're willing to stand firm where we are to back our president, to back his administration, other employees of this school, and show that we care and we're not going to be rollover artists for letting anyone who wants to hire an attorney come after us because they know that we're going to roll over and settle. I think that's wrong.

MR. LUTGERT: This is Scott, can you hear me?
I totally concur with that. Particularly in this situation where we have not done anything wrong. If we were to settle, in the public's view there's a presumption of guilt. Whether there should be or there shouldn't be, there is. So, we haven't done anything wrong, and we need to defend the reputation of the University and the administration. I totally concur with that.

MR. LUCAS: I think that's the reason to keep the State out of it too. Because I think they're not going to be nearly as concerned about the case at hand as we are.

MR. HARRINGTON: I would agree.

DR. LESTER: I agree.

MR. STARKEY: I think at this point we're probably saying defer the judgment on whether to submit it to the State. I don't think you have to make a decision today for the full life of the case. At this point we're looking for discovery and motion for summary judgment. I assume we could have future executive sessions so the board could be apprised of any material developments. Would that be the case, Vee?

MS. LEONARD: Yes, we could have strategy sessions.
MS. GALLION: I would certainly be happy to make myself available either telephonically or in person at any time for that purpose.

MR. STARKEY: If there is a significant milestone event that we need to consider.

MS. LEONARD: Yes. Theresa, could you speak to the mandatory mediation in federal court.

MS. GALLION: Yes. I'm glad that Vee raises this. Just a couple of observations. In federal court eighty-three percent of all civil cases settle. And they generally settle because in every single case the parties are ordered prior to trial to go to mediation. And judges who are beleaguered and overwhelmed with enormous dockets of civil and criminal cases know that there's an eighty-three percent chance statistically of these cases going away and their dockets getting lighter.

So one of the first activities that will happen in this case is that there will be a scheduling order that will issue. The scheduling order will contain key dates. It will happen sometime after we're served and after we file an answer and the initial papers are complete. You'll probably see that a trial will be scheduled for sometime in mid to late 2010. You'll also see that
there will be a mediation date that will mostly likely be in 2009.

The parties will be directed to choose a mediator voluntarily to negotiate. If they can't then the judge will direct one for us. We must go to mediation. We're not ordered to settle, but we're ordered to appear in good faith and to consider the other side's position, and to make a financial settlement if it's appropriate to do so.

So there will be downward pressure. If I had to guess based on what happens to the typical case, and I don't see this case as being untypical, it's really a pretty standard case, here's what usually happens: We get a big fat demand like the one that we got. We start the discovery process. We're able to demonstrate that certain allegations are affirmatively false, as we already know. Certain witnesses don't support her claim. They hear our defense.

They get to take Dr. Bradshaw's deposition and other depositions, and they hear our explanation and they start to second guess themselves. They see the expense. We all see the expenses piling up. We see that mediation date out there. Usually what will happen is that the other side will make a greatly
reduced demand.

I don't know what Rod Smith is thinking. If I had to guess he wants to settle this case between $100,000 and $200,000. I think that's what he's thinking. I think that his demand for $500,000 now is designed to result in a settlement in that range. If we can have early success, we can maybe get some portions of the case dismissed, maybe even convince him to abandon a claim because it's not supported by law, you never know. Maybe we can even consider what's called a Rule 11 motion.

Rule 11 is where someone is maintaining a position on a particular claim that's frivolous, that is outrageous, and not supported at all. Again, I'm getting way ahead of myself. Don't be surprised if within six months we're speaking again, and all of a sudden the demand is for $150,000 or $125,000, or even $100,000. And then if we file a motion for summary judgment and have success I wouldn't be surprised to see a demand less than that.

That is going to be an ever present issue in this case, because it's ever present in every piece of federal court litigation. Today is not the only day that we're going to have to consider an early
resolution of this case. It will happen over and over. We may have as many as five or ten settlement discussions about this case, because that is typical because we are ordered to discuss this at various stages by the court, who wants to get rid of this case and every other case.

DR. LESTER: If we go to mediation you're saying we don't necessarily have to live by what comes out of that, or do we?

MS. GALLION: We have to live by it, we just don't have to settle. We have to appear in good faith and listen to the other side, but we don't have to agree to settle. Now, if we do reach a compromise we would obviously have appropriate settlement documents, maybe with confidentiality, maybe without.

Maybe we're pretty darn pleased with the settlement that we've struck and don't mind everybody knowing. But yes, we'll have to live with any deal that we strike, but it will be this entity striking that deal and deciding that this is in our best interest.

MS. LEONARD: Theresa, does good faith, going into mediation with good faith, does that mean that we have to come to the table with a number, or can
we go to mediation with the intent not to?

MS. GALLION: Again, I've never in all my
years had a situation where the other side has gone
to the judge and said the defendant showed up at
mediation and were not in good faith. It's just
that everybody usually puts a few thousand dollars
on the table, and I would think we would do the
same.

If we went to mediation we would be under so
much downward pressure from the mediator, we would
say, all right, $2,500, $5,000. Almost everybody
does, even when we walk in saying we will not offer,
they're going to pay us, they're going to pay our
attorney's fees. That's just the way it is, we
almost always end up offering something. In this
case it is good faith to maintain a truly nominal
position. All right, fine, $500, $1,000, $1,500.
We can do that. That telegraphs a total lack of
respect for the plaintiff's case.

MR. ST. CERNY: It seems to me that -- I know
it's premature, but when you get to that point, I
understand you have to play by the rules of
mediation, but any form of settlement, is that
construed to be an admission of guilt at any level,
or can you assign that to a nuisance factor?
MS. GALLION: Again, we're way ahead of ourselves. I have no idea what might ever happen. I have had cases that truly, and still do all the time, that settle in a very nominal range. Sometimes those clients are so fearful of the plaintiff being able to say, I settled, I got some money, that they don't want confidentiality, they want to be able publicly to say, yeah, we settled with him, he didn't get a nickel, we gave $1,500 to his attorney, which was just an admission that it was frivolous. They want to be able to do that.

So sometimes I have clients who will forego the standard traditional confidentiality because they want to be able to publicize what they think is a favorable result. Because who's going to sue you if they think they're going to get $1,500? Nobody. Nobody is going to think that's a good deal. So I have had cases -- I really don't think that will happen in this one.

I think Rod Smith has gone to the trough enough times. I think he thinks there is a pot of gold at this University. And prior experience bears him out, that there is a pot of gold. You can't blame him. He's a smart guy for thinking that the pot of gold is still here. And he will continue to
think that until we disabuse him of that notion.

MR. ST. CERNY: Especially now, especially
with President Bradshaw and his people, they need to
know this board stands behind him, and we're not
rollover artists, and we're going to do what's right
and what is best for the taxpayers and the citizens
of southwest Florida. I think we have to stand
strong. I want to thank you for your presentation
and candor, I really do appreciate that.

MS. GALLION: Yes, sir.

PRESIDENT BRADSHAW: We have one --

MR. LUCAS: One other question. We talked a
little bit about attorney's fees. Based on what you
know about the facts of this case, do you see any
possibility that we may be able to recover any of
our attorney's fees?

MS. GALLION: Quite frankly, no. The standard
in federal court is not very inviting or friendly.
I don't think -- there was not a prevailing party
attorney's fees clause in her contract. At least I
don't think so. I will double check that before I
leave today. But there are only two ways to get an
award of attorney's fees. One, it's contractual and
you have it in your arrangement that if you're the
prevailing party and there's a dispute over your
contract, and Bonnie did have a contract, and that
is the subject matter of her lawsuit, that is the
easiest way to be the prevailing party and to
recover those fees.

Otherwise in these sorts of cases you are left
with a standard that the United States Supreme Court
announced in the late 1970s, it's called
Christiansburg Garment, and the Christiansburg
Garment case said that you can only recover your
fees if you're able to demonstrate by a
preponderance of the evidence that the opposing
party's claims were frivolous.

And frivolity is a very high standard.
Frivolity means no rational person would have
brought the case. If we're able to show that
virtually everything she says is false, there are
other things that we can do. But I would not bank
on that. It is a long shot, probably a five or ten
percent chance of us getting money back.

I will share with you what a federal judge in
the Northern District of Illinois, which is the
federal court in Chicago, once shared with me and a
client. The judge was conducting a mediation,
that's common in some of the midwest states, not
down here. We were in the judge's chambers and a
Fortune 500 company, the client, and general counsel was just outraged and just looked at the judge and said, this is robbery, how can you sanction this? You know this is a frivolous case. You should be granting our motion for summary judgment or motion to dismiss. And the judge looked at him and said, don't you get it? The day the lawsuit was filed you were a loser. Now, what are you going to do to stop being a loser.

It's sad but true that the minute you are a defendant in one of these cases you really have lost in a very significant and meaningful way. Your chances of recovering your fees are paper thin. So all you can do is make the best decision about how to make yourself aware.

And some people decide it's fine throwing five, ten, forty, $50,000 and getting rid of it immediately. Some people decide that they'll draw a line in the sand and they've got a good case and they will fight and send the message that Mr. St. Cerny was discussing, and Mr. Lucas as well. People make different decisions. I think I'm hearing loud and clear what this board views. But in some very sad and cynical way the minute this was filed we lost money that we're not going to get back.
MS. WHITCOMB: It's time for us to quit being a defendant.

PRESIDENT BRADSHAW: I would ask the board and the chair to spend some time talking about what this will cost. Others have alluded to the value of taking this path that we're taking on this particular case, and I think the value far outweighs the cost on this case.

MR. LUTGERT: I agree with that because, you know, there's a perception out there that we're an easy target. But there's another thing that disturbs me, and that is in each one of these cases there's been an allegation that there's been a pattern of discrimination, which is not the case, and which we need to defend, and we haven't done anything wrong here.

And it's very important I think to defend the reputation of Florida Gulf Coast University and the administration and the ethics of all of the staff and the people that work here. So I think there are other things here, but it's worthwhile to defend the reputation of the University and to stand up to this allegation that there's a pattern of discrimination here.

MR. LESTER: Scott, I think that's where we
want to be the winner. The less talks we have the
better, but the main thing is to win the reputation
issue.

PRESIDENT BRADSHAW: Mr. Chair, Trustees, and
Counsel, there's another matter we need to talk
about, and I'm going to ask Vee to take over in a
second. You know, it's been our practice with
lawsuits never to make a statement, comments to the
press while litigation is still active. We would
like the board to consider maybe another approach.
We would like to share a statement that we have
crafted that would be delivered to the press by the
spokesperson or whomever is the chair of the board
of trustees.

We spent a couple of days on this. Highly
educated people really need a lot of time crafting
words, but we spent a couple days with three or four
people, and we have come up with a statement that is
a little bit more aggressive than we've been in the
past, and I'm going to ask Vee to share that with
you.

MS. LEONARD: We would like to say and we
would like this to be our party line: "The
University has no comment on the complaint, other
than to say on the advice of legal counsel the
complaint as drafted is meritless. Moreover, we've also been advised that the Federal Rules of Court discourage comments on pending litigation. However, we will say that we are confident that the University and everyone named in the complaint will be completely vindicated."

Usually we just say we have no comment, but we want to state our confidence in our position in moving forward in this litigation.

MR. LUCAS: That took two days, huh?
MR. ST. CERNY: I think that's appropriate.
MS. WHITCOMB: I think that's an excellent statement.

PRESIDENT BRADSHAW: Scott, will you be willing for us to issue that statement on your behalf?

MR. LUTGERT: Absolutely. I think that is totally consistent with the conversations we've all had this morning. So I would support that wholeheartedly.

PRESIDENT BRADSHAW: I will work with Susan and we'll get it out appropriately. Thank you.

MS. LEONARD: Are there any other questions or comments or --

MS. GALLION: Again, it was a great privilege
to be able to represent the University and to work with all of you. Again, I think it's a very defensible case, but patience is the word. Nothing happens quickly, nothing is easy, nothing is cheap. Yes, we will be as cost effective as possible. I wish I had a magic wand, but I only have a computer with a keyboard. And I think that is something that we need, is patience. We'll file our motion for summary judgment.

I tried a case for Subway corporate out of Connecticut in April of this year, and the motion for summary judgment in that case was pending for six months before the judge denied it on the eve of trial. We have no control over these federal judges. The judge might decide not to rule on our motion. He may decide not to rule on our motion until after mediation, so that we still have that pending.

So again I would just urge some patience, some sense that there will be high marks and low marks, and some depositions won't go as well as we'd like. Just can't get too high or too low, and we simply maintain the faith and be steady.

PRESIDENT BRADSHAW: Vee, is there any action that needs to be made, taken in public before we
reconvene?

MS. LEONARD: No.

PRESIDENT BRADSHAW: No statement about the -- okay. I would remind the trustees, probably don't need this, but once again when you're asked to comment, just reference the statement that is made on behalf of Chair Lutgert and the board, and that's our statement. With that, that will be what I will say --

MR. ST. CERNY: One last thing, Mr. President. I will say I think it's important concurring with your statement and the timing of it, should merit the thought on who and how this will be presented to the press. I think there's some -- I think there's merit in the way it should be handled. I leave that with your judgment.

MS. LEONARD: If I could just add, if you have any questions about the case, please feel free to give me a call. Conversations with other non attorneys will not be protected. And if you are deposed, it is very possible that they can ask who else have you discussed this case with and you would have to disclose that information.

MR. STARKEY: Technical question. We're going to make this response prior to being served?
MS. LEONARD: No. This is a response we will make if we were approached by the media. It is not one that we are going to affirmatively put out there, though we could.

MR. STARKEY: Assume the media is going to call you this afternoon because they know we're having this executive session, and you make this statement, is that a constructive service? Have you acknowledged the suit? You don't have to respond.

MS. LEONARD: Well --

MS. GALLION: They have to actually serve us, which again is not a hard thing to do.

MS. LEONARD: We pulled it, we can read it off the Internet. But no, we haven't been served. I don't think that will be a problem.

PRESIDENT BRADSHAW: I think, if I understand where you're going with this, Trustee Starkey, that this would be a very appropriate response once we are served. And maybe not responding until we are served might be --

MR. STARKEY: I mean the message is we're not a quick hit, you're not going to get a bunch of money fast.

PRESIDENT BRADSHAW: Right. I'm wondering again --
MR. STARKEY: No urgency on our part until we're served.

MS. LEONARD: It's a decision that you have to make. But acknowledging the complaint does not in any way say that, yes, we have -- of course we have knowledge of it, and I don't think it would harm us in that respect.

PRESIDENT BRADSHAW: Not only that, not only do we have knowledge of it, we actually have an offer for settlement, even though we have not been served. We'll talk about that. And don't be surprised at all if you see this statement or hear it this afternoon on the evening news. I think for us to present as if we don't have knowledge of the details, it's been filed in federal court, we know what the lawsuit says even though we have not been served. You might make that a part of the statement, even though we have not been served.

MR. LUCAS: One last question. If we took any notes today, are they discoverable?

MS. LEONARD: Well, discoverable and public record are two different things. I'll let Theresa speak to the discovery aspect of it. As far as public record is concerned, it's your personal notes for your own personal recollection, it is not a
public record. Just so long as you don't share it with anybody else, not disseminated around. Now, whether or not that's discoverable is a different issue.

MS. GALLION: I would also urge you not to make any notes or keep any notes, because we now are in litigation and there's just no need for those notes. Because they could conceivably be discoverable. Not that there is anything harmful in them, but every additional document that we have to produce or gather is another dollar, is more time of someone involved in the case that they have to spend. So I would not take notes. I did not see any of you taking notes this morning, so you probably have followed my advice and divined it even before we gave it.

MR. LUCAS: Anything else? Anybody have any questions or comments?

DR. ST. HILL: No.

MR. HARRINGTON: Ms. Gallion referenced that possibly some of the trustees may be asked questions of. Really? I don't see how we fit in this debate.

MS. GALLION: Could be. One of the allegations that she makes is the board did not consider her for the interim president position. So
she might delve into that, what the rationale was.
We will be arguing that that's not something that is
illegal because it's not an adverse employment
action. She wasn't denied anything that was
meaningful. But again she does make some
allegations involving the board.

MR. LUCAS: Always good for harassment.

MR. HARRINGTON: Exactly.

MS. WHITCOMB: She did not apply for the
president's position when that was available; is
that correct?

MS. LEONARD: The permanent position? I don't
believe she did apply for the position.

MS. GALLION: I think she really complains
primarily about the interim, the interim
arrangement, which again we will argue was not an
adverse action against her.

PRESIDENT BRADSHAW: I think a motion is in
order to adjourn -- I'm sorry, I guess it's not. We
would have to vote if we did that, so I understand
we're not to vote anything in executive session.

MS. LEONARD: We'll just reconvene.

PRESIDENT BRADSHAW: We now will reconvene to
the regular board meeting at ten o'clock.

(Meeting concluded.)
I, LISA M. BOYD, Registered Professional Reporter, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript pages 1 through 49, is a true and correct record of my stenographic notes.

DATED this 27th day of July, 2009.

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MEMBERS PRESENT FOR EXECUTIVE SESSION:

Dr. Wilson Bradshaw, President
Scott Lutgert, Board of Trustees (Chair)
Lindsay M. Harrington, Board of Trustees
Isaac Roman, Board of Trustees
Doug St. Cerny, Board of Trustees (via telephone)
Jerry Starkey, Board of Trustees
Larry Hart, Board of Trustees (Vice chair)
Brian Cobb, Board of Trustees (via telephone)
Adam Corey, Board of Trustees
Ann Hamilton, Board of Trustees
Charles Lindsey, Board of Trustees
Edward Morton, Board of Trustees
Robbie Roepstorff, Board of Trustees

ALSO PRESENT:
Theresa M. Gallion, Esquire
Vee Leonard, Esquire
MR. LUTGERT: Good morning. I think at this point I'll let Vee explain what's going on.

MS. LEONARD: We are having this session for the purposes of discussing strategy, as well as the mediation which occurred on yesterday. We were required to enter into mediation on yesterday. We didn't have the ability to change the date so that we could have a conversation with the board in advance of the board meeting. But we did want to update you on what occurred and to have you provide some direction for us going forward.

And at this time I'll turn it over to outside counsel Theresa Gallion.

MS. GALLION: Good morning, everybody. I'm Theresa Gallion. I met most of you before and I had the opportunity to introduce myself. As most of you know, Bonnie Yegidis, who is the former Provost, filed a lawsuit in Federal District Court in June of 2009. There are three primary claims that she put forward.

The first is that she was retaliated against when she was removed from the Provost position in November of 2007 because of her Title IX activity. And she claims that the Title IX activity was the lodging of complaint about compliance issues under
Title IX and engaging in other activity, which by
the way is largely not supported by the record.

In fact, there is significant testimony in her
own deposition which was taken several months ago,
and she really was a bystander in all Title IX
matters, had no particular involvement in any of it
except for incidentally running into Merrily Dean
Baker at a softball game or volleyball game, where
Merrily Dean Baker mentioned she would be sending a
letter to interim president Pegnetter.

But she admitted under oath that she had no
role in the investigation, in the administration of
this law, and she had no responsibility for
athletics. And so generally speaking her statement
and her testimony was she had no role. Nonetheless
that's the first of her claims, that she was
retaliated against in that she was removed by Dr.
Bradshaw from the Provost position.

The second of her claims is that she was
subjected to a hostile environment from the
standpoint of sex or gender, otherwise known as
sexual harassment. We believe that these claims,
which are largely apparently abandoned by her, will
be dismissed by the court because they do not meet
the minimum legal standard.
All she's been able to articulate in support of that claim is that Dr. Merwin a number of years ago made a remark about her attire, that she was showing too much boob. We have significant testimony from others that some of her attire was sexually provocative. And even if Dr. Merwin did make that remark, which he denies, a single remark of that sort does not establish a sexual harassment claim. The law is very clear.

She also contends that there was some other hostile treatment by Steve Magiera and others, the foundation staff. But she has pretty much admitted based on documentary evidence that we have spent a lot of time and trouble to locate, because much of it is very old, that she was mistaken about all of those allegations.

The records do not support her claims that she was disrespected, left out of events, not invited. Minor things that really are kind of garden variety silly things, and she has since backed away from those. We have a high level of confidence that the second count in the complaint for the hostile work environment based on sex has largely been abandoned by them, and we will -- we should have not too much difficulty getting the judge to dismiss that.
The third claim that's in the complaint is for sex discrimination, in that she says a lesser qualified man was hired into the Provost position. We believe that we'll be able to demonstrate that our hiring of the Provost position involved consideration of several qualified women, who for whatever reason did not participate in the process or did not apply or were not selected. In any event our criteria were gender neutral.

So those are the three claims. In terms of where we are and what's happened in the case, we do have a scheduling order in place. We were required by court order to complete mediation no later than yesterday. That's why it was set at the latest date yesterday. If the matter is not otherwise resolved it's set for trial in August of this year.

We will be no later than May 21st, because that's the deadline, filing a Motion for Summary Judgment, which is a tool where we ask the judge to dismiss all three counts of the complaint. I would say I think we have a very good chance on two of the counts. It is often very difficult to convince a federal judge -- and we have an excellent federal judge. This case is in federal court in Fort Myers. We have the newest federal judge who has been
appointed, who has a commercial civil litigation employment law background. She's African American, about fifty years old, very well respected, was previously on the State bench. So a very experienced jurist.

In any event, we know that it places her in a difficult position to be a relatively new federal judge and in a highly contested significant attention-getting case to ask her to throw the entire case out, but we still think we have a pretty good chance. And that's our orientation, to try to get these claims dismissed because we did nothing wrong.

We feel very strongly that our independent investigation has shown that no laws were violated. She certainly was not discriminated against or retaliated against. It's just that we're still dealing with this very unfortunate Title IX background which Bonnie Yegidis has glommed onto to try to create a stronger case for herself.

So leading us up to yesterday we went in good faith, we were required to bring persons who had authority over the case, we made it clear that subject to this board's approval we would negotiate in good faith. We spent almost an entire business
day there, aided by the independent neutral mediator Cary Singletary, which was selected by the parties. Cary knows the parties and the lawyers very well. He's a very well respected mediator, he worked very hard.

Their opening demand was $516,000, based on nothing that we could determine other than two years of base salary. We believe that's the number that she pulled out of the air, because her final base salary was $233,000. Cary Singletary, I think, very quickly recognized, as did we, that these numbers were based on nothing that made sense.

And so we spent about four hours educating them about what her damages really might be in the event that she prevailed. Of course we did not concede that we thought she would prevail, but just for purposes of being there in good faith we spent a good bit of time, three or four hours, educating her on the fact that she was no longer a participant in the Florida Retirement System. Now she thought that she was. And her negotiating posture was devoted to that for several hours of the day.

To make a long story short, they made a final offer at about 3:30 or four yesterday afternoon for the amount of $174,750, which is nine months of
severance. There is a long history that I will not
bore you with on how she came up with that number.
Again it bears no resemblance to her actual damages.
Her actual damages in reality are about twenty or
$30,000 for each year that she's not here.

Because our view of the world is that she left
voluntarily. She had a one-year sabbatical that was
in her contract where she was paid her base salary
of $233,000. She left with four months left on that
sabbatical, that was her choice, because she located
other employment at the University of Tennessee.

She also had contractual right to be a faculty
member making at least $188,000 a year, but she
voluntarily left that, again in favor of
compensation at the University of
Tennessee-Knoxville where she was making and
continues to make a base salary of $212,000.

So we presented all of these facts, and
because we were required to negotiate in good faith,
subject to this Board's approval, we made a best and
final offer to her of $39,800, which we rounded to
forty thousand, and it was supported by principle.
It was two amounts, the amount of $24,041, which was
the amount of contributions that if she had stayed
five years with us that is the balance of the 13.12
percent contribution that the University would have made to the Florida Retirement System.

Again, we determined later in the day that she was not entitled to a pension under the Florida Retirement System rules, but that was still a principal number that we thought we could make an offer on. And then we offered her the further amount of $15,750, which is her loss to date, the difference between the $233,000 that she earned in base salary here at FGCU and the $212,000 that she's earning at the University of Tennessee-Knoxville for the period since she's accepted that job to date. We made a best and final offer, subject to the approval of this entity, and their best and final was allegedly this $174,000 amount.

And that's basically the report that we have. And our desire is to obtain direction and guidance from this body so that we will be able to respond to the mediator and to respond to the opposing side to let them know if we wish to maintain our approximately $40,000 offer, which we can withdraw, or if we wish to even continue these discussions.

In terms of the Court's requirement, we have negotiated in good faith, we spent an entire day, we did our best. We are no longer required to engage
in good faith settlement discussions as of four o'clock yesterday afternoon. So if this body determines that we should withdraw any -- and our offer has been rejected as a matter of contract law, there is no pending offer. But if this body does not desire us to do anything further, we're not required to.

If this body desires that we should continue discussions, we'll take our direction from you, and the opposing side as well as the mediator are awaiting confirmation from us on what direction you would like us to take.

MR. STARKEY: When is the Summary Judgment Motion due?

MS. GALLION: That really is the critical question. It's due May 21st, but we're going to file it earlier than that. We expect that we'll have it to Vee by the last week of April in final draft form. Keep in mind it requires a lot of affidavits. There are a number of people from whom we will have to get affidavits, and we're working on that. But we expect that we'll have it on file right around May 7th.

The reason for that is that's the date that discovery closes. Discovery is the ability to take
depositions and to send out interrogatories. We
don't want our papers on file with them still having
time to go take someone's deposition or to do
something else. So our plan is the day discovery
closes, May 7th, our papers will be on file. My
worry is just that with these very compact dates the
Court will be pressed to devote sufficient time to
our Motion for Summary Judgment.

The reason we're compressed is because the
other side has done very little discovery, and then
they had to file a Motion three weeks ago asking the
Court to extend the deadlines for them to take
further depositions. I'll just add this as my
personal opinion, I do not think that the opposing
lawyers have been prudent in their prosecution of
the case.

I believe that Rod Smith, who's the senior
lawyer who represented Wendy Morris, truly thought
that we would just roll over and make a significant
settlement, and that he would not have to do very
much based on his prior experience with this
University. And I think it's been a shock to them
to see us take this aggressive approach and
aggressive opposition based on the facts, and
supported and warranted by the facts.
So they really have done very little. To date they've taken four depositions, they lasted an average of forty-five minutes. Chairman Lutgert was deposed for about thirty-five minutes, President Bradshaw for less than an hour, Dr. Shepard for less than an hour, Dr. Pegnetter for less than an hour. They would like to depose Dr. Merwin, but he has been too ill.

Again, that's really all they've done. I add that as an aside. Because of their lack of diligence, they then went to the Court to get additional time, which we opposed, but the Court gave them thirty extra days, jamming us up. The Court said, okay, I'll give you thirty more days to take depositions, but I'm not extending any of these other dates.

So that is a worry that I have, that the Court is jammed up and very busy, and will not have time until the last minute before trial to announce a ruling on our Motion for Summary Judgment. That's a procedural situation that we have.

MR. STARKEY: When is the trial scheduled?

MS. GALLION: August, but I would not at all be surprised if we are carried over another month or two. Just keeping in mind this is not a definite --
it's not a date certain, it's not a definite time frame. We could be one of ten cases on the docket that month. We won't know until mid July. And there could be five criminal cases ahead of us, which always take precedence, in which case we'll be bumped to another time frame.

MR. MORTON: Chairman Lutgert, what is the protocol here?

MR. LUTGERT: The protocol is that anyone is free to speak at any time. I think anything we do say ultimately will be released after the case is settled on public record. But clearly right now we're prepared to inform ourselves, get as much guidance as we can through counsel, and give General Counsel Vee Leonard some guidance on how the Trustees feel we should proceed. So it's appropriate to ask questions.

MR. MORTON: May I ask?

MR. LUTGERT: Sure.

MR. MORTON: I think I could hear it. You have to bear with me, I'm deaf in my right ear, so I kind of struggle in a closed room. What I heard was they wanted roughly $174,000 and change. And we offered roughly $40,000, which we felt we could support. And that leaves us about $135,000 or
$140,000 apart.

What I also heard was because of time compression there is going to be a significant amount of work between now and the 7th of May so that you can be prepared for summary judgment on the 21st of May, and that there would likely be a number of affidavits and other things that would have to be acquired and gathered together.

I would also presume that given what you've said, whether they're vagaries of the Court's schedule, whether or not there are more criminal trials or other things that intervene, there could be an extension of time. Time is money.

I would imagine there is a significant cost associated with that litigation, and if we offer $40,000, we've offered $40,000. If we proceed from this point forward, then we're going to incur I believe, unless we have insurance, which I don't recall that we do for this type of an action, then we will be out-of-pocket that additional cost.

MS. GALLION: Yes, sir, that's correct.

MS. LEONARD: If I could just interject. We have chosen not to utilize the insurance available to us. There is insurance available, but the University elected to secure outside counsel and
incur the cost of that. So we have not submitted this claim to the insurance company, but it's not because we don't have it available to us.

MR. MORTON: Okay.

MR. LUTGERT: If you remember, the last time we had these allegations in a different form we did elect to go with insurance, and that came along with some other constraints from the insurance organization in Tallahassee, particularly counsel that was provided to us and some other things. And without -- I will say that I think there is no question that the counsel we have now is excellent and very much on top of the case. But I think what you're getting to is what is the cost of the trial --

MR. MORTON: My question was in terms of settlement. If you were to split the baby and we were to offer -- I don't know what the implications of that are, so I'm just green light thinking here. But if we were to offer to split the difference between one thirty-five and forty -- well, excuse me, offer $62,000 on top of the forty, which is about $100,000, is the cost of litigation going to be roughly $60,000 between now and the date of the trial?
MS. GALLION: That's a very good question. If your view of the world is that a dollar is a dollar is a dollar and it does not matter what you do with that dollar, you'll be very concerned with the answer. Litigation is expensive, it is uncertain. We've been fairly cost effective to date. I think there is no doubt that this month we'll spend another 10, 15, $20,000 between the mediation and the preparation for Summary Judgment.

June and July, if the case is not resolved, we're getting ready for trial, the judge has not ruled on the Motion for Summary Judgment, we'll easily spend another twenty-five to $50,000 getting ready for trial. And that doesn't even cover the cost of trial, which is probably another fifty to $75,000. So the total cost of the case through trial is easily another $100,000, there is just no doubt.

So you have to consider what is important to you. Is it just about the money or is it concern about other issues? I believe that this case could settle for a good bit less --

MR. MORTON: Follow-up to that is a sentiment as opposed to a question, and that is the reputational risk or the image and the impression
that we give off predicated upon maybe some of what
has occurred in the past, that people can make a
complaint and we are particularly accommodating to
that complaint. That's a judgment I guess. We all
may have different opinions. Thank you very much.

MR. LUTGERT: What do you think -- I know this
is just a hunch. What do you think they would
settle for right now, and with what you know now if
we went to trial what do you think the risks are of
them prevailing or our prevailing?

MS. GALLION: I'll answer a third question
too. I think those two and this additional comment
are really the bottom line. I believe that they'll
take $100,000. I think they were significantly
deflated yesterday. I think it was a shock to them
to have the mediator push them so hard. But
$100,000 is still an awful lot of money.

She's a highly compensated person, so when you
look at it in terms of her compensation maybe that's
not an irrational. But my guess is that they'll
take $100,000. If the judge grants significant
portions of our Motion for Summary Judgment, which I
expect her to do, I think they'll take a good bit
less. Because I think they will be very concerned.

In terms of what I expect the judge to do on
Summary Judgment, which is the third of the questions, I think the judge will dismiss the gender portions but be hard-pressed to grant Summary Judgment on a retaliation claim. That's asking a lot.

MR. LUTGERT: Does it make sense to reconvene after the Summary Judgment?

MS. GALLION: (Nodding head.)

MR. LUTGERT: That would be one strategy. It's possible we don't settle now and wait and see what the judge does and get back and evaluate the situation at that time when we have more information.

MS. GALLION: Absolutely. And the third question is I think we'll prevail at trial. If I were a betting person I would say our chances are 65 to 70% of prevailing. Those are very good odds in my business.

MR. LUTGERT: I want to make a comment, it's my personal view. Money is obviously important, there's no question about that, but reputation of the University is also overridingly important. The fact of the matter is, from what I hear of counsel and from what I know, the University has done nothing wrong on any of these claims, and I think
it's important with the history we've had in the past, so on and so forth, that we make sure that the university's reputation is --

MR. HART: I agree with the chair. I'm concerned. First of all, I'm going to be hard-pressed to agree to settling for anything. My thoughts are that we move full speed ahead. And then I agree with the chair coming back after the Summary Judgment. The reputation of Florida Gulf Coast University is at stake here, and we have not done anything wrong.

I think in prior situations not having all the information that should have been available to us at the time, we misstepped. I don't intend to misstep again. I think this University has been fair to everyone that's been a member of this team. And for someone to look at this University as a cash cow or whatever you want to call it is wrong. And I think the integrity of Florida Gulf Coast University far outweighs a $40,000 settlement or $100,000 settlement.

Bottom line is we did not do anything wrong. I feel more comfortable today with this institution than I have before. I have what I believe to be a real attorney representing us. I have reviewed the
facts and been delivered some quality information. I'm very comfortable in how Vee has proceeded. I think we've got a good team.

I'm just saying if you want to get back together after Summary Judgment, fine. But to settle this case I think would be a slap in the face to the president and all the staff at this institution.

MR. COBB: Larry couldn't have said it any better. I was uncomfortable the last time we were settling, so I side with him totally on that.

MS. ROEPSTORFF: As a new Trustee, second meeting, I absolutely totally reaffirm what you're saying. Having not been here and being a part of, it is reputation that's at stake now. And I'm sure there was, now that you said insurance, I understand how that works. You don't have control a lot of times when you have insurance in the ball game. Inasmuch as we don't have insurance it's definitely our reputation at stake in making the right judgment call.

Not being here, I'm sure there were valid reasons that the Provost was not made interim president. I'm not going to go backwards and start asking a lot of questions as to why, but I do feel
that I wouldn't be on this board if I didn't have
certainty with all the Trustees that are on here.
And I totally support what you're saying, Trustee
Hart; I don't think we should make any settlement at
all. I think we should go forward, because it is
reputation at stake.

MR. ST. CERNY: Mr. Chairman, I agree with
Trustee Hart's comment to the letter. I think this
University and the Board of Trustees need to stand
strong and stay the course, and I would support
that. Thank you very much.

PRESIDENT BRADSHAW: I just want to make it
really clear for the record that we don't have an
active $40,000 offer on the table to these people.
That was once considered; it was rejected. And the
$174,000 plus figure you have, it came to that
figure after the mediator said, "Look, what would it
take to settle this case from your side?" They gave
us that number, and we said good afternoon. And
that's where we left it.

MR. LUTGERT: Any other questions or comments?

MS. HAMILTON: I agree with Trustee Hart's
summarization of the situation as well.

MR. HARRINGTON: Likewise.

MR. STARKEY: Agree.
MR. ROMAN: I definitely agree.

MR. LUTGERT: Excellent. I think General Counsel Leonard has direction.

PRESIDENT BRADSHAW: I think for the record the question would be do you feel you have the sufficient direction from the board to proceed?

MS. LEONARD: Yes.

MR. HART: I think we can go full speed ahead and then come back after the Summary Judgment. I think that's been made clear.

MS. LEONARD: I just want everyone to know that that may be a call meeting, not a part of our regular schedule.

MS. GALLION: Thank you very much. Pleasure to see everyone.

MR. LUTGERT: This meeting is adjourned.

(Meeting concluded.)
CERTIFICATE OF REPORTER

I, LISA M. BOYD, Registered Professional Reporter, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript pages 1 through 23, is a true and correct record of my stenographic notes.

DATED this 1st day of May, 2010.

LISA M. BOYD, RPR, FPR
FLORIDA GULF COAST UNIVERSITY

BOARD OF TRUSTEES

EXECUTIVE SESSION

DATE: January 18, 2011

TIME: 8:45 a.m. to 9:40 a.m.

PLACE: Florida Gulf Coast University
10501 FGCU Blvd., South
Fort Myers, Florida

REPORTER: LISA M. BOYD, Registered
Professional Reporter, Notary
Public, State of Florida at Large

FORT MYERS COURT REPORTING
2231 First Street
Fort Myers, Florida 33901
(239) 334-1411 Fax (239) 334-1476
APPEARANCES

MEMBERS PRESENT FOR EXECUTIVE SESSION:

Dr. Wilson Bradshaw, President
Scott Lutgert, Board of Trustees (Chair)
Larry Hart, Board of Trustees (Vice Chair)
Brian Cobb, Board of Trustees
Adam Corey, Board of Trustees
Kimberly Diaz, Board of Trustees
Ann Hamilton, Board of Trustees
Jerry Starkey, Board of Trustees
Doug St. Cerny, Board of Trustees
Robbie Roepstorff, Board of Trustees
Edward Morton, Board of Trustees
Chuck Lindsey, Board of Trustees
Lindsey Harrington, Board of Trustees (Via Telephone)

ALSO PRESENT:
Theresa M. Gallion, Esquire
Vee Leonard, Esquire
MS. LEONARD: We'll now convene the executive session. I have asked for the executive session because we are on the heels of trial. The trial date is February 1st and 2nd, it's currently scheduled for two days, and we are here to seek the counsel of this Board in that particular matter. We have had a Court ordered settlement conference. And as you may or may not know we can settle up to trial.

So we need some counsel from this Board as to what your position is. We want to also inform you as to what has been going on since we last met. And at this time I turn it over to our outside counsel Theresa Gallion.

MS. GALLION: Good morning, everybody. It's so nice to see all of you. Please pardon my tardiness this morning. Just to give you an overview, because I think some folks will not have the same historical perspective, we are here today to talk about a lawsuit that was initiated back in June of 2009. We're coming up on two years during which this will have been a problem that we've been -- and a challenge that we've been dealing with.

The case is now set for trial with a date
certain, which means this is our time and place, 8:45 a.m. on February 1st and 2nd. We still have no ruling on our Motion for Summary Judgment. Most of you will remember that when the lawsuit was filed there were three counts or three individual claims that were brought. Two related to either sex discrimination or sexual harassment.

Much to our dismay, although ultimately it's a very good thing, Bonnie Yegidis has without much attention abandoned the claims that related to sex discrimination and sexual harassment. It's obvious that she did so in response to our Motion for Summary Judgment, which has been on file some seven months now. More about that later. That's extremely disappointing.

Some of you may recall that we have a new federal district judge, Judge Honeywell. This is her first. She's been on the bench about a year now. She has a good reputation. She had previously been on the state bench. But what we are hearing is that she's overwhelmed, overwhelmed with her docket. That position that she now holds on the bench was open for some time, another judge took senior status, all of these factors that contributed to her having an extremely heavy and burdensome case load.
She's new to the Court, procedures, administrative procedures, and the long and short of it is she's really having a hard time getting her hands around her docket, her case load, disposition of cases. In fact, this was acknowledged very directly by a junior judge, a magistrate judge, Judge Chappell, whom we were ordered to mediate before, and Vee Leonard and I did that several months ago.

And it was interesting that Judge Chappell, while very respectful of the judge who will try the case, nonetheless commented that she was really struggling. And the junior judge, she's actually a magistrate judge, but most people think of her as being in the secondary or junior role, she actually told Vee and myself at the settlement conference that if this were her case she would have granted our Motion for Summary Judgment a long time ago. She had read the papers, she had come to believe that our position -- that the case shouldn't even go to trial, that our position was so strong on all counts.

So back to what happened when we filed our Motion for Summary Judgment, Bonnie files her opposition papers and doesn't say a word about
gender or sexual harassment, just totally abandoned those claims. She has since filed something with the Court indicating I've abandoned those, I'm not going to present evidence. So we don't have anything official because the judge has simply not gotten around to ruling on the Motion for Summary Judgment, but we will.

So this means that on February 1st and 2nd one count goes to trial, and that is a Title IX retaliation count. I'm looking at the complaint right now. The upshot of it, it should be very narrow, very limited, very focused, it is simply that she was removed from the Provost position in mid November of 2007 because she allegedly raised issues of her concerns about the Title IX status and the Title IX investigation.

That is the case that we are preparing to take to trial here in precisely two weeks. The trial will start two weeks from this morning. We've been given the assurance that the judge will rule on the pending Motion for Summary Judgment. We did receive an indirect comment from Judge Chappell, the magistrate judge, junior judge, that she thought the judge was going to deny our Motion for Summary Judgment on the Title IX retaliation, the only
remaining count.

Not because it's not well taken, but because she's new, it's politically sensitive. She's not going to stick her neck out there. As a brand-new judge in this situation she's not going to stick her neck out there and rule in our favor. The easier thing for her to do is let it go to a jury trial. This is a jury trial. There will be eight jurors that will be selected that morning. When we commence at 8:45 two Tuesdays from now, unless the matter resolves prior to that, we will pick an eight-person jury and we will then proceed with the presentation of evidence.

I have been told by opposing counsel Rod Smith, who represents Dr. Yegidis, that he will only be calling in all likelihood four witnesses, but he may call a fifth. The question mark is Dr. Pegnetter. I don't believe he will be called. I don't believe the judge will permit him to be called. If you look at what's remaining in the lawsuit itself, the Title IX complaint relates to the decision making of Dr. Bradshaw, it has nothing to do with Dr. Pegnetter.

But Bonnie Yegidis' claims in our opinion are very weak. So as a consequence she's seeking to
bolster her claims by calling, if she's permitted to
do so, Wendy Morris as a witness. We have filed a
Motion asking that Wendy Morris not be permitted to
testify? Because what would she know about Dr.
Bradshaw. She's never met him or spoken to him.
She was dismissed in late July before Dr. Bradshaw
even took office.

And the other witness besides Dr. Bradshaw on
Bonnie's side, they will call him first, which we
anticipated, and I have no doubt he'll do an
excellent job, the other witness is Merrily Dean
Baker. Some of you remember that she's the person
in May of 2007 who wrote the letter to Dr. Pegnetter
first expressing concerns about Title IX matters.

We have filed a Motion asking that the judge
not permit her to testify for the same reason as
Wendy Morris. What would she know about Dr.
Bradshaw? She's never met Dr. Bradshaw, she's never
spoken to Dr. Bradshaw. She has no personal
knowledge of why Dr. Yegidis was asked to step down
from the Provost position. So we believe that the
judge will rule favorably on those evidentiary
issues.

There is a hearing set on those matters for
the 27th of January. One thing that we did do is we
placed a phone call on Friday afternoon to the Court's chambers to suggest that the Motion -- it's called a Motion in Limine. It's where you argue about these evidentiary issues, and which will be primarily Wendy Morris and Merrily Dean Baker's role in the case. We ask that take place, that argument take place privately in the judge's chambers. We don't want to file a formal Motion, because then there will be media coverage asking what does the University have to hide.

But we mentioned to the Court personnel that this could taint the jury pool if there's media coverage, because a person, at least one person from the media has been present at every proceeding so far, including trying to come to the private confidential mediation, and had to be asked to leave by Judge Chappell.

So I'm hopeful that the judge will issue an order stating that the oral argument on the evidentiary issues will be private and in her chambers, because it certainly makes sense. If there is media coverage then you might get jurors who have read about that and know about these other witnesses, and that would not serve the interest of justice.
I guess the only other thing that I will mention before turning it over for any input or comments or questions or concerns is the status of settlement. We were directed to go to mediation, and we did appear and spent about a half a day. And Dr. Bradshaw made himself available by telephone, which had been requested by the district Court.

And our view had been that if it was possible to get rid of this for something that was truly diminimus, five, ten, $15,000, and as long as the settlement document, which of course would be public, indicated that Bonnie had changed her mind and was wrong, and maybe it wouldn't have to be that bold, but something that this was money to pay for her costs, her Court reporter, some of her attorney's fees.

And they actually agreed to this. They had agreed in our discussions to give us language in the agreement that upon reflection and after the discovery process Bonnie had come to believe that she should not have brought these claims and appreciated our efforts to provide her some money to pay her expenses and to walk away from the case. But we could not resolve the financial aspect. We came to a substantial agreement on what the language
would be. That turned out to be the easy part. The money turned out to be the not so easy part.

Vee, what was their final number?

MS. LEONARD: Forty-five, forty-six.

MS. GALLION: Forty-nine, I think it was forty-nine thousand. I do remember. They indicated they would come lower. My sense said they might have come to thirty-five or something. But Bonnie wanted to recoup the money that she had actually paid to her attorney Rod Smith. And I don't know whether this is true.

I only have his statement, but he claims that's about $45,000. And that she wanted to -- she didn't want to be out any money affirmatively. She simply wanted to -- she was happy to walk away. She knew she wasn't going to take any money, but we just weren't able to do that. We did not think at the time that that would be what this Board would want. So we declined that offer, although I certainly think that something along those lines would be there for the taking if we were --

MR. COREY: The number was forty-five thousand?

MS. GALLION: It was three or four weeks ago. We have not had any further discussions. I think,
frankly, that if the judge rules on the 27th at the Motion in Limine, which is on the evidentiary issues, that they would not be permitted to call Wendy Morris or Merrily Dean Baker, I think we'll definitely hear from them with a much lower number. But then they'll know they're in a lot of trouble. They have only Bonnie.

And Bonnie is going to be met with the testimony of Dr. Bradshaw about his good faith reasons why he did not feel she would serve him properly in the Provost position. Dr. Shepard has done input on that, Susan Evans, Steve Magiera, Barbara Krell (phonetic spelling). And there may be others. But these are all people who will be able to say that they shared information at Dr. Bradshaw's request.

And much of what they shared is very derogatory to Bonnie, will be very embarrassing to her, and I think that any reasonable jury upon hearing that will understand why Dr. Bradshaw did not feel that she should serve him as the Provost. But again I think the point is we could get settlement back on track if that's what this group wants us to do.

MR. STARKEY: When will the Motion for Summary
Judgment be dealt with? Will it be at the Motion in Limine or -- but it's required to be before you start the trial?

MS. GALLION: That's correct. It's extremely frustrating to us. Here we are at the bitter end. We think no later than the 27th, at the hearing on the Motion in Limine. But she could have saved everybody a lot of time and money. We just do not understand. Because it's a lot of work. I mean, it's a ten, fifteen, twenty-page opinion. It's a lot of work.

PRESIDENT BRADSHAW: I want to remind everyone that while the proceedings in this session will not immediately be available as a public record, transcripts will be available after the case is settled. So whatever is said, of course we have a Court reporter here, just as a reminder.

MR. COBB: Because there's no settlement judgment yet, does that mean we have to be prepared for both cases?

MS. GALLION: Well, I don't think so. That is because Rod Smith has stated in documents that have been filed with the Court and in open Court that they have abandoned those claims. And so if he tried to do something, I think it would not be
difficult for us to bring that to the court's attention. You can't make those types of representations and then change your mind.

He's actually in something called a pretrial statement, which is something that the parties had to cooperate on to submit to the judge in advance of trial where we tell the judge here are the issues, here are the witnesses, here are the exhibits, stated in that document that they had abandoned the gender claims. So it's very unfortunate that -- because those are the claims that really got a lot of attention, and now she's not even pursuing them.

MR. LUTGER: One issue that will be in front of the Court is Title IX, and the fact that her case is that she got fired because she brought Title IX to President Bradshaw?

MS. GALLION: Correct.

MR. LUTGER: President Bradshaw knew about Title IX way before and independently of Bonnie bringing this up. It's a frivolous --

PRESIDENT BRADSHAW: Those Title IX issues we're in the newspaper prior to coming on board. And I'll just remind you all, we have had -- and you'll hear another assessment of Title IX as part of a feasibility study. There's never been any
report, any investigation at all that found that we were not in compliance with Title IX. None. And that continues to be the case.

MR. LUTGERT: Matter of fact, when you and I and Simone and JoAnn were up in Tallahassee before the Board of Governors, you know, approved your presidency here, we went out to lunch, and I talked to you about Title IX and told you it could be a serious issue, like an iceberg, and we really needed to get in and look at that. So, I mean, there's no question you were aware of this.

MS. GALLION: I believe Dr. Bradshaw will testify and has testified that he was well aware of it. It was one of the highest priorities of his administration to resolve and tackle all those issues.

And the sum total of Bonnie Yegidis' testimony is that she had a casual conversation with him where she expressed some concern that not she, but others who had commented to her, felt that the investigation by Carol Slade, the internal auditor, was a white wash, to use her phrase.

That's the sum and -- that's it, that's what she told him. And now her claim is that based on that he removed her from the Provost position. I
believe it's a very difficult proposition for a reasonable person to believe that sequence of events.

MR. HART: What are you looking for from us? What are you asking of us?

MS. LEONARD: We're seeking your input as to the position of this Board. We are moving forward to trial, but that does not mean that we could not, if this Board so chooses, to seek out a settlement of this claim.

MR. LUTGERT: Just so everybody knows, Brad and I have had extensive discussions prior to this with Theresa and Vee, and Brad can amplify this, but our position was that the language was extremely important that Bonnie state that the suit was frivolous.

In order for settlement to go forward we want strong language on her part acknowledging that the suit was frivolous and there were no claims or no fault on the part of the University. And then if we got that we were willing to settle for a small amount of money.

Defining that, you know, I guess I have -- we thought under $10,000 is what we thought at the time. But still we had a little bit of -- with the
language we felt we would be okay with that. Would we have the expense of going to Court? On the other hand we face some -- inaudible -- at the University --

THE COURT REPORTER: I'm sorry, I can't hear you.

MR. LUTGERT: -- in this particular suit, so we're more inclined to just let's see what happens.

PRESIDENT BRADSHAW: Let's speak up for THE COURT REPORTER.

MR. MORTON: As I understand it, from what I've heard, we have pretty much got an agreement on the language, is that a fair statement?

MS. GALLION: I think we had an agreement in principle on the language.

MR. MORTON: To the extent that the Chair has indicated we had a pretty strong, and we should, opinion of the quality, if I could use that word, of the language, we reached that point where we were recently satisfied with the language?

MS. GALLION: We did.

MR. MORTON: Now we're talking about a matter of price. And the upside is forty-nine thousand and the downside is ten thousand?

PRESIDENT BRADSHAW: Yes.
MR. MORTON: What's the cost of this proceeding?

MS. GALLION: It is expensive, and that's one of the reasons why I had the opportunity to --

MR. MORTON: Is this proceeding going to cost more than $40,000?

MS. GALLION: I'm certain it will.

MR. MORTON: Then it seems to me we would be compelled to find a number.

PRESIDENT BRADSHAW: We understand that. And I was really pleased that the trial was not until after we had an opportunity to have this executive session. Bonnie in filing her lawsuit was quite free to say a lot of things that damaged a lot of people who invested a great deal of time, effort, energy, and treasure into the University.

And as this progressed she eventually dropped those most damaging statements from her lawsuit. What remains is what I think is a fairly weak case, where she's claiming she was removed from the Provost position because she was the whistleblower of Title IX issues. I told you about Title IX.

I will also let you know that with Dr. Yegidis' contract she had a clause in there that allowed her to go back to faculty as a full
professor at her same salary rate. It would be
adjusted to a nine month salary, but it was the same
salary rate. So it was not as if she was fired and
had no place to go. She also was entitled, which
she was taking at the time she resigned, to a
one-year sabbatical at full pay.

We kept with those contractual clauses. We
did nothing to try to change that. And she was to
come back as a faculty member with, according to her
contract, a five-year rolling appointment, which is
not provided for in the current collective
bargaining agreement. So that could have been
problematic for us. My point is that she was in
quite good stead as a faculty member, and her salary
was as it had always been.

MR. MORTON: My rebuttal to that would be,
irrespective of those very valid points, it seems to
me we were prepared to settle for $10,000.

PRESIDENT BRADSHAW: Oh, yeah.

MR. MORTON: With all of that knowledge we
were prepared to settle for $10,000. So to me that
falls out of the equation and becomes what is the
price for which we're willing to settle. If we're
going to spend $100,000, and I don't know what the
number is, on a case and we can settle it for less
than that, it would seem to me that we would want to reach a settlement.

PRESIDENT BRADSHAW: I think the $10,000 in my mind was embarrassingly low, that's why it was attractive to me. I must say that. There was some emotion in that. $50,000 may be embarrassingly low, that's why we're having this session to get a sense of --

MR. STARKEY: Two things. What is her burden? What exactly does she have to prove? Succinctly what's the issue?

MS. GALLION: The burden of proof is on her. She has to show that she engaged in protected activity. And we're taking the position that she did not, that simply mentioning her concerns to Dr. Bradshaw, who was equally concerned about them, does not constitute protected activity. And then she has to show that he retaliated against her because of his unhappiness or displeasure about that. And she has to show that she suffered damages. She has a problem with all three of those. Her loss of damages is about $15,000 a year.

MR. STARKEY: Can you share with us the language in the settlement agreement?

MS. GALLION: I don't think -- you know,
again, we never reduced it to writing. It was very vague. But the upshot of the language was that Bonnie after consideration of all the testimony and after the discovery, the depositions, the investigation into this case, had come to regret the decision to initiate this action. She had voluntarily abandoned the gender claims because she found them to be lacking in merit.

And upon further investigation did not believe that the Title IX matters should go forward and did not believe that she had been the victim of Title IX retaliation. That's what we insisted upon, and we made clear we'll take nothing less. She has to say -- you know, asking her to say the claims are frivolous, that's not going to happen. But asking her to say that they are without merit, they're not well taken, she no longer wishes to pursue them, they clearly agreed to do that.

MR. COBB: Because an offer was made and another one was made, as far as I'm concerned it's not relevant that we were willing to do that at that time, because those of us who have been here, and Ed was too, we went through a lot of pain with some previous charges.

I'm still not convinced when we settled that
we did the right thing before. This one I'm very positive we shouldn't be settling. It's not a matter of saving ten, forty, $50,000. Somewhere this University has to stand up and say wrong, we're not paying money just because somebody makes a frivolous claim. And this is a frivolous claim. I don't think we settle, period.

MR. STARKEY: I support that.

MR. HART: I totally agree. We have just -- let me get the right word. We need to be more protective of Florida Gulf Coast University. I think this claim is frivolous. As the president has stated, every ounce of protection for the Provost was in her contract, and she had every opportunity to take advantage of it.

The only settlement offer will be how much they pay the University for the aggravation they put us through. That would be my only settlement. It's not the cost of litigation, because we don't get the chance to remake the reputation of Florida Gulf Coast University. So for lack of a better word, tell them no.

MS. ROEPSTORFF: I was obviously not here when all of this went on, and I feel very, very strongly based on all the statements and the facts and
listening to our attorneys, it is a reputation, it
is enough is enough. And being from the outside
looking in and prior to being a trustee, people just
hear the end result at the end of the day, and
hearing another settlement, it doesn't matter if
it's five thousand or fifty-five thousand, it's a
settlement. So somewhere FGCU did something wrong
again.

And I just firmly, firmly believe based on
this one, absolutely not. I would totally go
against any form of settlement. It's just the
principle. And like Trustee Hart said, what about
all the dollars that FGCU has spent to date on all
the hurt people that's going through this when there
was absolutely no merit. Just on another bandwagon
of lawsuits and thinking that something would come
in their best interest. I would totally be against
it.

MS. HAMILTON: Opening the door to future
lawsuits, that this is our pattern that we have
established. I agree with Robbie.

PRESIDENT BRADSHAW: If I may ask a question,
Theresa. What's the most we have to lose in this,
dollars?

MS. GALLION: I think that's a very good
question, very important question. We could lose. We could always lose. We could lose for reasons that are unrelated to the merits of the case. We could lose because of the people on the jury, a couple of them who are powerful and dominant have an axe to grind against the University, or don't like me or don't like Dr. Bradshaw, or don't like one of our witnesses.

I have seen -- you know, after thirty years of doing this, and sometimes occasionally getting to talk to jurors, I am often shocked by the things that they say and that influence them. And often times -- again, I don't have complete confidence in the process, but it's disturbing to me that they sometimes will express interest in what I wore, what another witness wore, you know, a strange behavior of a witness.

So we have to keep in mind that there is at least a twenty-five percent element out of a hundred point that's uncontrollable, because a jury can be renegade, can behave -- can ignore the instructions to the jury. They can have their own agenda. But I think that the chances are much greater that we will prevail.

I think the biggest thing we have to fear if
we lose is attorney's fees. Because the statute will give an award of attorney's fees. Bonnie's damages appear to be very insignificant. For the period of time that she was at the University of Tennessee, about two years of the period was only a $15,000 a year difference. And her benefits, maybe that's another $15,000 max a year. So very, very insignificant.

But the attorney's fees would easily be one hundred fifty, $200,000. We would then ask the judge if Bonnie is only getting some tiny amount of money, then we would ask that the attorney's fees be reduced. But I have certainly seen cases where the judge has said no, the statute says attorney's fees are awarded and $150,000 in a two-year battle is reasonable.

So our worst case scenario is that the jury could award some kind of punitive damages, but I think that's extremely unlikely. I would say maybe two, three, four percent or less option on that. I think realistically our worst case scenario is three or $400,000 that we would lose. And obviously a big black eye in the media.

PRESIDENT BRADSHAW: I would also remind the newer members of the Board that the Board has
delegated authority to me to settle for as much as $100,000. So the Board will not have to reconvene or anything like that. We determined at some point I have the authority to do that. Of course as I've done throughout this process, I will consult with the Board Chair prior to taking the action for settlement.

MR. MORTON: Once again, the emotional side is one thing, but what we heard here is we have attempted to settle. So the question whether we should or should not, we put that hook in the water.

PRESIDENT BRADSHAW: Well, actually it was required by the Court to go to mediation.

MR. MORTON: We were prepared to settle for?

PRESIDENT BRADSHAW: For eight to $10,000.

MR. MORTON: And we have a statement that it was acceptable to us?

MR. STARKEY: We don't.

MR. MORTON: We did not have a statement that it was acceptable?

MR. STARKEY: We had discussion, we never had a settlement.

MR. LUTGER: We have a statement that has been reduced to writing, but in principle --

MR. MORTON: What I heard from counsel pretty
clearly was we reached an agreement on a statement, or in principle.

MS. GALLION: In principle. Not reduced to writing though.

MR. LUTGERT: The next step wasn't reduced to writing because we didn't agree on a dollar amount.

MR. MORTON: Brian and I go back, and Larry and Jerry and others, we -- my own opinion is we should have never settled the first lawsuit. And part of that problem was we depended on counsel that I felt was part of the -- my words are being recorded, so I will be very diplomatic. I think we have very good counsel in this particular case.

MR. HART: Yes.

MR. MORTON: Some of us felt settlement in that first case was ill-advised for a lot of reasons, and it's bearing fruit today because it's influencing our decision making process today. If I were to remove myself from the emotion that I feel and the disappointment of how that first case went down, and I look at this instant case and I take that out of context and just look at it and I say we have a statement in principle we agree with that absolves -- or to the satisfaction of the University must absolve the University of the negativity of
whether or not we did something wrong, and I have to
depend upon the wisdom of management to say yes,
this statement puts the University in the
appropriate light, in the appropriate position.

Without that you don't settle anything. But
if you do cross that hurdle, and you have answered
the question of what the public is going to think
and you have attempted to get there and you have
gotten there in principle, and the difference is, I
don't know, $15,000 or whatever, you split the baby,
it would seem to be that that's a pretty compelling
argument. Now, if this Board wants to base this
upon drawing a line in the sand and saying this is
the case in which we will make a statement that from
this day forward we will no longer be an easy
target, I understand that.

MR. STARKEY: There is an investment -- you
can invest in becoming a deterrent. In other words,
going to trial and winning costs money, but it
becomes a deterrent. It can be an inflection point
on how people view the University.

MR. MORTON: And if that's the logic, I
understand that.

MR. STARKEY: And most people who would read
the paper might consider $10,000 with that statement
a peppercorn, but at some point as you raise that
amount people that are making thirty or $40,000 a
year say, oh, my God, they gave away a year or two
worth of salary for that. Every constituent has a
different bar, and it's fairly low I think for the
average reader.

MR. LUTGERT: That's true. And people don't
go and --

MR. STARKEY: When you agree on the money,
reducing the statement to writing is going to become
the next negotiation.

MR. LUTGERT: Her legal expenses would vastly
exceed any amount that we would give her.

MS. GALLION: She was required to state that
too, that no money was coming to her, that money was
just simply to pay for her expenses and legal fees.

MR. STARKEY: That still rewards the behavior
from an outsider.

MR. COBB: Most people don't read the
newspaper, they don't.

MR. STARKEY: They read the headlines.

MR. COBB: They're going to hear what somebody
tells them happened. If somebody says they settled,
then they settled.

MR. ST. CERNY: But to normal laymen settling
is an admission of guilt. And we carried that
burden through the first lawsuits. We said at the
last executive session, and I think there was a
consensus on the Board, that this is not an issue
that would be entertained, to even think about
settling at any price. What you do is condone and
leaving the door open for anyone else who wants to
come along, because no one on this Board is willing
to stand up and say no, it's a trespass against this
institution.

And we have to deal with what's correct and
what's right. Not what's easy, not what's
advisable. We took advice in the first lawsuits,
and we listened to counsel. And we did it. And the
public opinion was that we were roollover artists and
we gave it away. Taxpayer money, we gave it away.
And here we are again with what I would probably say
ninety percent of us feel is a frivolous suit. We
did at the time. I think it's proving out to be all
of that.

When people start getting nervous and they
want to settle and they want to pay their attorney's
fees and this, that, and the other, they start
dropping counts in their lawsuit, I don't think it's
time for us to show any sign of weakness.
That's my personal opinion. I think we've been in this too long. I think the people of this community need to understand that we stand for what's right for this University, and we're willing to fight for it.

PRESIDENT BRADSHAW: Mr. Chair, if I may, just a clarification, on the previous lawsuits we did not use any State money to pay those off. Nevertheless that didn't change the amount that we had to come up with --

MR. ST. CERNY: Perception I was talking about.

PRESIDENT BRADSHAW: I just want to make that clear.

MR. HART: I thought that was part of -- that was State funds.

MR. ST. CERNY: Insurance.

MS. LEONARD: The State -- yes, the State insurance did pay I forget how much --

PRESIDENT BRADSHAW: Yeah, a smaller amount. And you're right. We won't belabor that, but it was not all State money.

The other thing I wanted to mention was I was at an event yesterday, talk about lasting impressions on what people hear or think they hear
or think they read, a couple of women approached me
and they were saying how good the University is and
isn't it great that we have cleared up those Title
IX gender issues. I said, well, we didn't have any
Title IX gender issues. Oh, yeah, you did.

You certainly don't engage people, certainly
not at that event. But the perception is that we
cleaned up our Title IX problems, when three
independent investigations showed we had no Title
IX -- and we have none. But that's not the
perception that is out there.

MR. COREY: I'm just curious as to if you can
shed some light on what the other cases that you
guys felt like you were ill-advised on, because that
seems to be brewing a lot of emotion in this case.
I'm just curious as to that.

Because the way I see it Ed makes a very valid
point that when it comes to dollars and cents at the
end of the day, if it was my money and I could
settle for $10,000 as opposed to $300,000 I'd take
the settlement. I'm curious if you could give me a
little more insight.

MS. LEONARD: The previous case was a Title IX
lawsuit against two female coaches in the athletic
department. The case was consolidated, and the
coach was a volleyball coach, which was Jaye Flood. And the women's golf coach, which was Holly Vaughn. They both consolidated their cases. And then we had a separate lawsuit by the previous general counsel Wendy Morris. She also claimed Title IX and gender discrimination because she was terminated.

The lawsuit by the general counsel settled for I believe $800,000, the State paid $500,000 of that. The case with the coaches paid 3.8 million dollars, and the State paid a portion of that as well. The counsel for those cases was hired by the State Division of Risk Management, and they kind of controlled to some extent the --

MR. STARKEY: I think there were some facts that perhaps counsel was aware of that some of the Board members either didn't hear or didn't have the opportunity until after the fact, there were some facts that might have swayed our opinion if we felt we had a better disclosure.

MR. MORTON: Absolutely.

MR. HART: Words to the effect that I feel counsel misrepresented the facts in that case, which caused this University to agree on a settlement that was horrendous because of the big picture that was painted of the reputation of many people, several
people at this institution. And those facts at the end of the day was wrong facts, wrong information. And that's one of those situations you wish you could turn back the hands of time, because it left hard feelings where it shouldn't have. It left accusations against people that was improper and wrong.

So yeah, I think when you talk about emotion, I have a lot of it. Because I can't look in the eye today because I feel the decision was wrong, I feel I participated in it, and I felt I let some people down. Sitting on this Board, at some point we should have faith in the people at this institution that they would not go do something that wrong. And we should have brought more information to the table. We didn't. We agreed to settle something that was totally wrong.

MR. LUTGERT: The facts were wrong that we were presented, and therefore, the strength of our case was indicated to be extraordinarily weak. And coupled with that were judgments on similar Title IX cases in other states that were exorbitant and very onerous.

PRESIDENT BRADSHAW: At the time were recent.

MR. LUTGERT: Anyway, subsequent to that we
learned that the investigation and the facts that were presented to us were not true and, therefore, that results in an issue here.

MR. MORTON: Mr. Chairman, does management and Chair, do you have a recommendation for the Board? We haven't heard the opinion of those of you who have really looked into this, what your recommendation is, if you have one.

MR. LUTGERT: You know, I guess we ought to -- I haven't come up with a recommendation, but there are two sides of this, because we could settle this case, it's clear, we could settle it now. We could get language from Bonnie, and it could be real good language, or it could go to trial.

Second, I'm going to ask Theresa what she thinks the odds are at trial. But, you know, the odds are probably pretty good that we win. There are odds that we lose. And if we lose, as she stated, we could lose on other than the merits of the case. And we also could, you know, a remote possibility, be faced with significant legal fees we would have to pay for Bonnie.

So, I mean, it's sort of a judgment call. We can go forward and push this and go to Court, and hopefully we win and get the results we all want.
But there is a chance we won't, and then the situation will not be as we hoped it would be.

So this is a call that Brad and I were willing to settle, we were willing to settle this if we got a number that we thought was reasonable. And we first started frankly at $4,000. You know, under five. And then after listening to Theresa and what was happening and the potential risks of the case, so on and so forth, we raised the amount to what we considered still to be a minimum number, and hopefully it was going to be around eight. We wanted it to be under ten.

Theresa indicated that she thought that was not going to happen. But we still stood firm on that because we understood the history of this, number one, and the strong feelings of some members of the Board of Trustees. That's where we are now, and this is being brought forth with full discussion and information from all the members of the Board of Trustees.

PRESIDENT BRADSHAW: There is an important legal proceeding that will occur on the 27th. I think that depending on the outcome of that, that can give me some additional guidance on what we do prior to trial as it relates to language and
settlement. If we prevail in not having
witnesses -- or witnesses removed from their list, I
think that puts us in a stronger position to either
settle, or something far less than $15,000, or then
determine to go to trial. I believe the 27th is an
important proceeding.

MR. MORTON: If you have no witnesses, from
what I heard from counsel, the probabilities would
be increased in our favor to the extent that there
are no other witnesses, Merrily Baker and Wendy
Morris cannot testify, then that strengthens our
hand considerably, which would weaken theirs, which
might compel them to take a very low number --

PRESIDENT BRADSHAW: If that is the outcome.
It seems to me we have a strong position on that,
even if only one is eliminated. I think I have a
sense of the Board, and we will see what happens
on --

MR. COREY: How effective is Rod Smith? Is
that the politician?

PRESIDENT BRADSHAW: Yes.

MR. COREY: And he's pretty good? Out of
curiosity.

PRESIDENT BRADSHAW: Is he good?

MR. COREY: Is that something to be concerned
with?

MS. GALLION: I think he's a good lawyer. I tried two cases with Rod before, won both. He's kind of a country jokesy guy and can be effective with juries. Sometimes not. But Rod is over this case. Rod has made a personal appeal to get rid of this case. They all regret everything. They want out. And it was within our power to let them out, but they would not be sufficiently reasonable to get out. That's really what the mediation all came down to. They want out, they still want out.

MR. STARKEY: Neither of them want to go to trial. If they think the case is so strong in our favor, I think the 27th is very important.

MS. GALLION: The key day. My advice to you is if we could get rid of this with great language and five or $10,000 I think it's foolish not to do that. I don't think that kind of a settlement telegraphs weakness to anybody. But if it's much over that, then you do --

MR. STARKEY: If she's really just interested in the money, can't you get the language about Title IX to be withdrawn and no merit.

MS. GALLION: I'm not sure that I understand.

MR. STARKEY: Well, it sounded like your
language about two sexual discriminations, that that
was pretty strong language that you agreed to, but
it sounded weaker about the Title IX.

MS. GALLION: We require the same language on
all three counts. We require the same admission.
We didn't reduce anything to writing. I don't have
my notes with me, but I have some notes that we were
sending back and forth to the magistrate judge. And
based on conversations with Rod Smith I believe we
could still work that problem out to the
satisfaction of this Board.

As Dr. Bradshaw said, there might be an
opportunity on the 27th. There might be another of
these very low volume opportunities if the ruling on
the Motion in Limine goes our way. And just one
other joker in the deck, the judge still has not
ruled on the Motion for Summary Judgment.

And whenever we talk to her law clerk we are
always told the judge has not ruled on the Motion
for Summary Judgment. The judge may still grant it
in its entirety even though we were told that she
would not do that. But when we called up Friday we
were once again told the judge has not ruled on the
Motion for Summary Judgment. It's not known what
she will do.
MR. COBB: The fact she's procrastinated on
the ruling, what I heard earlier is she may be
unsure of herself. Since it's a Title IX issue,
that she may decline to exclude any witnesses
because it might -- she wants to have everybody. So
I wouldn't put my hopes on the fact she's going to
exclude any witnesses at all, to try to make a
settlement decision based on that. Because I don't
think there is any implication as to who wins this
case, whether those witnesses are in or out, even if
they're in.

MS. GALLION: I agree with that too.

MR. LINDSEY: Will you get a ruling on the in
Limine Motion that day?

MS. GALLION: I will be surprised if she
didn't.

MS. LEONARD: We have gone over about ten
minutes, and we're now into the time for the other
executive session. If no one else has any comments
I believe we have received sufficient counsel from
this Board so that we might move forward in a
direction that would be acceptable to the Board.

Please be reminded that because this is an
executive session there are no votes that will be
taken in the shade. Any votes that are to be taken
will be taken in the sunshine. If there is any settlement, that will still come back before the Board for ratification. But I understand the position of this Board as it relates to settlement and going forward to trial.

MR. LUTGERT: Are there any other comments before we take a break?

MR. STARKEY: I have a question. Does the Board feel comfortable with the broad range of settlement discretion, zero to one hundred thousand? I think that if that's the range that still exists, based on the discussion here you could be acting within your previously approved and current range and have a lot of upset Board members. So I think the point is do we want to have that range stand or do we want to address that?

PRESIDENT BRADSHAW: Well, you know, I'm fine with that range. I understand from conversation I have a sense of where the Board members are on this. And it seems to me that to limit the range to eighty or to seventy, I know the Board in my opinion, certainly for me, that's not acceptable, so the range is not as important as making the right decision at the right time. I would hope that the Board would trust that I understand.
Any other statements before we move on?

MR. COBB: If we had a vote this would be the most split vote we've had in nine years.

PRESIDENT BRADSHAW: I will bring you all together.

MR. LUTGERT: We're going to take a very short break here, maybe three minutes.

(Executive Session concluded.)
CERTIFICATE OF REPORTER

I, LISA M. BOYD, Registered Professional Reporter, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript pages 1 through 42, is a true and correct record of my stenographic notes.

DATED this 10th day of February, 2011.

[Signature]
LISA M. BOYD, RPR, FPR