

BRENNEKE DECLARATION

EXHIBIT K

FILED UNDER SEAL

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON

3
4 STATE OF WASHINGTON,)
5)
6) Plaintiff,)
7)
8) vs.) CIVIL ACTION NO.
9) 3:17-cv-05806-RJB
10 THE GEO GROUP, INC.,)
11)
12) Defendant.)

13)
14) UGOCHUKWU GOODLUCK NWAUZOR,)
15) FERNANDO AGUIRRE-URBINA,)
16) individually and on behalf of)
17) all those similarly situated,)
18)
19) Plaintiffs,)
20) CIVIL ACTION NO.
21) 17-cv-05769-RJB
22)
23) THE GEO GROUP, INC., a Florida)
24) corporation,)
25)
26) Defendant.)

27 VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION UPON ORAL

28 BRIAN R. EVANS

29 (CONTAINS CONFIDENTIAL TESTIMONY SUBJECT TO PROTECTIVE
30 ORDER AND FOR ATTORNEYS' EYES ONLY)

31)
32) 12:03 P.M. EDT
33) JUNE 11, 2020
34) 28 ELEUPHERA DRIVE
35) BOYNTON BEACH, FLORIDA
36) REPORTED BY: JUDY BONICELLI, CSR, RPR, CCR 2322

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ALSO PRESENT: Allan Morgan, Videographer (Remotely)
Carolyn Rice (Remotely)
Paige Suelzle (Remotely)

1 I'm hearing Andrea. I don't know if others are hearing
2 her, but I can hear her fine.

3 MS. WILKE: -- breaking up on my end.

4 MS. MELL: I got none of it.

5 THE WITNESS: I heard most of it. It
6 does break up a little sometimes, but I am hearing most
7 of what she's asking.

8 MS. MELL: Well, I need it repeated
9 because I didn't get it.

10 BY MS. BRENNEKE:

11 Q. What I'm asking, you, Mr. Evans, is have you
12 ever conducted an analysis of what financial benefit
13 detainee labor provides to GEO and its bottom line?

14 MS. MELL: Object to the form.

15 THE WITNESS: I don't believe so. I
16 think in connection with these lawsuits, there has been
17 an evaluation of what it would cost the government if
18 they were to change the program. But I'm not sure if
19 that's -- was part of the -- is, you know, privileged
20 or whatnot, but there was some analysis done at some
21 point regarding, you know, advising the government on
22 the cost of what the labor would look like,
23 potentially, if it was all done by civilian employees.

24 But that's not an analysis of the benefit to
25 the GEO Group. That's just an analysis of what the

1 additional amount of funds would be that the government
2 would have to pay. And I'm not really sure if it was
3 even that. It may have been more to calculate what the
4 government could owe us, we believe, if the Court
5 decided unfavorably against us, because we have a
6 claim -- we believe, under the laws against the federal
7 government for implementing their program.

8 BY MS. BRENNEKE:

9 Q. Can you say more about that?

10 A. No, I think it is just that straightforward.
11 If for some reason the plaintiffs are successful in
12 their claim, then we're going to make a claim against
13 the federal government for whatever we have to
14 ostensibly reimburse the participants in the Voluntary
15 Work Program for whatever wage, you know, is determined
16 to be the appropriate amount or whatever the damages
17 are. That is going to be a requirement that the
18 government pay us.

19 And then ultimately we'll modify our contract
20 and they'll pay us on a prospective basis for all of
21 those people being employed as regular civilian
22 employees and we'll charge them additional cost,
23 profit, for that fee.

24 Q. So if --

25 A. So I think just to be clear, whatever

1 (Ms. Mell left the teleconference.)

2 BY MS. BRENNEKE:

3 Q. So what was the mechanism by which you
4 evaluated what it would cost to comply with the minimum
5 wage or the wage determinations, which is the
6 prevailing wage in Washington? How did you go about
7 that analysis?

8 A. I don't remember. I mean just note you asked
9 if we had ever done something like that and I do recall
10 a process some time ago, I'm not sure exactly, you
11 know, two or three years, maybe, where we did evaluate
12 at least on one contractor too. And again, I don't
13 recall exactly which facility it was, what it would
14 look like to staff with, you know, civilian labor.

15 Q. Do you have access to those records of what
16 the analysis was and what the cost would be to staff at
17 the prevailing wage rates?

18 A. I do not.

19 Q. Do you recall whether that was for one
20 facility or multiple facilities --

21 THE REPORTER: This is the court
22 reporter. You -- I got, "Do you recall whether that
23 was for one facility or multiple facilities."

24 BY MS. BRENNEKE:

25 Q. -- for compliance with prevailing wage rates?

1 A. I believe it was -- as I said before, it was
2 done in part of the process to make the federal
3 government aware of the issue and the potential cost
4 ramifications to them. So it may have been for a
5 number of facilities so that we could illustrate to
6 them the potential cost ramifications to the government
7 in total.

8 I think our view was if the decision from the
9 State Court or from the -- in the State of Washington
10 is sustained, that all the way up to Supreme Court,
11 then it's going to change the federal contracting and
12 it's going to have a cost beyond just the contract in
13 Washington. So I think it was a relatively large
14 number and because it encompassed many facilities, I
15 don't recall if it was strictly an annual amount in a
16 prospective basis or if it was strictly, this is, you
17 know, what we could potentially be coming to you for a
18 historical amount at a single facility. But that was
19 the construct of what I remember that type of analysis
20 being done for.

21 Q. How much was it that you determined would be
22 required to comply with prevailing wage rates or the
23 work done by detaining workers in the Washington
24 facility?

25 MS. SCHEFFEY: Object to form.

1 THE WITNESS: I don't remember,
2 honestly, the exact annual amount.

3 BY MS. BRENNEKE:

4 Q. Do you have a general recollection of how much
5 that was?

6 MS. SCHEFFEY: Object to form.

7 THE WITNESS: I really don't. I would
8 be guessing. I mean in my position as a CFO, I can
9 guess pretty good at numbers, but it would be a guess
10 and I don't think it is appropriate for me to guess at
11 this.

12 BY MS. BRENNEKE:

13 Q. I would agree that a guess isn't good but an
14 approximation, since we don't have the actual
15 documents, is appropriate. So what would be an
16 approximate amount be per year?

17 MS. SCHEFFEY: I'm going to object to
18 form and I'm also going to say that a lot of this was
19 discussed by the witness as being part of the
20 discussion of these lawsuits. I imagine it's
21 privileged and I think you're getting into privileged
22 content here.

23 THE WITNESS: You know, I would guess
24 four to seven million dollars might be a reasonable
25 range for a facility that size. In that location, the

1 wage determinations in that area are relatively high,
2 at least for the detention officers. You saw that in
3 2014, I think we looked, it was like \$23 an hour. But
4 obviously, the positions that these people would be --
5 the job descriptions that they would be meeting would
6 not be detention officers, so I just don't know what
7 the wage would be. But I still think it would be, you
8 know, higher than, you know in that 10 to \$14 an hour
9 range, so I'm guessing, you know, multiple millions of
10 dollars, maybe four to six million might be a
11 reasonable range.

12 BY MS. BRENNEKE:

13 Q. So the part you would take would be to look at
14 what the prevailing wages are for each category of work
15 that the detainee workers are performing --

16 THE REPORTER: I'm sorry. This is the
17 court reporter. I did not get that. There was an
18 interruption.

19 MS. BRENNEKE: What part did you get.

20 THE REPORTER: "The part you would take
21 would be to look at what the prevailing wages are for
22 each category of work that the detainee workers are
23 performing" --

24 MS. BRENNEKE: And multiply that by the
25 hours of that work; is that correct?

1 MS. SCHEFFEY: And I'm going to object
2 to form and object that that is vague.

3 THE WITNESS: So do you want me to try
4 to answer?

5 BY MS. BRENNEKE:

6 Q. Yes.

7 A. Okay. And my answer to that was, I would say
8 no. The way we would do that analysis is we would look
9 at what the different job functions are that need to be
10 completed, for instance food service worker or maybe
11 somebody working in the laundry. Those, I believe,
12 would have job descriptions in the Department of Labor
13 Wage Determination Analysis. They have, you know,
14 hundreds of different jobs codes and job descriptions.
15 So we would match up the work description, the job
16 code, and then we would, you know, apply that to, you
17 know, we would have to calculate how many people we
18 would need to do those different -- different tasks.
19 But I don't think that that would compare to the
20 voluntary work program because the voluntary work
21 program isn't managed to sort of maximize the
22 workforce. You know, it's managed to maximize
23 participation, so there is arguably, I believe, a lot
24 more people working in the voluntary or participating
25 in the voluntary work program than would be necessary

1 if you were doing the work with regular civilian
2 workers who work, you know, 8-hour days or 8-hour
3 shifts.

4 Many of them don't work, you know, a full
5 shift. They're working two to four hours or something
6 like that and you may have many more people working to
7 complete certain tasks than you would if you were
8 paying regular employees, again, because there are two
9 different objectives. One would be from the
10 perspective of a regular workforce-type environment
11 versus one whose main focus, I believe, is to get
12 people active in doing stuff and the facility and the
13 government is evaluating us on how many people are
14 participating, how robust is the program.

15 Q. So in order to complete the work that the
16 detainee workers are now completing, if you were to
17 hire full-time employees, what you're saying is you
18 would imagine there would be some efficiencies and you
19 would have to hire FTEs for somewhere less than the
20 amount of hours that the detainee workers are working;
21 is that right?

22 MS. SCHEFFEY: Object to form and I
23 believe you're testifying, Counsel, if you could
24 rephrase that as a question.

25

1 BY MS. BRENNEKE:

2 Q. Is that right was the question.

3 A. Yeah, I believe we would have -- we would use
4 less hours to get the work done, so that would be less
5 people and less hours worked.

6 Q. How many FTEs or how many hours worked by
7 full-time employees would be necessary to replace the
8 detainee workers and the work they do at the Northwest
9 Detention Center?

10 MS. SCHEFFEY: Object to form.

11 THE WITNESS: That I don't know.

12 BY MS. BRENNEKE:

13 Q. Was that part of the analysis that you
14 conducted?

15 MS. SCHEFFEY: Object to form and also
16 object that it misstates prior testimony. I don't
17 believe he said he conducted an analysis.

18 THE WITNESS: Yeah, I reviewed some work
19 that was done in that vein and I think that, you know,
20 it would have been done from the perspective as I
21 described more of just how much would it take to get it
22 done. I don't know if they would have even looked to
23 the Voluntary Work Program to see what they were doing.
24 It would just be more like, all right this is an
25 institutional setting, it's a thousand or 1,500 bed

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1 facility, you have a kitchen that's so big, you need to
2 feed so many meals, you have so much laundry to process
3 or whatever the other areas are that the Voluntary Work
4 Program covers, and you would just evaluate this is the
5 work that needs to be done, what do we think we need to
6 do that, sort of exclusive of what really happens over
7 what the VWP.

8 Because as I said, you know, we just know that
9 those tasks are going to be completed by participants
10 in the VWP and I think generally speaking we have more
11 people volunteering for the work than we need to
12 actually do the work. So it's not really an
13 efficiently designed program from a worker or a labor
14 management perspective because it's about the
15 participant level and the robustness of the number of
16 people participating in the program.

17 BY MS. BRENNEKE:

18 Q. All right. Who was it that conducted the
19 analysis of how many full-time employees would need to
20 be hired to complete the work currently done by the
21 detainee workers at the Northwest Detention Center?

22 MS. SCHEFFEY: Object to form.

23 THE WITNESS: I honestly don't know who
24 the specific people that who did it.

25

1 BY MS. BRENNEKE:

2 Q. Do you have any records of that work or the
3 underlying assumptions they made? Is that available
4 for GEO?

5 MS. SCHEFFEY: Object to form.

6 THE WITNESS: I do not. I don't know if
7 that is retained or where it's retained, if we still
8 have that.

9 BY MS. BRENNEKE:

10 Q. Was that work done on a regional level, a
11 corporate level, or the facility level?

12 MS. SCHEFFEY: Object to form.

13 THE WITNESS: It probably involved, you
14 know, all of those different levels of, you know,
15 people with different subject matter expertise
16 calculating or building up that kind of analysis.

17 (Previously marked Exhibit 365 introduced.)

18 BY MS. BRENNEKE:

19 Q. I'm going to have you take a look at a
20 document that has previously been marked as 365. Could
21 you please pull that up?

22 A. Yeah, I got to log back in, which takes me a
23 minute here. 365. 365 Scott?

24 Q. Yes.

25 A. Okay. It's a letter?

1 Q. It's a letter, yeah. I'm going to -- yeah,
2 it's a letter. That's a letter dated May 30th, 2018,
3 to Deputy Director Peter Edge at ICE.

4 Do you see that?

5 A. Yes. It's a one-page letter.

6 Q. And it was signed, apparently, by the Chairman
7 and CEO of GEO; is that correct?

8 A. Yes.

9 Q. And that's the formal corporate GEO
10 headquarter logo and stationery; is that right?

11 A. Yes. Although that is our prior address.
12 We've since moved to the address that I gave earlier.

13 Q. Okay. The reason I'm asking is because the
14 address -- I mean the signature is blocked out. Who
15 would the chairman and CEO have been who signed that
16 letter?

17 A. That would be George Zoley.

18 Q. Who is the current Chair and CEO?

19 A. Yes.

20 Q. Did you review this document before it was
21 sent?

22 A. I'm sorry, the first part broke up.

23 Q. Yeah, have you seen this document before, this
24 letter?

25 A. Yes. This is, I believe, what I was referring

1 to earlier when I said we provided some analysis to
2 ICE.

3 Q. And so in the letter it says that there have
4 been -- there have been cases brought regarding the
5 violation of state minimum wage laws filed by class
6 actions lawsuits and by the State of Washington and it
7 includes, as you say, in Tacoma, Washington, for the
8 detainees.

9 Do you see that?

10 A. In the first paragraph?

11 MS. SCHEFFEY: Object to form.

12 THE WITNESS: Sorry.

13 BY MS. BRENNEKE:

14 Q. And then down below it -- before that big
15 blocked-out section in the middle, it says, "We have
16 conducted an estimation of the costs necessary to
17 achieve compliance with the plaintiffs."

18 Do you see that?

19 A. Yes.

20 Q. And is that where there had been information
21 about what costs GEO, and you're saying possibly ICE,
22 to comply with the Minimum Wage Acts in Washington
23 State and the other states?

24 MS. SCHEFFEY: Object to form.

25 THE WITNESS: Yes, as I said, and I

1 don't recall how many facilities, it was just these
2 specific or if, as I said before, it was for -- if we
3 included all ICE facilities. And it was -- it was from
4 our perspective, to let them know what costs they would
5 be incurring if the plaintiffs were to prevail, as I
6 said before. It wasn't from our perspective that we
7 would bear these costs alone.

8 So this letter was sent -- it has two
9 components. The first component is to request an
10 equitable adjustment for the significant amount of
11 legal defense costs that we were incurring as a result
12 of these lawsuits, in effect, defending the
13 government's policy. So we believed at the time that
14 we were going to push for an equitable adjustment for
15 those costs. And this was the initial formal request
16 for that, and then this other piece is informational,
17 as I described, to make ICE aware of the potential
18 value of what was being brought forward here by
19 plaintiffs to the government.

20 BY MS. BRENNEKE:

21 Q. And by that, the value of the labor that you
22 would need to be paying for at the minimum wage level
23 or the prevailing wage level?

24 MS. SCHEFFEY: Object to form and again
25 I'd ask you to stop testifying.

1 You may answer.

2 THE WITNESS: No, the value that the
3 government is going to have to pay to have their policy
4 changed, if it's changed by the Courts or they change
5 it, whatever, but the change in the policy to no longer
6 have a Voluntary Work Program, what it would cost at a
7 certain number of facilities. As I said, I don't know
8 if it's just the four listed here or the three listed
9 here or all of the ICE facilities.

10 BY MS. BRENNEKE:

11 Q. And just to be clear that we're talking about
12 the same thing, if the policy changed, that would mean
13 paying for the work that is currently done in the
14 Voluntary Work Program for a dollar a day, it would
15 mean paying that work to be done at minimum wage or
16 prevailing wage, correct?

17 MS. SCHEFFEY: Object to form.

18 THE WITNESS: To probably -- mean a wage
19 determination.

20 BY MS. BRENNEKE:

21 Q. That's the prevailing wage?

22 A. Yes.

23 MS. SCHEFFEY: Object to form.

24 THE WITNESS: It may have been done both
25 ways, I don't recall.

REPORTER'S CERTIFICATE

I, JUDY BONICELLI, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

WITNESS MY HAND and DIGITAL SIGNATURE this 24th day of June 2020.



JUDY BONICELLI, RPR, CCR

Washington Certified Court Reporter, CCR 2322