

90194-5

No. 322238

FILED

Feb 11, 2014

Court of Appeals
Division III
State of Washington

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

MATTHEW A. NEWMAN, an incapacitated adult; and RANDY
NEWMAN AND MARLA NEWMAN, parents and guardians of said
incapacitated adult

Plaintiffs/Respondent,

v.

HIGHLAND SCHOOL DISTRICT NO. 203, a Washington State
government agency,

Defendant/Petitioner.

Appeal from Superior Court of Yakima County

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONER'S
MOTION FOR DISCRETIONARY REVIEW AND MOTION FOR
EMERGENCY STAY

ADLER GIERSCH PS

By: Richard H. Adler

WSBA No. 10961

Melissa D. Carter

WSBA No. 36400

Arthur D. Leritz

WSBA No. 29344

333 Taylor Ave. N

Seattle, WA 98109

(206) 682-0300

NELSON BLAIR LANGER ENGLE,
PLLC

By: Fred P. Langer

WSBA No. 25932

1015 NE 113th St

Seattle, WA 98125

(206) 623-7520

Attorneys for Plaintiff's/Respondent

TABLE OF CONTENTS

I. STATEMENT OF THE CASE.....1

**II. ARGUMENT WHY REVIEW SHOULD NOT BE
ACCEPTED.....11**

**III. ARGUMENT WHY AN EMERGENCY STAY SHOULD
NOT BE GRANTED.....17**

IV. CONCLUSION.....17

V. APPENDIX

A. Declaration of Fred Langer A001 - A004

1. Exhibit 1.....A005 - A009

2. Exhibit 2.....A010 - A012

3. Exhibit 3.....A013 - A016

4. Exhibit 4.....A017 - A039

5. Exhibit 5.....A040 - A043

6. Exhibit 6.....A044 - A049

7. Exhibit 7a-7f.....A050 - A068

8. Exhibit 8.....A069 - A071

9. Exhibit 9.....A072 - A074

10. Exhibit 10.....A075 - A078

11. Exhibit 11.....A079 - A082

12. Exhibit 12.....A083 - A086

13. Exhibit 13.....A087 - A091

14. Exhibit 14.....A092 - A100

15. Exhibit 15.....A101 - A103

16. Exhibit 16.....A104 - A106

B. Declaration of Eric Deiner.....A107 - A109

TABLE OF AUTHORITIES

CASES

Admiral Insurance Co. v. U.S. District Court for the District of Arizona and King Ranch Properties Limited Partnership
881 F.2d 1486 (9th Cir. 1989).....16

In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation, the City of Long Beach v. Standard Oil Company
658 F.2d 1355 n.7 (9th Cir. 1981) cert. denied, 455 U.S. 990 (1982).....12, 13, 16

Loudon v. Mhyre
110 Wn.2d 675, 756 P.2d 138 (1988).....15

Upjohn Co. v. US
449 U.S. 383, 397 (1981).....11 - 16

U.S. v. Chen
99 F.3d 1495 (9th Cir. 1996).....16

Wright v. Group Health
103 Wn.2d 192, 691 P.2d 564 (1984).....14 - 15

Youngs v. Peacehealth
No. 87811-1, 2014 WL 265568
(Wash. Sup. Ct. Jan. 23, 2014).....15 - 16

I. STATEMENT OF THE CASE

In order to understand the nature of this issue and why Plaintiffs/Respondents are seeking discovery of this information, it is important for the Court to have additional background facts. On September 17, 2009 while Plaintiff Matthew Newman ("Matthew") was participating on the Highland High School's football team, he was removed from practice, after sustaining a concussion. His parents were not notified of this concussion during practice. He was not cleared to return to play by a licensed healthcare professional, which is required under the Lystedt Law. The next day, Friday September 18, 2009 during the game against Naches High School, Matthew sustained a near-fatal brain injury. Nearly every player on the Highland High School football team that has been deposed recalls the triggering event at the practice on September 17, 2009: Matthew was running a punt-return drill when player Joe Scott tackled him at or near the out-of-bounds line, which is less than two yards away from the asphalt-rubberized pole-vault landing pit. Matthew and Joe both went to the ground as a result of the tackle. Matthew struck the pole vault pit with his head. Joe popped up; Matthew did not. Some players say Matthew was "dazed;" others say he "had his bell rung;" some say

he slowly paced after he got a hand up and seemed to "have the wind knocked out of him." Many players heard Matthew immediately say he had a headache.

Highland assistant football Coach Dustin Shafer walked Matthew to the sidelines. Matthew sat out of practice for some period of time after this, due to his head injury according to several players. Despite having knowledge of Matthew's injury, Assistant Coach Dustin Shafer and Head Coach Shane Roy allowed Matthew to play in the team's football game against Naches High School the next day, September 18, 2009. By allowing Matthew to return to play in this game the day after his first injury, the District failed to comport with its duty to require medical clearance following Matthew's initial "concussion" or "suspicion of concussion." Predictably and tragically, Matthew sustained an entirely preventable life-threatening brain injury. If not for the skilled response of the surgical team who performed life saving brain surgery on September 18, 2009, Matthew would be dead.

The truly egregious facts also demonstrate that the District consciously facilitated Matthew's return to play, knowingly circumventing rules in place to protect injured student athletes. Those safety rules require medical personnel with specific

qualifications to evaluate and clear injured players to return to play following "suspicion of a concussion." The District failed in their duty of "safety first" by letting the long-time rivalry game with Naches High School trump mandatory safety considerations and allowing Matthew, a star player and the team's quarterback, to play following his head injury the previous day during practice.

After filing this lawsuit, Mark Northcraft entered an appearance for the sole named Defendant, Highland School District. Mr. Northcraft has engaged in truly shocking misconduct that has caused extreme harm and prejudice to the Plaintiffs.

On February 26, 2013, Mr. Northcraft conducted a recorded interview of the young man involved in the pre-game tackle with Matthew Newman, Joe Scott, and his parents, Zach and Feleighsha Beach. Also present was Highland's insurance representative, John Young, who is assisting Mr. Northcraft in the defense of this lawsuit. The Beaches and Mr. Scott had not yet talked to the Plaintiffs' attorneys in this matter.

At the outset of the February 26, 2013 interview, Mr. Northcraft introduced himself as general counsel for the Highland School District.¹ During this interview between Joe Scott, his

¹ A013 - A016.

parents and the defense attorneys for the School District, Joe told Mr. Northcraft that some of the players on the team had given Joe a hard time at school, around the end of football season in 2009, suggesting that Joe gave Matthew a concussion when he tackled him at practice and that was why Matthew collapsed at the game the next night.² According to Joe's mother, the players were blaming Joe for the pre-game concussion as the cause of Matthew's brain injury within a week of the injury.³ Despite Mr. Scott's admission that several kids suggested that Joe "gave Matthew a concussion" during practice in the fall of 2009, Mr. Northcraft still told Joe and his parents during this meeting that Mr. and Ms. Newman, multiple-generation orchard farmers in the Yakima area, had held a meeting at their house in the summer of 2010 and concocted a story to get the players to lie about a concussive event during that pre-game practice.⁴

At this point, Mr. Northcraft had already attended six player depositions, none of whom testified that any such collusion occurred. In fact, every player who attended a meeting with the

² A015 - A106.

³ A019, lines 17 - 20.

⁴ A041 beginning at line 24 to A043, line 6; A025 beginning at line 13 to A026, line 2.

Newman family and their attorney has categorically denied that *anyone* told them what to say, or how to say it. The fact that several players were giving Joe Scott a hard time in the fall of 2009, months before the Newmans ever even considered hiring an attorney, indeed, while their son was still hospitalized at Children's Hospital in Seattle, clouds the credibility of the defense theory significantly.

Similarly, John Young contacted several student players, including Kyle Belton. Mr. Young suggested with leading questions to Mr. Belton, who did attend a meeting with the Newmans and their attorney in the summer of 2010, that the Newmans lead him to recall the concussive event on the field during the practice. This angered Mr. Belton, as neither the Newmans, nor their attorneys, ever tried to taint his testimony and tell him what to say.⁵

At the end of the February 26, 2013 interview with the Beaches and Joe Scott and after the tape recorder was shut off, Mr. Northcraft, and/or Mr. Young in his presence, suggested to the Beaches that school programs, such as afterschool activities and band at Highland, would suffer if the Newmans prevailed at trial.⁶

⁵ A008, beginning at line 18 to A009, line 19.

⁶ A020, lines 8-23.

Mr. Beach took this to mean that the school football program could shut down, or that parents would have to pay for their kids to play football, because of the Newmans' lawsuit.⁷ After hearing this, Mr. Beach felt motivated to help Mr. Northcraft and the School District prevail in this lawsuit.⁸

Also after Mr. Northcraft and/or Mr. Young shut off the tape recorder during the February 26, 2013 meeting with the Beaches and Joe Scott, Mr. Northcraft learned from Ms. Beach that she had a meeting scheduled over the next few weeks with the Newmans' attorneys. Mr. Northcraft asked the Beaches if they would be willing to record the conversation with the Plaintiffs' attorneys. Mr. Northcraft's agent, Mr. Young, even offered to get a recorder for the Beaches.⁹ When Ms. Beach asked Mr. Northcraft how to respond to the Newmans' attorneys if they asked her why she was tape recording the meeting, Mr. Northcraft instructed Ms. Beach to lie to Plaintiffs' counsel, and to simply state that the recording was for her own benefit alone.¹⁰ Mr. Young then drove to the Beaches home shortly thereafter from Ephrata to Kennewick, and gave a tape

⁷ A046, beginning at line 23 to A047, line 25.

⁸ A049, lines 7-13.

⁹ A022, beginning at line 9 to A023, line 2.

¹⁰ A022, beginning at line 9 to A023, line 2.

recorded to Mr. Beach.¹¹ Mr. Young asked Ms. Beach to then mail the tape recorder back to him once she recorded the meeting with Plaintiffs' counsel under false pretenses.¹²

Ms. Beach felt as though Mr. Northcraft was trying to trick her during the February 26, 2013 meeting.¹³ She sees the act of Mr. Northcraft giving her a tape recorder, asking her to record the meeting with the Newmans and their attorneys, and instructing her not to disclose that the recording was meant for Mr. Northcraft as "completely dishonest."¹⁴

Mr. Northcraft is counsel of record for the Defendant, Highland School District No. 203. He has identified himself as the general counsel to the School District as well. At the depositions of former Highland coaches and *former* School District employees Dustin Shafer, Shane Roy, Matt Bunday, and Thomas Hale, and of *current* School District employees Kelly Thorson and Josh Borlund, Mr. Northcraft represented during the depositions that he was

¹¹ A028, lines 2-9.

¹² A024, lines 9-12.

¹³ A031, beginning at line 23 to A032, line 22.

¹⁴ A032, beginning at line 25 to A033, line 5.

counsel for the Highland School District, and "for purposes of the deposition," was counsel for these individual deponents.¹⁵

On September 27, 2013, Plaintiffs/Respondents filed a motion to disqualify Mr. Northcraft and his law firm from representing the Highland School District due to his misconduct, including the conflict of interest posed by his concurrent representation of Highland and of its former employees. The trial court declined to disqualify Mr. Northcraft and his firm, but did rule that Mr. Northcraft could not represent any former Highland School District employees at their depositions, because of the apparent conflict of interest.

It was also clear from the trial court's September 27, 2013 rulings that cooperation and candor were required, and that the kind of tactics documented by the Beaches should cease to avoid the effects of improper influences by false or misleading statements to witnesses. Such improper conduct could very easily create a distraction from the trial, as impeachment of adverse witnesses will require Mr. Northcraft or his partners to take the stand and place their own conduct at issue.

¹⁵ A051 - A068.

Despite the Court's very clear directive on this point, just a few weeks after the September 27, 2013 hearing, Mr. Northcraft again attempted to improperly influence and/or intimidate a potentially adverse witness. The Plaintiffs noted the deposition of former Highland School District employee Eric Diener for October 21, 2013. Mr. Diener was a teacher, the head football coach and the athletic director for Highland High School prior to the year of Matthew Newman's injury. Currently, Mr. Diener is the principal at Wapato High School. In the days leading up to his deposition, Mr. Northcraft visited Mr. Diener at his current school and attempted to intimidate him by threatening him with his personnel file from Highland High School. As Mr. Diener stated in his declaration:

When Mr. Northcraft arrived at my office we had a brief introduction as to the purpose of the visit. Within about 10 minutes of the meeting, he mentioned that he had my personnel file with him. Initially, I was taken aback by that but didn't think much about it. After the meeting I thought about what he did and was trying to do, and I [was] upset at what happened.

That evening I spoke with my spouse who works in the Human Resource Department of the Selah School District about what happened. She advised me that it was not proper for Mr. Northcraft to have my personnel file and that the rules, policies and procedures are clear, no one has access to an employee's personnel file unless and until the employee first receives formal notice. I never received any notice and certainly did not and would not release my personnel file to Mr. Northcraft.

Following this conversation I then contacted my Assistant Superintendent for the Wapato School District regarding this

incident. He reaffirmed that an individual can only have access to a teacher's personnel file after notice and approval. I also talked with former President of the Highland Teacher's Association. All individuals confirmed that anything to do with a teacher's personnel file, such as mine at Highland High School, required written notification with a formal process for the release of the file and providing me a copy.

I have nothing to hide in my personnel file. But using this in his presentation was clearly orchestrated to make me feel like the guilty person. It was out of bounds for Mr. Northcraft to try to use this as a lever or intimidation tactic.

...

I am a principal of a high school and I have to handle many different kinds of situations, including talking with gang members. There is no doubt as to what he was trying to do. And this does not sit well with me, even to this day.¹⁶

Not only did Mr. Northcraft attempt to improperly intimidate Mr. Diener to recruit him as a favorable witness for the Defendant, he also misrepresented the nature of the Newmans' lawsuit to exert improper influence over this witness. As Mr. Diener states:

Also during the meeting, Mr. Northcraft mentioned that there are two sides to every story and then told me his version of things. He also insisted that the other side was "trying to screw" the Highland School District. That was an unnecessary and unprofessional thing for him to tell me. I was quite surprised by his comment and language in trying to manipulate my opinions.¹⁷

¹⁶ A017 - A109.

¹⁷ Ibid.

II. ARGUMENT WHY REVIEW SHOULD NOT BE GRANTED

THE TRIAL COURT COMMITTED NO ERROR IN RULING THAT THE UPJOHN CASE DID NOT APPLY IN WASHINGTON STATE.

The *Upjohn* case has no bearing on the Trial Court's ruling concerning Petitioner's Motion for Protective Order regarding communications with non-party former employees, and Petitioner's focus on it as "obvious error" is misplaced. The Trial Court's statement that Washington does not follow *Upjohn* is not a basis for discretionary review. In fact, the Trial Court was correct that Washington does not follow the *Upjohn* case - as it technically has no binding precedent on the issue presented.

In *Upjohn Co. v. US*, 449 U.S. 383, 397 (1981), the central issue was whether or not the attorney-client privilege extended to communications with certain employees who were interviewed by counsel for the corporate employer/defendant. Ultimately, *Upjohn* expanded the definition of "client" so that the attorney-client privilege would extend to a greater number of corporate employees. It is clear from footnote 3 of that decision that the Court did not address the specific issue in this case – namely whether the attorney-client privilege would extend to communications with

former employees that took place *after* they left employment of the corporate defendant:

Seven of the eighty-six employees interviewed by counsel had terminated their employment with Upjohn at the time of the interview. App. 33a-38a. Petitioners argue that the privilege should nonetheless apply to communications by these former employees concerning activities during their period of employment. Neither the District Court nor the Court of Appeals had occasion to address this issue, and we decline to decide it without the benefit of treatment below.

Upjohn at 404. Since *Upjohn* did not address this issue, it was harmless error by the trial court to say that *Upjohn* does not apply in Washington State.

Additionally, the 9th Circuit did not extend the ruling in *Upjohn* to apply to communications with former employees at the time the communications were made. In *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation, the City of Long Beach v. Standard Oil Company*, 658 F.2d 1355 n.7 (9th Cir. 1981) cert. denied, 455 U.S. 990 (1982), at footnote 7, the 9th Circuit stated:

Upjohn reversed the Third Circuit's "control group" test for the scope of the attorney-client privilege in the corporate context. It held that information concerning potential violations transmitted by Upjohn's current employees to corporate counsel was privileged.

Although *Upjohn* was specifically limited to current employees, 101 S.Ct. at 685, n.3, the same rationale applies to the ex-employees (and current employees) involved in this

case. Former employees, as well as current employees, may possess the relevant information needed by corporate counsel to advise the client with respect to actual or potential difficulties. See *id.*, at 683. **Again, the attorney-client privilege is served by the certainty that conversations between the attorney and client will remain privileged after the employee leaves.** Although no findings were made, it is clear that at least some of the conversations referred to by the district court were made to counsel for the companies in order to secure legal advice for the company. The orientation sessions undoubtedly provided information which will be used by corporate counsel in advising the companies how to handle the pending lawsuit.

Id. at page 1362. (Emphasis added.) Petitioner/Defendant's assertion that "Clearly, the Ninth Circuit applies the *Upjohn* rationale to both current and former corporate employees"¹⁸ is misleading. The privilege extends to communications made *during* employment, and not to communications when they are no longer employed with the employer. Neither *Upjohn* nor *In re Coordinated Pretrial Proceedings* addresses the issue presented here, namely, whether an attorney can interview and "prepare" a witness, former employee of the defendant entity, and claim that all communications that occurred, well after that witness ceased to work for the defendant, are somehow privileged. To allow Petitioner such leeway would be tantamount to a race to each non-

¹⁸ Page 13 of Petitioner/Defendant's Motion for Discretionary Review.

party witness, which the attorney will simply proclaim as his or her own client, "for purposes of the deposition," and to hide under the shield of a non-existent attorney-client privilege. This is hardly what *Upjohn* stands for.

Petitioner/Defendant also misinterprets the impact and importance of *Wright v. Group Health*, 103 Wn.2d 192, 691 P.2d 564 (1984) on this issue. In *Wright*, counsel sought to prevent ex parte contact by Plaintiff's counsel with current and former employees. *Id.* at 194. The Court ultimately held that the attorney-client privilege only applies to employees who have speaking authority to bind the corporation in a legal evidentiary sense. *Id.* at 200. The Court further held that "Since former employees cannot possibly speak for the corporation, we hold that CPR DR 7-104(A)(1)¹⁹ does not apply to them." *Id.* at 201.

¹⁹ CPR DR 7-104(A) provides:

During the course of his representation of a client a lawyer shall not:

- (1) Communicate or cause another to communicate on the subject of the representation with a *party* he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

CPR DR 7-104 is now essentially RPC 4.2, which states:

In representing a client, a lawyer shall not communicate

Petitioner/Defendant's assertion that the attorney-client privilege should apply to these former employees has no support in *Wright* or in any other existing case law.

Next, Defendant/Petitioner relies on the recently decided case of *Youngs v. Peacehealth*, No. 87811-1, 2014 WL 265568 (Wash. Sup. Ct. Jan. 23, 2014). However, *Youngs* dealt with a different issue – namely the inherent conflict with the prohibition on ex parte contact with a plaintiff's healthcare providers in a medical malpractice case as set forth in *Loudon v. Mhyre*, 110 Wn.2d 675, 756 P.2d 138 (1988), and the corporate defendant's right to assert the attorney-client privilege over non-managerial employees. In *Youngs*, the Court held that "To protect the values underlying both the physician-patient and the attorney client privileges, we adopt a modified version of the *Upjohn* test in this context." *Id.* at page 5.

The Court in *Youngs* further stated:

The defendants maintain that *Upjohn* recognized a blanket privilege for communications between corporate counsel and corporate employees at all levels, regardless of a given employee's relationship to potential corporate liability. This perspective-which in the era of rapidly consolidating health care systems would all but eviscerate *Loudon*-reads too

about the **subject** of the **representation** with a person the **lawyer knows to be represented** by another **lawyer** in the **matter**, **unless** the **lawyer** has the **consent** of the other **lawyer** or is **authorized to do so by law** or a court order.

much into the *Upjohn* decision. **Upjohn does not say that every corporate employee is necessarily a "party" to a lawsuit naming the employee's corporate employer. Cf Wright, 103 Wn.2d at 202 ("A corporate employee who is a 'client' under the attorney-client privilege is not necessarily a 'party' for [other] purposes "). Nor does it say that every employee is corporate counsel's "client."**

Id. at page 17. (Emphasis added).

Petitioner/Defendant's reliance on *Admiral* and *Chen* is also misplaced. *Admiral Insurance Co. v. U.S. District Court for the District of Arizona and King Ranch Properties Limited Partnership*, 881 F.2d 1486 (9th Cir. 1989) was a real estate case and centered around two particular employees who gave transcribed statements to corporate counsel. An important distinction to the present case is that once these two individuals gave their statements, they resigned. *Id.* at 1488 – 1489. *Admiral* simply reiterated the rule in *Upjohn* that former and current employees may be shielded by the attorney-client privilege for communications made during their employment. It is unclear why Petitioner/Defendant's cite this case since it is simply quoting the *Upjohn* rule.

In *U.S. v. Chen*, 99 F.3d 1495 (9th Cir. 1996), the Court was dealing with the disclosure of privileged communications by a former employee – obtained during employment. *Chen* simply acknowledged the rule in *Upjohn* and in *In re Coordinated Pretrial*

Proceedings. It did not extend the rule to apply to communications made after the employee left the employ of the defendant.

**III. PETITIONER/DEFENDANT HAS FAILED TO
DEMONSTRATE SUFFICIENT GROUNDS FOR AN
EMERGENCY STAY.**

As stated above, Petitioner/Defendant has not cited any authority in support of its position that the Trial Court committed error when it ruled that certain communications made with counsel were not protected by the attorney-client privilege.

IV. CONCLUSION

The Court of Appeals should deny both the Motion for Discretionary Review and the Motion for Emergency Stay. Neither is supported by the facts or applicable law. Defendant/Petitioner's counsel is attempting to extend the scope of the attorney – client privilege, when there is no legitimate basis to do so, apparently because they are concerned that if this information is discoverable, it may lead to further evidence of witness tampering and interference by counsel. When communications between a former employee whom counsel does not (or should not) represent occur that bears on or otherwise potentially affects the witnesses testimony, consciously or unconsciously, no attorney-client privilege

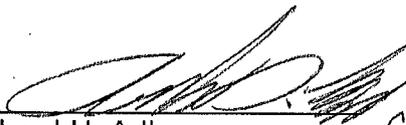
should apply.

Dated this 11th day of February, 2014.

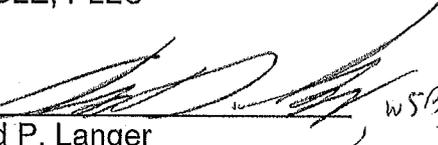
ADLER GIERSCH PS

NELSON BLAIR LANGER
ENGLE, PLLC

By:


Richard H. Adler
WSBA No. 10961
Melissa D. Carter
WSBA No. 36400
Arthur D. Leritz
WSBA No. 29344

By:


for Fred P. Langer
WSBA No. 25932

WSBA 29344

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State governmental agency,

Defendant.

No. 12-2-03162-1

DECLARATION OF FRED P. LANGER IN
SUPPORT OF PLAINTIFFS' MOTION TO
DISQUALIFY AND/OR FOR OTHER
RELIEF

DATE OF HEARING: September 27, 2013
TIME: 2:00 p.m. (SPECIAL SET)
ASSIGNED JUDGE: Honorable Blaine G. Gibson

I, FRED P. LANGER, hereby declare as follows:

1. My name is Fred P. Langer. I am one of the attorneys for Plaintiffs Newman. I am familiar with the files herein and make this declaration upon my own personal knowledge and belief.

2. Attached hereto as **Exhibit 1** is a true and accurate copy of pages from the deposition transcript of Kyle Belton - pages: 36, 62-63.

3. Attached hereto as **Exhibit 2** is a true and accurate copy of Exhibit 3 to the Deposition of Josh Borlund.

1 4. Attached hereto as **Exhibit 3** is a true and accurate copy of the tape recorded
2 interview of Josh Borlund by John Young - pages: 1, 30-31.

3 5. Attached hereto as **Exhibit 4** is a true and accurate copy of the Deposition of
4 Feleighsha Beach - pages: 16, 28, 30-34, 37, 42-44.

5 6. Attached hereto as **Exhibit 5** is a true and accurate copy of excerpts from the
6 Deposition of Joe Scott - pages: 94-96.

7 7. Attached hereto as **Exhibit 6** is a true and accurate copy of excerpts from the
8 Deposition of Zach Beach - pages: 12-14, 16.

9 8. Attached hereto as **Exhibit 7a** is a true and accurate copy of excerpt from the
10 Deposition of Dustin Shafer - pages: 12-13.

11 9. Attached hereto as **Exhibit 7b** is a true and accurate copy of excerpts from the
12 Deposition of Shane Roy - page 4.

13 10. Attached hereto as **Exhibit 7c** is a true and accurate copy of excerpts from the
14 Deposition of Matt Bunday – page 5.

15 11. Attached hereto as **Exhibit 7d** is a true and accurate copy of excerpts from the
16 Deposition of Thomas Hale – page 5.

17 12. Attached hereto as **Exhibit 7e** is a true and accurate copy of excerpts from the
18 Deposition of Kelly Thorson -- page 5.

19 13. Attached hereto as **Exhibit 7f** is a true and accurate copy of excerpts from the
20 Deposition of Josh Borlund – page 5.

21 14. Attached hereto as **Exhibit 8** is an email between Plaintiffs' co-counsel, Arthur
22 Leritz, and Mark Northcraft dated February 8, 2013.

23 15. Attached hereto as **Exhibit 9** is an email between Plaintiffs' co-counsel, Arthur

1 Leritz, and Mark Northcraft dated February 20, 2013.

2 16. Attached hereto as **Exhibit 10** is a letter from Plaintiffs' co-counsel, Arthur
3 Leritz, to Mark Northcraft dated April 3, 2013, along with the Subpoena Duces Tecum to
4 Dustin Shafer attached thereto.

5 17. Attached hereto as **Exhibit 11** is a letter from Plaintiffs' co-counsel, Arthur
6 Leritz, to Mark Northcraft dated May 31, 2013.

7 18. Attached hereto as **Exhibit 12** is a letter from Andrew Biggs to Plaintiffs' co-
8 counsel, Arthur Leritz, dated June 14, 2013.

9 19. Attached hereto as **Exhibit 13** is an email from Michelle Tomeczak dated August
10 22, 2013 attaching a Notice of Deposition of Dustin Shafer.

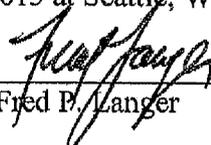
11 20. Attached hereto as **Exhibit 14** is a letter from me to Mark Northcraft and
12 Andrew Biggs dated August 28, 2013.

13 21. Attached hereto as **Exhibit 15** is a letter from Andrew Biggs to me dated
14 September 3, 2013.

15 22. Attached hereto as **Exhibit 16** is a letter to Andrew Biggs from me dated
16 September 5, 2013.

17 I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF
18 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

19 DATED this 19th day of September, 2013 at Seattle, Washington.

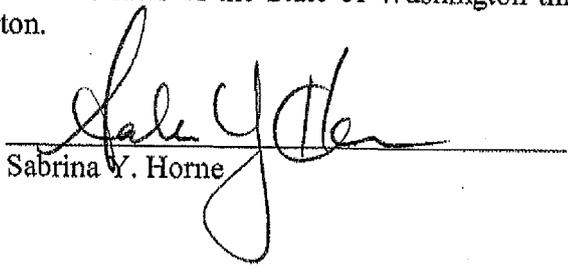
20 
21 _____
22 Fred P. Langer
23

1
2 **CERTIFICATE OF SERVICE**

3 I, Sabrina Y. Horne, hereby certify that on September 20, 2013 before 5:00 p.m., I
4 served the above-referenced document on the interested parties in this action in the manner
5 described below and addressed as:

6 Mark S. Northcraft, Esq. 7 Andrew Biggs, Esq. 8 Northcraft, Bigby & Biggs, PLLC 9 819 Virginia Street, Suite C-2 10 Seattle, WA 98101-4421 11 <u>mark.northcraft@northcraft.com</u> 12 <u>marks.northcraft@northcraft.com</u> 13 <u>andrew.biggs@northcraft.com</u>	
14 <input type="checkbox"/> ABC Messenger	
15 <input type="checkbox"/> First Class mail postage prepaid	
16 <input checked="" type="checkbox"/> Email	

17 I declare under penalty of perjury under the laws of the State of Washington this 19th
18 day of September, 2013, at Seattle, Washington.

19
20 
21 Sabrina Y. Horne

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an)
incapacitated adult; and)
RANDY NEWMAN and MARLA)
NEWMAN, parents and)
guardians of said)
incapacitated adult,)

Plaintiffs,)

vs.)

HIGHLAND SCHOOL DISTRICT)
NO. 203, a Washington State)
governmental agency,)

Defendant.)

NO. 12-2-03162-1

DEPOSITION UPON ORAL EXAMINATION OF KYLE BELTON

August 14, 2013
5:49 p.m.
917 Triple Crown Way
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

1 Q. What happened to Matthew's body when Joe Scott made
2 contact with it?

3 A. They spun around and Matthew landed on his -- on his
4 back and shoulders and head on the track landing deal.

5 Q. And where did Joe Scott land?

6 A. Right next to him.

7 Q. Okay. Did you see what portion of Joe Scott's body
8 hit the ground?

9 A. I didn't. Because Joe Scott was on the -- on the
10 field side of where Matthew landed. So where the
11 grass was, not the track.

12 Q. Okay. Was Matthew's entire body on the track landing
13 or just the shoulders and head?

14 A. His upper body was waist up. Maybe a little bit more.

15 Q. Could you tell what struck the ground first or did
16 everything happen at once?

17 A. He -- he spun, I saw his back shoulder blades with
18 shoulder pads and his head all kind of hit first. And
19 then his legs plopped right at the same time so he was
20 flat on his back.

21 Q. It's hard for us to tell from this Google Earth image
22 of the field, but how close is this pole vault landing
23 pit to the out of bounds area?

24 MR. NORTHCRAFT: Object to the form.

25 A. Just not even two yards, four to five feet.

1 A. Yes.

2 Q. When were you contacted?

3 A. A month or two ago.

4 Q. Who contacted you?

5 A. I don't remember the guy's name.

6 Q. Does John Young sound familiar?

7 A. Yeah.

8 Q. How did he contact you?

9 A. He called me.

10 Q. Okay. And what did he tell you?

11 A. He told me who he was, said he was with the school
12 district. And then asked me if he could ask me some
13 questions.

14 Q. Did he ask you if he could record that conversation?

15 A. Yes.

16 Q. And did he to your knowledge?

17 A. Yes.

18 Q. What questions did he ask you?

19 A. He asked me about the incident at practice. He asked
20 me if I met with the Newmans, if I met with their
21 attorneys. That kind of stuff.

22 Q. And did you tell him that you had?

23 A. Yes.

24 Q. Was there any question to you about whether the

25 Newmans or their attorneys were attempting to lead you

1 in a certain direction?

2 A. Yes. Multiple questions were like that. He -- he
3 asked me if I had spoken to the Newmans about what had
4 happened and I said yes. And he said, That helped you
5 remember what happened, correct? Like he was -- he
6 wanted me to answer yes to that, like they helped me
7 remember what happened on the field and all that.

8 Q. And did they?

9 A. Not at all.

10 Q. How did you react to Mr. Young's questioning to that
11 effect?

12 A. It made me mad, very mad.

13 Q. Why did it make you mad?

14 A. Because I could tell that he was trying to lead me
15 into an answer.

16 Q. At any time have the Newmans or their attorneys
17 suggested to you what you should say in response to
18 questions?

19 A. No.

20 Q. Have you seen a copy of the recorded statement you
21 gave over the phone to Mr. Young?

22 A. I have not.

23 Q. Did you request a copy?

24 A. I did not.

25 Q. Would you like to see a copy?

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated)	
adult; and RANDY NEWMAN AND MARLA)	
NEWMAN, parents and guardians of)	NO. 12-2-03162-1
said incapacitated adult,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT NO. 203, a)	
Washington State governmental)	
agency,)	
)	
Defendant.)	
)	

VIDEO DEPOSITION UPON ORAL EXAMINATION OF JOSHUA BORLAND

August 20, 2013
 9:06 a.m.
 917 Triple Crown Way, Suite 200
 Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
 PHYLLIS CRAVER LYKKEN, RPR, CCR NO. 2423



EXHIBIT
3
Portland 8-29-13
PENGAD 800-431-6599

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 3

TAPE RECORDED INTERVIEW
Highland School District vs. Matthew Newman
Conducted by John Young
Of Canfield
Claim #28143

Person Interviewed: Joe Scott
Employer:
Present at Interview: Mark Northcraft, General counsel
Zach and Felicia Beach, Joe's parents
Phone #:
Date: 02/26/13

YOUNG Uh, Joe, do you give me permission to record the interview?

SCOTT Yes, I do.

YOUNG Uh, present also is Mr. Mark Northcraft the, uh, general counsel for the Highland School District. Uh, Joe's parents are also here. Would each of you identify yourselves please and answer my question as to whether or not you agree to me recording the interview?

ZACH Zach Beach. Yes.

FELICIA Felicia Beach. Yes, I do.

YOUNG Okay. All right. I have a couple questions though, that I'd like to get clear in my mind to start with. During September 17th and 18th, 2009, you were a sophomore at the high school?

SCOTT Yes.

YOUNG Do you remember about what weight you played football at during that time?

SCOTT Like 130 maybe.

YOUNG 130

SCOTT About that.

YOUNG Okay. And what position on the football team, as a sophomore, were you playing at that time?

SCOTT Oh, yeah. This, kids were, kids at school were just saying, uh, that he got hit very hard during the games way too many times and I don't know. It was like a lot of hits. He got hit a lot.

MARK Okay. Did anybody up to the time you left ever suggest that the collision and tackle that you were involved with....

SCOTT Yeah. Billy.

MARK Um, Billy suggested that maybe you'd had, maybe he'd had—well, let me put it this way...

SCOTT He said that I gave him a concussion.

MARK That's what I was going to ask you. So Billy suggested that to you?

SCOTT He did. I remember the juniors, as a whole, they would kind of say, 'Oh, dude, it's your fault he got hurt.' And I was like, 'No.'

MARK Which juniors? So it was Billy. Who else was doing it?

SCOTT Billy, Tyler, Forest, their whole group.

MARK Okay. So we've got Billy, Forest, Tyler, what about, um...

SCOTT I didn't really talk to (sp) Cavin that much.

MARK What about Cavin? Okay. Uh, any other juniors you can remember that were a part of that group?

SCOTT They all just kind of hung out with each other. The ones that I remember I just, it felt like the just didn't like me very much.

MARK How did you, how did you react to that when Billy said something?

SCOTT I just shrug it off and walk away.

MARK Did you ever have a discussion with him about it?

SCOTT Nope.

MARK Did you have a discussion with Kopta or Tyler or any of these guys about what they were saying?

SCOTT Nope.

MARK Do you remember what time of the year they started talking to you like that?

SCOTT Around the end of football season.

MARK The end of the football season?

SCOTT Yeah. They just kind of got, people were hating on me because of it. And I was like 'whatever.'

MARK All right. And John asked you, you don't recall, well let me-. Do you recall when you got up from the tackle, whether you were out of bounds or in bounds?

SCOTT We were out of bounds after the tackle.

MARK Do you remember if you personally, your body, any part of your body, hit any portion of the pole vault run-up track or the pole vault pit itself?

SCOTT Nope.

MARK Either way?

SCOTT Huh-hmm. I don't remember either of us hitting it.

MARK Do you, as you sit here today, do you remember where it's located?

SCOTT The far side of the field from the bleachers. It's, I want to say mid-field, but I'm not 100% sure.

MARK I want to make sure I understand what you just told me. You don't think that either one of you, either you or Matthew, hit the pole vault pit or the run-up.

SCOTT I don't think either of us hit it. I don't remember that at all.

MARK Do you remember whether or not the pole vault pit had any of those big heavy blue paddings, you know, that they have...

SCOTT I think they have...

MARK ...you know, for vaulters to come down on, you know, when they're off the pole.

SCOTT I don't think any of that stuff is out there.

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

MATTHEW A. NEWMAN, an)	
incapacitated adult, and RANDY)	
NEWMAN AND MARLA NEWMAN,)	
parents and guardians of said)	
incapacitated adult,)	
)	
Plaintiffs,)	
)	
vs.)	No. 12-2-03162-1
)	
HIGHLAND SCHOOL DISTRICT NO.)	
203, a Washington State)	
governmental agency,)	
)	
Defendants.)	

DEPOSITION UPON ORAL EXAMINATION OF
FELEIGHSHA GRIFFIN-BEACH

August 8, 2013
5:08 p.m.
1030 North Center Parkway
Kennewick, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
JERI L. CHANDLER, CCR No. 3191

1 practice.

2 Q Okay. And did Joe tell you about the practice
3 during this conversation with you about a week after the
4 game?

5 A Yes.

6 MR. NORTHCRAFT: Object to the form.

7 BY MS. CARTER:

8 Q What did he tell you about the tackle?

9 A He said he didn't really -- I mean, it was so
10 fast. Yeah, he took him down, but he didn't remember much
11 about that. It was a tackle. And nobody said anything to
12 him afterwards, but I don't think they would anyway
13 because they weren't real close.

14 Q When you say nobody said anything afterward, are
15 you referring --

16 A After the tackle.

17 Q Do you know how long in time it was after Matthew
18 was taken away from the field on game night that these
19 teammates starting harassing Joe?

20 A It was within the week, that next school week.

21 Q And you then talked to your daughter about this?

22 A Yes.

23 Q And that's Tamara?

24 A Yes.

25 Q And what did you tell Tamara about it?

1 Mr. Northcraft told me that it wasn't directly the school,
2 but they were suing the district, and they needed
3 something -- help for Matthew.

4 I'm trying to think of everything that was said
5 in that meeting. I'm just at a loss right now. It wasn't
6 that long ago, but it kind of was. Yeah. It was -- I was
7 just really concerned about the school.

8 Q Was there any suggestion to you that harm would
9 come to the school if the Newmans prevailed at trial?

10 MR. NORTHCRAFT: Object to the form.

11 THE WITNESS: That possibly certain programs
12 might suffer, and that -- that was a concern of mine.

13 BY MS. CARTER:

14 Q Who suggested that to you?

15 MR. NORTHCRAFT: Object to the form.

16 THE WITNESS: I believe it was Mr. Northcraft.

17 BY MS. CARTER:

18 Q And can you tell me exactly what was said about
19 programs at the school being affected by the lawsuit?

20 A He said that it might affect some of the
21 programs. Some of the programs might suffer from it.

22 Q From the lawsuit by the Newmans?

23 A Yes.

24 MR. NORTHCRAFT: Object to the form.

25 ///

1 BY MS. CARTER:

2 Q How did that make you feel?

3 MR. NORTHCRAFT: Object to the form.

4 THE WITNESS: I was very upset at that point.
5 Again, that's when I was very concerned how the Newman
6 family could do that to the school.

7 BY MS. CARTER:

8 Q While your son was being questioned during this
9 interview including Mr. Young and Mr. Northcraft, what was
10 your impression of the questioning of Joe?

11 A As a mother, I was very upset because he kept
12 getting repeated questions in different forms. I felt
13 like they were kind of attacking him, trying to make him
14 remember something that he's not going to remember. It
15 had been so long.

16 Q At any point, did Joe change his answers if he
17 was asked the same question?

18 A Sometimes he would remember a little bit more;
19 but then again, I mean, in his statement -- or his
20 interview, it states in there that he'd be like, "but I'm
21 not a hundred percent sure." That's a concern of mine
22 because, if you're not a hundred percent sure, then it
23 shouldn't be said.

24 Q Did you have any impression as to why
25 Mr. Northcraft or Mr. Young would ask Joe the same

1 question?

2 A I --

3 MR. NORTHCRAFT: Object to the form.

4 THE WITNESS: -- think they were just trying to
5 get him to remember something, trying to spark memories or
6 possibly; but, I mean, it was repeated, and Joe -- it
7 changed a very minute amount.

8 BY MS. CARTER:

9 Q Any other discussion after the tape recorder was
10 shut off during this February 2013 meeting, other than
11 your expression of concern for the school?

12 A Yes.

13 Q Tell me what was also discussed.

14 A We mentioned to Mr. Northcraft and Mr. Young that
15 we were meeting with yourself and Mr. Adler, and he asked
16 when that was. I can't remember when we actually met. I
17 know it was within a couple weeks, I think, of when we met
18 with Mr. Northcraft.

19 Then he asked me if I would be willing to record
20 it, the conversation with the Newmans' attorneys. And at
21 that point in time, I said yes, and -- but I did not have
22 a recorder. I told him that Mr. Young said that he would
23 get one for us.

24 I also expressed -- I don't know how this stuff
25 works. I didn't want to get in trouble for recording it.

1 So I asked him, What do I say if they ask me why? And
2 they said just because I wanted it for my benefit.

3 Q Let me get this straight. Mr. Northcraft asked
4 you to record your upcoming meeting with Mr. Newman and
5 his attorneys?

6 A Yes.

7 MR. NORTHCRAFT: Object to the form.

8 MS. CARTER: What's the basis of your objection?

9 MR. NORTHCRAFT: It's leading.

10 BY MS. CARTER:

11 Q Is that your testimony?

12 MR. NORTHCRAFT: Object to the form.

13 THE WITNESS: Yes.

14 BY MS. CARTER:

15 Q And instructed you to advise Mr. Newman or the
16 attorneys, if they asked about the recording, that it was
17 for your own personal use?

18 A Yes.

19 MR. NORTHCRAFT: Object to the form.

20 BY MS. CARTER:

21 Q Were you instructed to disclose that the tape
22 recorder was given to you by Mr. Northcraft or
23 Mr. Young?

24 MR. NORTHCRAFT: Object to the form.

25 THE WITNESS: No.

1 BY MS. CARTER:

2 Q Were you specifically instructed not to disclose
3 that?

4 MR. NORTHCRAFT: Object to the form.

5 THE WITNESS: No. They -- like I said, they told
6 me that -- when I asked, they said that it was for my own
7 personal benefit.

8 BY MS. CARTER:

9 Q Were you instructed to return the tape recorder
10 to Mr. Northcraft or Mr. Young after the meeting with the
11 Newmans and their attorneys?

12 A Yes. Mr. Young wanted me to mail it back to him.

13 Q Do you have any idea why Mr. Northcraft or
14 Mr. Young asked you to record the meeting with the Newmans
15 or their attorneys?

16 A My opinion? I don't know why, but my opinion
17 would be trying to see what way the other side is going.
18 That's just my opinion.

19 Q During this meeting with Mr. Northcraft and
20 Mr. Young, did it come up that Joe had been harassed by
21 some of his teammates within a week or so of Matthew's
22 injury and blamed for Matthew's injury?

23 A Yes. Joe brought it up.

24 Q What did he say about that during this meeting?

25 A Did Joe say?

1 MR. NORTHCRAFT: Object to the form.

2 BY MS. CARTER:

3 Q Right.

4 A Joe mentioned that the juniors, that group of
5 boys, had been telling him that it was his fault and they
6 lost because of him and Matthew's injury was because of
7 him, and it -- it weighed on Joe pretty hard.

8 Q And this is what Joe relayed during the meeting
9 with Mr. Northcraft and Mr. Young?

10 A Yes.

11 MR. NORTHCRAFT: Object to the form.

12 BY MS. CARTER:

13 Q Was there any suggestion during this meeting by
14 Mr. Northcraft or Mr. Young that the occurrence of the
15 tackle to Matthew on the Thursday practice was part of a
16 conspiracy made up by Mr. Newman?

17 A Yes.

18 MR. NORTHCRAFT: Object to the form.

19 BY MS. CARTER:

20 Q How was that suggested to you?

21 A It's actually in the typed interview. But he
22 said that Mr. Newman met with a group of the boys the
23 summer before all this started. I can't -- don't remember
24 if it was in 2012 or '11. I'm not sure. That he met with
25 these boys, and they came up with this story.

1 Q With what story?

2 A About the injury to Matthew and how it happened.

3 Q And what was the story?

4 A I am not completely sure. I did not get into too
5 much detail about it, that they came up with that story
6 about this. So that's where the lawsuit came from.

7 Q What was your reaction to that?

8 A I myself couldn't believe that they would do
9 that, but they did try to contact my son, and Joe ignored
10 them. It was on Facebook, I think. John Hein tried to
11 send him a message, and Joe didn't want to have any part
12 of getting involved in it. And that was before any
13 contact between either sides.

14 But, to me, it's not a story because of the
15 harassing that started, what, two years before.

16 MR. NORTHCRAFT: Move to strike as
17 nonresponsive.

18 MS. CARTER: Could you read that last question
19 back.

20 (Record read)

21 BY MS. CARTER:

22 Q When you say they tried to contact Joe, who were
23 you referring to?

24 A The other football players: John Hein, Billy
25 Gellerson. I don't think Forest tried to get ahold of

1 Q Do you have any information to suggest that Randy
2 Newman met with Billy Gellerson or John Hein in the week
3 after his son's injury to concoct this theory that his son
4 was injured on the Thursday practice?

5 A I doubt it.

6 MR. NORTHCRAFT: Object to the form.

7 THE WITNESS: Matthew was in the hospital.

8 BY MS. CARTER:

9 Q Did you, in fact, meet with the Newmans and their
10 attorneys after this interview meeting in February of
11 2013?

12 A Yes.

13 Q When was that meeting?

14 A I want to say -- I think it was like two or three
15 weeks after I met with Mr. Northcraft.

16 Q Okay. Who was present at that meeting?

17 A Oh, geez. Myself, my husband, Joseph,
18 Mr. Newman, yourself, and Mr. Adler.

19 Q Where did that meeting take place?

20 A It was at a chiropractic office off of Clearwater
21 and Ely.

22 Q Mr. Northcraft had asked you to tape record that
23 meeting; correct?

24 A Yes.

25 MR. NORTHCRAFT: Object to the form.

1 BY MS. CARTER:

2 Q Did he, in fact, give you a tape recorder?

3 MR. NORTHCRAFT: Object to the form.

4 THE WITNESS: Mr. Young gave it to us.

5 BY MS. CARTER:

6 Q How did that work? How did Mr. Young give you a
7 tape recorder?

8 A He brought it to our house and handed it to my
9 husband and showed my husband how to use it.

10 Q When was that?

11 A A few days before our meeting with you.

12 Q Do you know where Mr. Young -- where he lives or
13 where his office is?

14 A I believe it's in Ephrata.

15 Q And he showed up at your home in Kennewick with
16 the tape recorder shortly before your meeting with the
17 Newmans?

18 A Yes.

19 MR. NORTHCRAFT: Object to the form.

20 BY MS. CARTER:

21 Q Were you home when that happened?

22 A No.

23 Q Did your husband tell you about it when you got
24 home?

25 A Yes.

1 Q What did your husband tell you about his exchange
2 with Mr. Young?

3 A He handed me the tape recorder and the
4 instruction booklet and showed me how to use it and just
5 the same thing that Mr. Young had showed him on the
6 recorder.

7 Q Did Mr. Young give any instruction, to your
8 knowledge, to your husband about what to do with the tape
9 recorder after the meeting with the Newmans and their
10 attorneys?

11 A No.

12 Q What was your understanding of what to do with
13 this tape recorder after your meeting with the Newmans and
14 their attorneys?

15 A I contacted him after the meeting and asked him
16 what he wanted me to do with it.

17 Q Contacted who?

18 A Mr. Young. I'm sorry.

19 Q What did Mr. Young tell you at that point?

20 A He told me that I could mail it back to him, or
21 the next time he was in the area, he could stop by and
22 pick it up.

23 Q When you showed up at the meeting with the
24 Newmans and their attorneys, did you have that tape
25 recorder with you?

1 A Yes.

2 Q What did you do with it?

3 A I informed Mr. Newman and his attorneys that I
4 would be recording it.

5 Q And did you tell them that the tape recorder was
6 given to you by Mr. Young?

7 A No.

8 Q Why not?

9 A Because it was supposed to be for my benefit is
10 what I was instructed, the recording.

11 Q When you say it was supposed to be for your
12 benefit, as you were instructed, who instructed you that?

13 A That was from the interview with Mr. Northcraft
14 and Mr. Young.

15 Q Did you record that meeting with the Newmans and
16 their attorneys?

17 A Yes.

18 Q And after that meeting, what did you do with the
19 tape recorder?

20 A I took it home.

21 Q Is it still in your home?

22 A Yep.

23 Q Did Mr. Northcraft contact you and ask for it?

24 A No. I contacted him.

25 Q And tell me about that discussion.

1 theory that a story was made up between the Newmans and
2 some of the players --

3 A No.

4 Q -- regarding the injury to Matthew during the
5 Thursday practice?

6 A No.

7 MR. NORTHCRAFT: Object to the form.

8 BY MS. CARTER:

9 Q How did you feel about the suggestion that
10 certain school programs might be harmed because of this
11 lawsuit --

12 A Very --

13 Q -- after your meeting with the Newmans and the
14 attorneys?

15 A Oh, after the meeting with you guys. At ease
16 that that was not the case.

17 Q Why is that?

18 A I was explained a little bit more in detail about
19 the insurance program that is out there for all the
20 schools, and that's -- they're not suing the school
21 themselves. It's actually to help Matthew. It doesn't
22 come out of the school fund, basically.

23 Q Do you feel as though anyone was trying to trick
24 you?

25 A I do now, yes.

1 Q Explain to me how you feel you were being
2 tricked.

3 MR. NORTHCRAFT: Object to the form.

4 THE WITNESS: When I met with Mr. Northcraft, I
5 only had their side of the story. I -- like I said, we
6 moved. So I didn't know how Matthew was doing. I feel
7 really betrayed that -- and put in the middle, I guess,
8 that this -- I would be given this tape recorder to try
9 and record an interview that was not being recorded by
10 Mr. Newman and his attorneys.

11 Also, Mr. Newman informed my son that it was not
12 his fault and nobody blamed him, which relieved my son
13 quite a bit hearing it from them. It was just a big
14 relief to hear the other side of the story.

15 BY MS. CARTER:

16 Q Who was it that you believe was trying to trick
17 you?

18 MR. NORTHCRAFT: Object to the form.

19 THE WITNESS: Mr. Northcraft.

20 BY MS. CARTER:

21 Q During that February 2013 meeting?

22 A Yes.

23 Q Any other time?

24 A I didn't speak to him after that.

25 Q The act of giving you a tape recorder and asking

1 you to tape record the meeting with the Newmans and their
2 attorneys and not disclose that it was for Mr. Northcraft,
3 does that strike you as dishonest?

4 MR. NORTHCRAFT: Object to the form.

5 THE WITNESS: Completely dishonest.

6 BY MS. CARTER:

7 Q What does dishonesty mean to you?

8 MR. NORTHCRAFT: Object to the form.

9 THE WITNESS: Sneaky, not truthful. I can't give
10 you a complete description or definition of it, but it's
11 dishonest. It's not right.

12 BY MS. CARTER:

13 Q Has there been any contact from Mr. Young to you
14 or, to your knowledge, to your family since the meeting
15 that you had with the Newmans?

16 A Just when I contacted him to find out how he
17 wanted to go about getting the recorder back.

18 Q And what did he say about that?

19 A He told me that I could either mail it to him or
20 the next time he was in our area, he would stop by and
21 pick it up.

22 Q Have you had any contact from Mr. Northcraft
23 either to you or to your family, to your knowledge, since
24 the meeting with the Newmans?

25 A To Joseph.

1 A No. I deleted it.

2 Q Oh, you deleted the recording?

3 A Yes, I did.

4 Q Why didn't you tell him that it wasn't true?

5 A Because I was trying to get that back to him and
6 wanted it done in other ways.

7 Q So you lied to Mr. Young?

8 A Yep.

9 Q Why? Why did you lie?

10 A Because I did. That's how I felt. I felt very
11 betrayed, and I was done with being put in the middle.

12 Q And so when you understood that this tape
13 recording was for your personal benefit, what did that
14 mean to you?

15 A It wasn't for my personal benefit.

16 Q How do you know that?

17 A That is what I was told to say in your guys's
18 interview.

19 Q We told you to say that in the interview?

20 A Yes.

21 Q You're actually telling me -- you're under oath
22 now.

23 A Yes, I am under oath.

24 Q All right.

25 MS. CARTER: Just ask your questions, counsel.

1 You're not here to harass her.

2 MR. NORTHCRAFT: Is that an objection?

3 MS. CARTER: That's an objection. That was not a
4 question.

5 BY MR. NORTHCRAFT:

6 Q And so your -- could you read back her
7 response?

8 (Record read)

9 BY MR. NORTHCRAFT:

10 Q When did we tell you that in the interview? Was
11 that the part that was recorded?

12 A No. That was after we turned it off.

13 Q And so you're saying that that conversation
14 between me and you and John Young and you occurred at the
15 Kennewick Administrative District?

16 A Yes.

17 Q And that's when we asked you to tape record the
18 conversation?

19 A Yes.

20 Q Now, if it was tape recorded, why -- and you had
21 a copy of it and it was preserved in some fashion so that
22 it would be completely accurate as to what you just talked
23 with the attorneys for the Newmans about, why wouldn't
24 that be for your benefit?

25 MS. CARTER: Object to the form.

1 BY MR. NORTHCRAFT:

2 Q Wouldn't it help you to know what was accurately
3 said?

4 MS. CARTER: Object to the form.

5 THE WITNESS: They weren't recording it. You
6 guys asked me to record it.

7 BY MR. NORTHCRAFT:

8 Q We did.

9 A Okay. And I felt like it -- being used.

10 Q And I hear you. I understand what you just said,
11 but I'm trying to -- my question was, if it was recorded
12 and took down everything that everybody said and you had a
13 copy of it, why wouldn't that be to your benefit to have a
14 recording of that conversation if, for some reason, you
15 wanted to look at it later to remember what you said or
16 what the attorneys said? Why wouldn't that be to your
17 benefit?

18 A Because there wasn't anything said in that
19 interview that would implicate my son or make my son be
20 guilty or anything else.

21 Q Okay. During this conversation -- oh, by the
22 way, this conversation that we supposedly had -- because I
23 remember it differently, Ms. Beach. In fact, I never
24 talked to you about tape recording. John Young did.

25 MS. CARTER: Object to the form. It's not a

1 question.

2 MR. NORTHCRAFT: That's okay.

3 MS. CARTER: Ask a question.

4 MR. NORTHCRAFT: You can ask -- you can object
5 all you want. You can move to strike later on.

6 MS. CARTER: I'm moving to strike right now.

7 MR. NORTHCRAFT: Good for you.

8 MS. CARTER: Strike the testimony of
9 Mr. Northcraft, please.

10 BY MR. NORTHCRAFT:

11 Q Well, I'll put it in a declaration, but I don't
12 recall ever having a conversation with you at that time
13 about a tape recording.

14 MS. CARTER: Objection. Move to strike.

15 BY MR. NORTHCRAFT:

16 Q I just don't remember. If that's what you
17 remember, that's fine.

18 A That's fine, because people remember things and
19 some people don't.

20 Q We certainly do.

21 MS. CARTER: Objection. Move to strike.

22 BY MR. NORTHCRAFT:

23 Q And what I do recall, though, is that I asked
24 Mr. Young to call you to see if you would tape record the
25 conversation, and Mr. Young then called you, and you said

1 you would.

2 MS. CARTER: Is there a question?

3 BY MR. NORTHCRAFT:

4 Q Do you have any reason to dispute that?

5 A Yeah, because it happened at the interview. We
6 were inside the admin building, in one of the conference
7 rooms.

8 Q Was that recorded, that part of the conversation?

9 A Yet again, no. That was after you guys turned it
10 off.

11 Q So after -- and by that time -- I suppose what
12 you're saying -- because I don't remember that. Maybe I
13 did and you remember it, and I'm not going to try and talk
14 you out of it. I just don't remember that.

15 A Okay.

16 Q What I do remember is telling Mr. Young later on
17 to ask you if you could record the conversation. That's
18 what I remember. Let's go with what you remember.

19 A Uh-huh.

20 Q That conversation between you and me and John
21 Young about recording your upcoming meeting with the
22 attorneys, that occurred after Joe Scott had given -- your
23 son had given his statement; correct?

24 A His interview.

25 Q His interview.

1 BY MR. NORTHCRAFT:

2 Q I understand. I'm not asking you to tell me
3 about your dad. I'm sorry that that came up because,
4 obviously, it makes you feel bad.

5 What I'm trying to find out is -- if you'd like
6 to take a little break, I'm fine. What I'm trying to find
7 out is what the attorneys told you about the relationship
8 between a concussion and a later injury.

9 A I need to take a break.

10 MR. NORTHCRAFT: Okay.

11 (Recess)

12 BY MR. NORTHCRAFT:

13 Q So what did they tell you about the relationship
14 between brain injuries and concussions that you didn't
15 already know about?

16 A I've already -- that's the thing. I know because
17 I have been -- I'm a member of the Brain Injury
18 Association of Washington since 1999, since my dad got
19 injured.

20 Q Have you, by the way, read any of the deposition
21 testimony of Billy Gellerson and Tyler Hakala and Kavan
22 Stoltenow, John Hein, any of those boys?

23 A No.

24 Q Have you ever been shown by the attorneys for the
25 Newmans, in particular, say, Ms. Carter, our brief to the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON, YAKIMA COUNTY

MATTHEW A. NEWMAN, an)
 incapacitated adult; and RANDY)
 NEWMAN AND MARLA NEWMAN,)
 parents and guardians of said)
 incapacitated adult,) 12-2-03162-1
)
 Plaintiffs,)
)
 vs.)
)
 HIGHLAND SCHOOL DISTRICT NO.)
 203, a Washington State)
 governmental agency,)
)
 Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF
JOSEPH SCOTT

4:31 P.M.

APRIL 15, 2013

1030 NORTH CENTER PARKWAY

KENNEWICK, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578

1 Q. What were you told, if anything, by
2 Mr. Northcraft or the other gentleman?

3 A. Excuse me?

4 Q. What were you told during that meeting by
5 Mr. Northcraft or the other gentleman?

6 A. Just about the, that the -- there's a lawsuit
7 now and I didn't know what was going on. So I was
8 confused about it and they just told me that there was
9 a lawsuit between Matthew Newman and his family towards
10 the Highland School District and they're just trying to
11 get all the truth from all the players and just trying
12 to figure out exactly what happened.

13 Q. Were you told about what any of the other
14 players had said thus far regarding the practice of
15 September 17th?

16 A. No. All I really heard was that -- they've
17 taken statements from other players and that they
18 mentioned this play and the contact right here, but
19 nothing specific really.

20 Q. Did they tell you that the Newmans and their
21 attorneys had met with some of the players before a
22 lawsuit was filed?

23 A. Not that I remember.

24 Q. Did they suggest to you that the Newmans and
25 their attorneys had coerced the players into a story

1 about a tackle on September 17th?

2 A. They mentioned a meeting that was -- all the
3 players went to at Mr. Newman's house and they said
4 that the only people that they haven't -- or gotten in
5 contact with or don't -- haven't told them the story,
6 or something, are the ones that weren't there at the
7 house.

8 Q. Okay. So what is your understanding from that
9 meeting with Mr. Northcraft and the other gentleman
10 about what happened at the Newman house, the meeting
11 with the Newmans and the players?

12 A. That Mr. Newman told the players to all tell
13 the exact same thing to the lawyers that are contacting
14 everybody.

15 Q. And that was -- how did you get that
16 information?

17 A. Which?

18 Q. That Mr. Newman told the players to all say
19 the same thing, where did that information come from?

20 A. Just from the meeting itself. They said it
21 kind of in like, I'm not sure how to say it exactly.
22 It wasn't direct like saying that, it was more like of
23 an indirect thing. It's possible it happened, they
24 weren't saying it exactly.

25 Q. Okay. So was it suggested to you during that

1 meeting with the attorneys for Highland School District
2 that Mr. Newman asked the players to make up a story
3 about the tackle during the pregame practice?

4 A. They said that it could have -- that's what
5 could have happened. They weren't just saying it
6 really happened. But along the lines, yes.

7 Q. Okay. But it's not a made-up story; there was
8 a tackle on that pregame practice, correct?

9 A. Yes.

10 Q. Okay. Do you have any evidence that
11 Mr. Newman met with the players and asked them to make
12 up a story about a tackle to Matthew?

13 A. No.

14 Q. Do you believe that Mr. Newman did that?

15 MR. NORTHCRAFT: Object to the form.

16 A. No.

17 Q. (BY MS. CARTER) Do you believe that any of
18 the players who provided statements or testimony that
19 Matthew was tackled during that pregame practice are
20 lying?

21 MR. NORTHCRAFT: Object to the form.

22 A. No.

23 Q. (BY MS. CARTER) Do you believe that any of
24 the players who provided statements or testimony that
25 Matthew complained of a headache after the tackle are

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

MATTHEW A. NEWMAN, an)
incapacitated adult, and RANDY)
NEWMAN AND MARLA NEWMAN,)
parents and guardians of said)
incapacitated adult,)
)
Plaintiffs,)

vs.)

No. 12-2-03162-1

HIGHLAND SCHOOL DISTRICT NO.)
203, a Washington State)
governmental agency,)
)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
ZACHARY BEACH

August 8, 2013
6:40 p.m.
1030 North Center Parkway
Kennewick, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
JERI L. CHANDLER, CCR No. 3191

1 paper, drew a football field on it, kind of asked Joe,
2 okay, if this is the Highland side and this is the
3 visiting side, where would that -- where would that
4 concrete thing be? Where would the pads be? Where is
5 this? Where is that? Trying to ask him, you know, where
6 exactly, you know.

7 And that's -- you know, Joe couldn't really
8 actually remember exactly where, if he hit him and landed
9 in-bounds or if he hit him and landed out of bounds. Joe
10 was not sure.

11 Q Did you feel as though Joe was being led in a
12 certain direction during this questioning?

13 A I think -- I felt that the way they were asking
14 him the questions, they were trying to get him to say the
15 answers that they wanted him to say. It's because they
16 kept asking the same question. They kept asking them
17 differently. They kept asking them in a different way.
18 They kept asking them over and over and over again, and
19 they kept asking him to show them on a piece of paper.

20 Well, that got me frustrated because, I mean, how
21 many times does somebody have to show you or tell you
22 before you understand?

23 Q After the tape recorder was shut off and there
24 was a conversation for about a half an hour or so, who
25 participated in that conversation?

1 A All of us.

2 Q Was there any discussion during that 30-minute
3 conversation or so about why the Newmans were suing the
4 school?

5 A For -- to help take care of Matthew.

6 Q Any discussion about harm that would come to the
7 school as a result of this lawsuit by the Newmans?

8 MR. NORTHCRAFT: Object to the form.

9 THE WITNESS: Just that other programs could
10 suffer from it.

11 BY MS. CARTER:

12 Q Who told you that?

13 A The attorney.

14 Q Mr. Northcraft?

15 A Yes.

16 Q What did he say specifically about other programs
17 suffering from this lawsuit?

18 A I remember that he said that some programs could
19 suffer. Possibly, they might not have a band the next
20 year. They would cut other programs to keep other
21 programs, stuff like that.

22 Q Because of the lawsuit?

23 A Because of the lawsuit, yes.

24 Q How did that make you feel?

25 A That made me feel like, why should the kids pay

1 for something -- why should all the other kids suffer?

2 Q Did you think -- sorry. Finish your answer.

3 A Why should all the other kids suffer from an
4 accident that happens? Because accidents happen. I
5 understand that, and this was an extreme thing. But
6 should the school take responsibility for what happened?
7 Yes. But should the other kids have to suffer? No.

8 Q Did Mr. Northcraft tell you specifically that
9 kids were going to suffer and programs would indeed close?

10 MR. NORTHCRAFT: Object to the form.

11 THE WITNESS: He said that programs would suffer,
12 could suffer from this.

13 BY MS. CARTER:

14 Q How certain are you that he said that?

15 A Pretty certain.

16 Q A hundred percent?

17 MR. NORTHCRAFT: Object to the form.

18 THE WITNESS: Yeah.

19 BY MS. CARTER:

20 Q Did he say it to you directly?

21 A He said it to us all directly.

22 Q Did you take that to mean that the school
23 football program might shut down because of this lawsuit?

24 MR. NORTHCRAFT: Object to the form.

25 THE WITNESS: Yes.

1 Mr. Northcraft about programs suffering after he mentioned
2 they may be hurt --

3 A No.

4 Q -- from this lawsuit?

5 MR. NORTHCRAFT: Object to the form.

6 BY MS. CARTER:

7 Q Did you feel motivated to help the school
8 district after hearing that?

9 MR. NORTHCRAFT: Object to the form.

10 THE WITNESS: Now, no.

11 BY MS. CARTER:

12 Q At the time.

13 A Yeah.

14 MR. NORTHCRAFT: Object to the form.

15 BY MS. CARTER:

16 Q Did you mention to Mr. Young or Mr. Northcraft
17 during this half-hour discussion after the tape recorder
18 was shut off that you were planning a meeting with the
19 Newmans and their attorneys as well?

20 A My wife had mentioned it, yes.

21 Q Were you present for that conversation?

22 A Yes.

23 Q Who did she say that to?

24 A I believe she was talking to Mr. Northcraft.

25 Q What did he say in response to that?

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 7a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON, YAKIMA COUNTY

MATTHEW A. NEWMAN, an)	
incapacitated adult; and RANDY)	
NEWMAN AND MARLA NEWMAN,)	
parents and guardians of said)	
incapacitated adult,)	12-2-03162-1
)	
Plaintiffs,)	
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT NO.)	
203, a Washington State)	
governmental agency,)	
)	
Defendant.)	

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF
DUSTIN SHAFER

9:34 A.M.

MARCH 15, 2013

333 TAYLOR AVENUE NORTH

SEATTLE, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578

1 there.

2 Q. And what did the two of you discuss?

3 MR. NORTHCRAFT: I'm going to object to
4 that question. Mr. Shafer's asked me to represent him
5 as his attorney for this matter and in particular this
6 deposition so all of our conversations are privileged.

7 Q. (BY MR. LERITZ) Is that true, Mr. Shafer?

8 A. Yes, sir.

9 Q. Did you actually hire Mr. Northcraft to
10 represent you in this case?

11 A. I -- yes, I guess you would say that.

12 Q. Did you, did you actually pay him a fee --

13 A. No.

14 Q. -- for his representation?

15 A. No.

16 Q. Do you have any kind of fee agreement --

17 A. No.

18 Q. -- with Mr. Northcraft?

19 A. No.

20 Q. When did you discuss hiring Mr. Northcraft?

21 A. At my house last week.

22 Q. Okay. And it's your understanding he is your
23 attorney for this specific purpose of the deposition?

24 A. Yes, sir.

25 Q. Okay. But you haven't signed any written fee

1 agreement?

2 A. No.

3 Q. Okay. What is your understanding as to the
4 scope of the representation?

5 MR. NORTHCRAFT: I don't think that --
6 that's privileged information.

7 MR. LERITZ: You're asserting privilege?

8 MR. NORTHCRAFT: Yeah.

9 MR. LERITZ: I don't think it's
10 privileged, Counsel.

11 MR. NORTHCRAFT: Well, we disagree,
12 don't we?

13 MR. LERITZ: I guess we do.

14 Q. (BY MR. LERITZ) And then, Mr. Shafer, you
15 said you met with Mr. Northcraft yesterday?

16 A. Yes.

17 Q. For how long?

18 A. Oh, a couple hours. From -- I got there right
19 after my flight at 2:30 and I think I left out of there
20 about 5 o'clock.

21 Q. Okay. So other than speaking with
22 Mr. Northcraft and Shane Roy, have you spoken with any
23 other coaching staff about this deposition?

24 A. The only other brief conversation I had was
25 with Coach Hale, Coach Hale called me when kind of we

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 7b

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs, NO. 12-2-03162-1

v.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State governmental agency,

Defendant.

DEPOSITION OF SHANE ROY
TUESDAY, JULY 23, 2013
Pages 1 to 237

Jody K. Pope, CCR/RPR

1 THE VIDEOGRAPHER: This is the video
2 deposition of Shane Roy. The case is Matthew Newman, an
3 incapacitated adult, and Randy Newman and Marla Newman,
4 parents and guardians of said incapacitated adult,
5 plaintiffs, versus Highland School District No. 203,
6 defendant. The case is in the Superior Court of the
7 State of Washington, County of Yakima. The case number
8 is 12-2-03162-1. Today's date is Tuesday, July 23rd,
9 2013, and the time is approximately 1:10.

10 This deposition is taking place at the
11 offices of Central Court Reporting, located at 505 West
12 Riverside Avenue, Suite 500, Spokane, Washington 99201.
13 And the deposition was noticed by Mike Nelson of Nelson,
14 Langer and Engle. The video operator today is Marc
15 Lykken, and the court reporter is Jody Pope of Central
16 Court Reporting. The reporter will swear in the
17 witness, but first would the attorneys voice identify
18 themselves and state whom they represent and any other
19 parties in the room with them, starting with the
20 plaintiff, please.

21 MR. NELSON: Mike Nelson and Richard Adler
22 for the Newmans, and Randy Newman is here with us today.

23 MR. NORTHCRAFT: Mark Northcraft, for the
24 Highland School District, and I represent Mr. Roy for
25 the purposes of his deposition today.

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 7c

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated)	
adult; and RANDY NEWMAN AND MARLA)	
NEWMAN, parents and guardians of)	NO. 12-2-03162-1
said incapacitated adult,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT NO. 203, a)	
Washington State governmental)	
agency,)	
)	
Defendant.)	
)	

VIDEO DEPOSITION UPON ORAL EXAMINATION OF MATTHEW BUNDAY

August 21, 2013
 9:04 a.m.
 917 Triple Crown Way, Suite 200
 Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
 PHYLLIS CRAVER LYKKEN, RPR, CCR NO. 2423

1 represent, starting with the plaintiffs, please.

2 MS. CARTER: Melissa Carter for the plaintiffs.

3 MR. NORTHCRAFT: Mark Northcraft for Highland
4 School District and for the purpose of this
5 deposition Mr. Bunday.

6

7 MATTHEW BUNDAY, being first duly sworn to tell
8 the truth, the whole truth and
9 nothing but the truth,
10 testified as follows:

11

12

EXAMINATION

13 BY MS. CARTER:

14 Q. Good morning.

15 A. Good morning.

16 Q. Please state your name for the record, please.

17 A. Matthew Michael Bunday.

18 Q. Can you spell your last name for us?

19 A. Sure, it's B-U-N-D-A-Y.

20 Q. Do you prefer that I call you Mr. Bunday, Matthew,
21 Matt?

22 A. Whatever floats your boat.

23 Q. Okay. Can I have your current address, please?

24 A. Sure. It's 1560 -- no, I'm sorry, 1650 M-O-W-R-Y
25 Square, Apartment No. 202 in Creekside. I'll be

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 7d

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated)	
adult; and RANDY NEWMAN AND MARLA)	
NEWMAN, parents and guardians of)	NO. 12-2-03162-1
said incapacitated adult,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT NO. 203, a)	
Washington State governmental)	
agency,)	
)	
Defendant.)	
)	

VIDEO DEPOSITION UPON ORAL EXAMINATION OF THOMAS HALE

August 21, 2013
 1:02 p.m.
 917 Triple Crown Way, Suite 200
 Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
 PHYLLIS CRAVER LYKKEN, RPR, CCR NO. 2423

1 identify themselves, stating whom they represent and
2 any other parties in the room with them. We'll start
3 with the plaintiffs, please.

4 MR. LERITZ: Arthur Leritz representing the
5 plaintiffs.

6 MR. NORTHCRAFT: Mark Northcraft representing
7 the Highland School District, and for the purpose of
8 this deposition Mr. Hale.

9
10 THOMAS HALE, being first duly sworn to tell
11 the truth, the whole truth and
12 nothing but the truth,
13 testified as follows:

14
15 EXAMINATION

16 BY MR. LERITZ:

17 Q. Can you please state your full name for the record.

18 A. Thomas Jay Hale.

19 Q. Mr. Hale, is that a letter J or the name Jay?

20 A. J-A-Y.

21 Q. J-A-Y. Thank you. Mr. Hale, what is your current
22 address?

23 A. 128 Terrace Park Drive, Yakima, Washington, 98901.

24 Q. And how long have you lived at that address?

25 A. Currently 13 months.

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 7e

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated)	
adult; and RANDY NEWMAN AND MARLA)	
NEWMAN, parents and guardians of)	NO. 12-2-03162-1
said incapacitated adult,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT NO. 203, a)	
Washington State governmental)	
agency,)	
)	
Defendant.)	
)	

DEPOSITION UPON ORAL EXAMINATION OF KELLY THORSON

August 20, 2013
1:45 p.m.
917 Triple Crown Way, Suite 200
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
PHYLLIS CRAVER LYKKEN, RPR, CCR NO. 2423

1 The court reporter today is Phyllis Craver
2 Lykken, and she will swear in the witness, but first,
3 would the attorneys voice-identify themselves and
4 state whom they represent, and we'll start with the
5 plaintiffs, please.

6 MR. LERITZ: Arthur Leritz, counsel for
7 plaintiffs.

8 MR. NORTHCRAFT: Mark Northcraft. I represent
9 the Highland School District and Mr. Thorson for the
10 purpose of this deposition.

11
12 KELLY THORSON, being first duly sworn to tell
13 the truth, the whole truth and
14 nothing but the truth,
15 testified as follows:

16
17 EXAMINATION

18 BY MR. LERITZ:

19 Q. Good afternoon.

20 A. Hey.

21 Q. Can you please state your full name for the record.

22 A. Kelly Thomas Thorson.

23 Q. Mr. Thorson, what is your current address?

24 A. 209 A Holly Avenue, Moxee, Washington, 98936.

25 Q. And how long have you lived at that address?

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 7f

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated)	
adult; and RANDY NEWMAN AND MARLA)	
NEWMAN, parents and guardians of)	NO. 12-2-03162-1
said incapacitated adult,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT NO. 203, a)	
Washington State governmental)	
agency,)	
)	
Defendant.)	
)	

VIDEO DEPOSITION UPON ORAL EXAMINATION OF JOSHUA BORLAND

August 20, 2013
 9:06 a.m.
 917 Triple Crown Way, Suite 200
 Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
 PHYLLIS CRAVER LYKKEN, RPR, CCR NO. 2423

1 provided by Central Court Reporting. The court
2 reporter today is Phyllis Craver Lykken. She will
3 swear in the witness, but first would the attorneys
4 voice-identify themselves and state whom they
5 represent, starting with the plaintiffs, please.

6 MS. CARTER: Melissa Carter for the Newman
7 family plaintiffs.

8 MR. NORTHCRAFT: Mark Northcraft for the
9 Highland School District, and for the purposes of
10 this deposition Mr. Borland.

11

12 JOSHUA BORLAND, being first duly sworn to tell
13 the truth, the whole truth and
14 nothing but the truth,
15 testified as follows:

16

17

EXAMINATION

18 BY MS. CARTER:

19 Q. Good morning.

20 A. Good morning.

21 Q. State your name, please.

22 A. Josh Borland.

23 Q. Mr. Borland, I'm Melissa Carter, I just introduced
24 myself to you. I'm an attorney for the plaintiffs

25 Newman, also here is Arthur Leritz, another attorney

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 8

Sabrina Y. Horne

From: Arthur Leritz [aleritz@adlergiersch.com]
Sent: Friday, February 8, 2013 1:54 PM
To: Melissa Carter
Cc: Richard Adler; Fred P. Langer; Michael E. Nelson; Mary Ellen Bolden; Sabrina Y. Horne; Mary Wellnitz
Subject: RE: Newman

Agreed. Very interesting.

From: Melissa Carter
Sent: Friday, February 08, 2013 1:38 PM
To: Arthur Leritz
Cc: Richard Adler; Fred P. Langer; Michael E. Nelson; MaryEllen Bolden; Sabrina Y. Horne; Mary Wellnitz; Arthur Leritz
Subject: Re: Newman

Do you think Dustin will fly up/ cooperate? If not, I think we need to go there, and meet the day before, possibly with Randy, to make sure he shows. No restrictions on talking to him now.

Wonder if he is refusing to cooperate with Northcraft, and maybe that is why Northcraft is distancing himself. Very interesting, I would be all over that guy and would insist he was my client if I was on the defense.

On Feb 8, 2013, at 1:25 PM, "Arthur Leritz" <aleritz@adlergiersch.com> wrote:

I just talked to Northcraft re: Dustin Shafer dep and 30(b)(6) dep. He said he won't be flying Shafer up from CA for the dep unless we pay half! I said he's a District witness, you listed him as contact only through your office, you should bring him up. He said no, Shafer is not an employee. I then asked him if he formally represented Shafer and he said no. ☺ Per excellent suggestion of Melissa, let's give Shafer a call. ☺

Availability wise, Shafer is available 03/08/13 or 03/15/13. Northcraft also said he would waive the 20 day video notice requirement for either date if it's an issue. We still have time in any event.

As for the 30(b)(6), he would like to do it at the school and after the school day, to lessen the impact on Gary Packard, who is still a teacher at Highland (he actually told me it would be expensive for the District if they had to hire a substitute teacher. Really, Mark?) I told Mark that he should look at the 30(b)(6) again as I don't think Packard would be the best choice, given what Jim Morrison of his office told me about Packard's knowledge. He is going to check with Packard and get back to me. He didn't say anything about the 03/01/13 date so I presume that's still good, but if the 30(b)(6) rep changes that may change.

As for Shafer, my thought is it makes more sense financially to have Shafer fly here so we can depose him in Seattle v. going down there. We can set it for our office. Thoughts?

Sincerely,

Arthur D. Leritz

Attorney

Adler Giersch, PS
Personal Injury Law
Compassionate Counsel, Tough Advocacy
www.adlergiersch.com

Seattle 333 Taylor Ave North | Seattle, WA 98109 | T 206.682.0300 | F 206.224.0102
Bellevue 14710 SE 36th Street | Bellevue, WA 98006 | T 425.643.0700 | F 425.643.8038
Everett 4204 Colby Avenue | Everett, WA 98203 | T 425.338.7700 | F 425.337.1994
Kent 1111 W. Meeker | Kent, WA 98032 | T 253.854.4500 | F 253.854.4824

CONFIDENTIALITY NOTE: This e-mail message contains information belonging to the law firm of Adler Giersch, P.S. which is privileged, confidential and/or protected from disclosure. The information is intended only for the use of the individual named above. If you think that you have received this message in error, please e-mail the sender. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.



Please consider the environment before printing this email

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 9

Sabrina Y. Horne

From: Arthur Leritz [aleritz@adlergiersch.com]
Sent: Wednesday, February 20, 2013 9:21 AM
To: Marks Northcraft; Fred P. Langer; Sabrina Y. Horne; Michael E. Nelson; Mary Wellnitz; Richard Adler; Melissa Carter; Arthur Leritz; Mary Ellen Bolden
Cc: Lilly Tang
Subject: RE: Newman -- Shafer dep

Mark,

That's fine. We agree to split the costs 50/50 and we are good for Friday, 03/15/13. I will send you a dep notice and subpoena to forward to Mr. Shafer. I was hoping we could get him in the night before and have him catch a flight the evening after his dep, so he would only have to be here one night. Any reason we can't do that?

Also, per our prior conversation, Mr. Shafer is not an employee of the District and you do not represent him, correct? Please confirm.

Arthur

From: Marks Northcraft [mailto:marks_northcraft@northcraft.com]
Sent: Tuesday, February 19, 2013 3:00 PM
To: Arthur Leritz
Cc: Lilly Tang
Subject: RE: Newman -- Shafer dep

Hi Arthur,

The cost involved will be a plane ride, mileage to and parking at Ontario, CA to catch his flight to Seattle, two nights at a hotel, a rental car, and food. We will split it 50-50 with you. We can pay for the cost on our firm card and then bill you. If he has food charges that are not on the hotel bill, then he can submit a receipt, and we will send to you so you can pay your share. I am looking at March 8 or 15 for his dep. Are those dates available at your end?

Mark

From: Arthur Leritz [mailto:aleritz@adlergiersch.com]
Sent: Tuesday, February 19, 2013 9:55 AM
To: Marks Northcraft
Cc: Arthur Leritz
Subject: RE: Newman -- Shafer dep

Hi Mark,

Yes, still interested. I'm checking calendars and will get back to you soon. We will agree to split half the cost of bringing Mr. Shafer to Seattle; how do you want to handle that? We can do the dep here at my office.

Arthur

From: Marks Northcraft [mailto:marks_northcraft@northcraft.com]
Sent: Friday, February 15, 2013 11:06 AM
To: Arthur Leritz
Subject: FW: Newman -- Shafer dep

Hi Arthur,

Are you still interested in taking Mr. Shafer's deposition? March is booking up quickly.

Mark

From: Marks Northcraft
Sent: Monday, February 11, 2013 10:46 AM
To: aleritz@adlerglersch.com
Cc: Lilly Tang
Subject: Newman -- Shafer dep

Hi Arthur,

Do you have an answer as yet with respect to the timing, location, and expense related to Mr. Shafer traveling to Seattle for his deposition, in the event that is where you would like it to take place? Please advise. Thanks.

Mark

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 10

RICHARD H. ADLER
STEVEN J. ANGLÉS
MELISSA D. CARTER
JACOB W. GENT
ARTHUR D. LERITZ



SEATTLE
BELLEVUE
EVERETT
KENT

Email documents to:
mail@adlergiersch.com

Mall all correspondence to:
Adler Giersch PS
333 Taylor Ave. N.
Seattle, WA 98109

VIA EMAIL ONLY

Mark S. Northcraft
Northcraft, Bigby & Briggs, PC
819 Virginia St Ste C-2
Seattle, WA 98101

April 3, 2013

RE: Case Name: Newman v. Highland School District No. 203
Cause No. 12-2-03162-1
Our File No.: 211380
Your client: Dustin Shafer

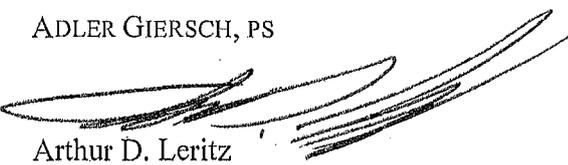
Dear Mr. Northcraft:

Based on your client's March 15, 2013 deposition, I am enclosing a Subpoena Duces Tecum for all materials in his possession relating to his time as assistant football coach at Highland High School.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

ADLER GIER SCH, PS


Arthur D. Leritz
Attorney at Law

Enclosure

Seattle
333 Taylor Avenue North
Seattle, WA 98109
P: 206.682.0300
F: 206.224.0102

Bellevue
14710 SE 36th Street
Bellevue, WA 98006
P: 425.643.0700
F: 425.643.8038

Everett
4204 Colby Avenue
Everett, WA 98203
P: 425.338.7700
F: 425.337.1994

Kent
1111 West Meecker Street
Kent, WA 98032
P: 253.854.4500
F: 253.876.4824

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

No. 12-2-03162-1

SUBPOENA IN A CIVIL CASE

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State governmental agency,

Defendant.

TO: DUSTIN SHAFER

YOU ARE COMMANDED to appear in the Superior Court of the State of
Washington at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the
following documents or tangible things at the place, date, and time specified below:

- 1 1. All videos of the September 18, 2009 Highland v. Naches football game.
2 2. The entire file maintained by Dustin Shafer concerning his time as
3 assistant football coach at Highland High School. This request includes
all paper files and electronic files.

4 PLACE
Adler Giersch, PS
5 333 Taylor Avenue North
6 Seattle, WA 98109

DATE AND TIME:
04/26/13
No later than 5:00pm

7 YOU ARE COMMANDED to permit inspection of the following premises at
8 the date and time specified below.

9 PREMISES

DATE AND TIME

10
11 DATED this 2nd day of April, 2013.

12 ADLER GIERSCH, PS

13 
14 Arthur D. Leritz, WSBA # 29344
15 Attorneys for Plaintiffs
16 Adler Giersch PS
17 333 Taylor Avenue North
18 Seattle, WA 98109
19 Telephone: (206) 682-0300
20 Fax: (206) 224-0102
21 Email: aleritz@adlergiersch.com

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 11

RICHARD H. ADLER
STEVEN J. ANGLÉS
MELISSA D. CARTER
JACOB W. GENT
ARTHUR D. LERITZ



SEATTLE
BELLEVUE
EVERETT
KENT

Email documents to:
mall@adlergiersch.com

Mail all correspondence to:
Adler Giersch PS
333 Taylor Ave. N.
Seattle, WA 98109

VIA EMAIL AND REGULAR MAIL

Mark S. Northcraft
Northcraft, Bigby & Biggs, PC
819 Virginia St Ste C-2
Seattle, WA 98101

May 31, 2013

RE: Case Name: Newman v. Highland School District
Cause No. 12-2-03162-1
Our File No.: 211380
Date of Injury: 9/18/2009

Dear Mr. Northcraft:

During the CR 26(i) conference with your law partner, Mr. Andrew Biggs on May 17, 2013, he advised me for the first time that you and your law firm no longer represented Dustin Shafer - and in fact, Mr. Biggs represented to me that you only represented Mr. Shafer solely for the purpose of his March 15, 2013 deposition.

I was very surprised by this information. As you may recall, when we were arranging Mr. Shafer's deposition, you specifically advised that you were NOT representing him and as a result we agreed to share his travel expenses to Seattle for his deposition. However, this then changed without notice to us during his video deposition at our Seattle office. When I asked Mr. Shafer about this representation at his deposition you both stated that he was represented by you - and not just for the deposition:

Q. And last week when you met with Mr. Northcraft at your house, how long was the conversation; how long was he there?

A. A few hours. He showed up in the morning and got out of there about noon, 1 o'clock, something in there.

Q. And what did the two of you discuss?

MR. NORTHCRAFT: I'm going to object to that question. Mr. Shafer's asked me to represent him as his attorney for this matter and in particular this deposition so all of our conversations are privileged.

Q. (BY MR. LERITZ) Is that true, Mr. Shafer?

A. Yes, sir.

Q. Did you actually hire Mr. Northcraft to represent you in this case?

A. I -- yes, I guess you would say that.¹

More troubling than this about-face on the nature of your relationship with Mr. Shafer as you had previously represented to me, was that you specifically forbade me to ask Mr. Shafer about the scope of your representation of him, and instructed him not to answer:

¹Page 11, line 21 to the Deposition of Dustin Shafer.

Seattle
333 Taylor Avenue North
Seattle, WA 98109
P: 206.682.0300
F: 206.224.0102

Bellevue
14710 SE 36th Street
Bellevue, WA 98006
P: 425.643.0700
F: 425.643.8038

Everett
4204 Colby Avenue
Everett, WA 98203
P: 425.338.7700
F: 425.337.1994

Kent
111 West Maeker Street
Kent, WA 98032
P: 253.854.4500
F: 253.854.4824

Q: Okay. What is your understanding of the scope of the representation?

Mr. Northcraft: I don't think that -- that's privileged information.

Mr. Leritz: You're asserting privilege?

Mr. Northcraft: Yeah.

Mr. Leritz: I don't think it's privileged, Counsel.

Mr. Northcraft: Well, we disagree, don't we?²

Based on your own statements at this deposition, it was my understanding you were representing him not only for the deposition but for this case as well. We were never advised subsequent to the deposition that you really only represented him for the deposition. We have also never seen any correspondence from your office advising that you no longer represented Mr. Shafer.

Certainly an appropriate time to advise my office that you no longer represented him would have been when you received the Subpoena Duces Tecum for documents in Mr. Shafer's possession dated April 2, 2013. Instead, we heard nothing from you and Mr. Shafer failed to produce the requested documents. In any event, neither you as Mr. Shafer's counsel, nor Mr. Shafer himself timely objected to the Subpoena Duces Tecum or moved to quash with the Court.

What is more troubling is the documents that are in Mr. Shafer's possession may contain facts that are critical to Plaintiffs' claims in this case:

Q. Okay. Whenever you would get paperwork from your work as an assistant coach at Highland, would you always kind of put it in the same notebook or the same place?
A. Yeah, generally. A lot of stuff has been, you know, lost and moved around, you know, in the move. But, yeah, generally I'll keep it. I had a, kind of like a bag, a little messenger bag that I kind of kept with all my coaching stuff in it, books and all that stuff.

Q. Okay. And you haven't purposely taken anything out of that bag or thrown anything away, destroyed any documents?
A. She's sitting in a closet.
Q. Okay.³

Q. Okay. So you still have, for lack of a better term, just the book, the playbook that you had when you --

A. I can't tell you --

Q. -- were at Highland?

A. Sorry.

Q. That's okay.

²Deposition of Dustin Shafer at 13:3-12.

³Page 41, line 20 to the Deposition of Dustin Shafer.



Mr. Northcraft
May 30, 2013
Page 3

- A. I can't tell you if I exactly have "the" playbook, but, yeah, I have a three-ring binder just full of various notes and different packets that we would get from coaching clinics and different things that I would review from time to time.
- Q. Do you have any notes in there that would have described what happened to Matthew on September 18th, 2009?
- A. No -- sorry, no. Okay.
- Q. So I'd like you to, Mr. Shafer, when you get back, produce a copy of that to your counsel.
- A. Okay.
- Q. Okay. Your athletic playbook, okay?
- A. Okay.⁴

Since no materials were produced in response to my request at Mr. Shafer's deposition and no materials were produced in response to the Subpoena Duces Tecum, I am very concerned that Mr. Shafer may have destroyed the relevant materials that he was keeping in his closet. That is certainly the negative inference to be made since we have received nothing.

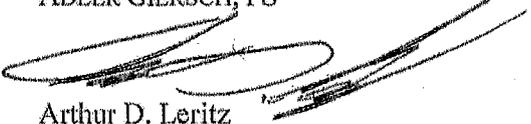
Therefore, I expect to receive all responsive documents no later than 10 days from the date of this letter. If I do not receive the requested documents, I intend to bring this matter before the court and will be seeking an instruction on spoliation for use at trial.

Finally, I received a letter from Lilly Tang dated May 16, 2013 asking for reimbursement of half of Mr. Shafer's travel expenses. We had agreed to pay for half of his travel expenses when we thought he was a witness - not your client. Accordingly, we will not pay for half, or any, of the expenses related to flying your client here for a deposition.

We are all troubled by the fact on the change of your relationship with this material witness. First you do not represent him, then you do, and now you do not. I have not seen this in my 10+ years of practice as an attorney for a private practice insurance defense law firm, nor as an attorney representing those with traumatic injuries.

Sincerely,

ADLER GIERSCH, PS



Arthur D. Leritz
Attorney at Law

cc: Randy & Marla Newman
Michael Nelson
Fred Langer

⁴Page 29, line 20 to the Deposition of Dustin Shafer.



Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 12



NORTHCRAFT, BIGBY & BIGGS, P.C.

ANDREW T. BIGGS
andrew_biggs@northcraft.com

June 14, 2013

Arthur D. Leritz
Adler Giersch, PS
333 Taylor Ave. N
Seattle, WA 98109

SENT VIA EMAIL

Re: *Newman, et al. v. Highland School District No. 203*
Cause No.: 12-2-03162-1
Our File No.: 10.1081

Dear Mr. Leritz:

This letter is offered in response to your letter of May 31, 2013, in which you address, among other topics, the issue of Mr. Northcraft's representation of Mr. Shafer. As you know, Mark Northcraft is away on vacation, but I will attempt to address the issues in his absence.

During our discovery conference, I thought I made the facts clear: Mr. Northcraft appeared at the deposition for the limited purpose of being Mr. Shafer's counsel, and he is no longer counsel for Mr. Shafer. Mr. Shafer is not a party, and Mr. Northcraft simply assisted Mr. Shafer with preparation for and attending the deposition. That is not unique and, although you cite your "10+ years of practice as an attorney" as the basis for being surprised, I could describe for you many instances in which an attorney appears at a deposition (and even at court hearings and trials) for the limited purpose of assisting a witness with preparing for and giving testimony.

In addition, even if Mr. Northcraft were to continue as Mr. Shafer's counsel, that would not relieve you of the obligation to serve the subpoena on the witness, Mr. Shafer. You included a subpoena for attendance with Mr. Shafer's deposition notice, but you did not request that Mr. Shafer bring any documents to the deposition. In the case of the deposition notice and subpoena, Mr. Northcraft agreed to accept service on Mr. Shafer's behalf because, as noted in your correspondence, our office helped coordinate the

Arthur Leritz, Esq.
June 14, 2013
Page 2

arrangements for Mr. Shafer's attendance. However, the second subpoena – for Mr. Shafer's records – which was sent to Mr. Northcraft nearly three weeks later, and without any prior discussion, presents a wholly new set of issues.

First, you failed to serve the subpoena, and neither Mr. Northcraft nor any other attorney at this office agreed to accept service on Mr. Shafer's behalf. Therefore, the subpoena is ineffective because you failed to serve the witness. Second, even if you did serve the witness, the subpoena is defective. You are well aware that Mr. Shafer is a non-party, and that he resides in California. The rules clearly state that a non-resident who receives a subpoena for the purpose of obtaining documents, can only be compelled to produce documents in the county where he is served (or within 40 miles of that place). You will surely agree that your office is more than 40 miles from California. If you wish to subpoena a California witness, you must comply with both California and Washington laws.

And, as a final matter relating to the subpoena, you will note that the subpoena does not comply with CR 45(a)(1). That provision is for the purpose of protecting those from whom records are being sought, such as Mr. Shafer. The failure to advise the subpoenaed witness of his rights is a critical misstep.

In short, the subpoena is defective in several respects, and it was never served on the witness. Had it been served on Mr. Shafer, or if you now choose to serve him, objection will be made on the above grounds (since service was never effected, the time for objecting has not yet begun to run).

In your letter, you also mention your "concern" that Mr. Shafer "may have destroyed" the materials in his possession. We do not have any information that would support such a speculative statement. Further, if you had properly prepared and served a subpoena, this matter would have likely been resolved by now.

As a final matter, I would like to address the refusal to abide by your agreement to pay one-half of the costs associated with Mr. Shafer's travel to Washington for his deposition. Both sides agreed that it would be more cost-effective to have Mr. Shafer travel to Washington for his deposition, rather than having the attorneys travel to California. You agreed verbally, and in writing, that your office would reimburse my firm for one-half of the expense. Now, you are resisting payment because Mr. Northcraft represented Mr. Shafer at the deposition. I must respectfully note that – whether or not a witness has an attorney – agreed travel expenses must be paid. Your office saved a considerable amount of time and expense by having Mr. Shafer come to Washington. You must stand by your agreement.

Arthur Leritz, Esq.
June 14, 2013
Page 3

I trust this letter helps address the issues you raised, but if not, please feel free to call me, or you can call Mr. Northcraft after he returns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew T. Biggs', with a large, sweeping flourish above the name.

Andrew T. Biggs

ATB:mt
w:\newman\corres\leritz 6-14-13

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 13

Sabrina Y. Horne

From: Michelle Tomczak [Michelle_Tomczak@northcraft.com]
Sent: Thursday, August 22, 2013 4:01 PM
To: Arthur Leritz; Fred P. Langer; Mary Ellen Bolden; Melissa Carter; Michael E. Nelson; Richard Adler; Sabrina Y. Horne
Cc: Marks Northcraft; Andrew Biggs; Jenna Wolfe; Lilly Tang
Subject: Newman v. Highland School District -- Notice of Video Deposition of Dustin Shafer
Attachments: Shafer-Dustin.novd.001.pdf

Attached please find the notice for the video deposition of Dustin Shafer. Mr. Shafer's deposition is scheduled for Monday, September 16, 2013, at 10:00 a.m. at the Hilton Garden Inn in Victorville, CA. No hard copy to follow unless requested.

Michelle A. Tomczak | Legal Assistant to Aaron D. Bigby, Andrew T. Biggs, and Jenna M. Wolfe
NORTHCRAFT, BIGBY & BIGGS, P.C. | 819 Virginia Street, Suite C-2 | Seattle WA 98101
Tel: 206.623.0229 | Fax: 206.623.0234 | Email: michelle_tomczak@northcraft.com

Honorable Blaine G. Gibson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

v.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

**NOTICE OF VIDEO DEPOSITION OF
DUSTIN SHAFER**

TO: Plaintiffs

AND TO: Fred P. Langer and Michael E. Nelson , Counsel for Plaintiffs

AND TO: Richard H. Adler, Arthur Leritz, and Melissa D. Carter, Counsel for Plaintiffs

PLEASE TAKE NOTICE that the video deposition upon oral examination of the following
described person will be taken on the following date, at the following time and place designated
below, and said video deposition to be subject to continuance or adjournment from time to time or
place to place until completed:

PERSON: Dustin Shafer
14492 Hurricane Lane
Helendale, CA 92342

DATE: Monday, September 16, 2013

1 TIME: Commencing at 10:00 a.m., and continuing until complete.

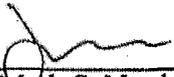
2 PLACE: Hilton Garden Inn
3 12603 Mariposa Road
4 Victorville, CA 92395
5 1-760-952-1200

6 Court Reporter: Barkley Court Reporters
7 310-207-8000

8 This video-taped testimony upon Oral Examination will be taken for the reason that the
9 witness will give evidence material to the establishment of Defendant Highland School District's
10 case.

11 DATED this 22nd day of August, 2013.

12 NORTHCRAFT, BIGBY & BIGGS, P.C.

13  # 44168 for
14 Mark S. Northcraft, WSBA #7888
15 Andrew T. Biggs, WSBA #11746
16 Attorneys for Defendant Highland School District

17
18
19
20
21
22
23
24
25
26

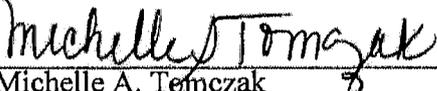
1 CERTIFICATE OF SERVICE

2 I, Michelle A. Tomczak, hereby certify under penalty of perjury under the laws of the state
3 of Washington that on August 22, 2013, I caused the foregoing to be served, via email, upon
4 the following counsel of record:

5 Richard H. Adler
6 Arthur Leritz
7 Melissa D. Carter
8 Adler Giersch, PS
9 333 Taylor Avenue N.
10 Seattle, WA 98109
11 radler@adlergiersch.com
12 aleritz@adlergiersch.com
13 mdcarter@adlergiersch.com
14 marye@adlergiersch.com

15 Fred P. Langer
16 Michael E. Nelson
17 Nelson Langer Engle, PLLC
18 1015 NE 113th Street
19 Seattle, WA 98125
20 nelsonm@nlelaw.com
21 langerf@nlelaw.com
22 hornes@nlelaw.com

23 SIGNED in Seattle, Washington on August 22, 2013.

24 
25 _____
26 Michelle A. Tomczak
Legal Assistant
michelle_tomczak@northcraft.com

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 14



NELSON LANGER ENGLE PLLC
ATTORNEYS AT LAW

Michael E. Nelson, Attorney
Frederick P. Langer, R.N., Attorney*
Aaron I. Engle, Attorney

*Licensed in Washington and Oregon.

August 28, 2013

Via Email and U.S. Mail

Mark Northcraft, Esq.
Andrew Biggs, Esq.
Northcraft, Bigby & Biggs, PLLC
819 Virginia Street, Suite C-2
Seattle, WA 98101-4421

Re: *Newman v. Highland School District No. 203*
Yakima County Superior Court Cause No.: 12-2-03162-1
Our File No.: 202632

Dear Counsel:

This letter is being written to address several issues that have cropped up over the past few weeks in this case. It is our sincere hope that we can resolve these issues without turning to the court for any relief.

The first issue that we would like to address is the Dustin Shafer deposition. Our office received a copy of the *Notice of Video Deposition of Dustin Shafer* on August 22, 2013. The deposition was unilaterally set for Monday, September 16, 2013 in California. This is the second time that proceedings have been set without any consultation regarding Plaintiffs' counsel's availability to attend. This occurrence is different than when your office set Defendant's Motion to Compel. In correspondence it was indicated that the Court set that date and you agreed without notifying us, despite the known conflict of a previously set deposition. Here, though, no consideration was given to any of our calendars. This is a sharp practice that should not occur, especially as the deposition requires travel and none of the attorneys for the Newman's can attend on this date. For this reason, and as a threshold matter, we ask that the deposition be stricken until an agreed upon date can be arrived at. We would also appreciate confirmation from you upon receipt of this letter that Mr. Shafer's deposition has been cancelled or whether we need to seek immediate relief from the Court on this matter.

Seattle Office
1015 NE 113th Street
Seattle, WA 98125
T 206.623.7520
F 206.622.7068

Renton Office
3300 Maple Valley Hwy.
Renton, WA 98058
T 425.255.9698

www.nlelaw.com
A093

This deposition notice also raises several questions. First, is this deposition for trial purposes? If that is the case, then the notice of deposition is inadequate as it does not state that it is for perpetuation purposes. Second, are you asserting that Mr. Shafer is your client for this deposition? As you recall, during his prior deposition, we were alerted only at the proceeding that he was your client, and then the representation for him ceased. So, what is your position on that matter now? Are you again representing him and, if so, will you be filing a notice of representation? We would appreciate answers to these questions so that we may adjust our actions accordingly. Finally, please provide us with the authority upon which you rely to note an out-of-state deposition without consent of counsel or court order.

The second issue we would like to address is the trial date. In Mr. Biggs' correspondence dated August 20, 2013, he indicated that there was "no conceivable way" that this case would be able to be trial ready until the summer of 2015. That is simply too long to deny our clients resolution of their claims. Further, we find it hard to accept given the fact that King County is able to get cases out in 18 months, in the United States District Court for the Western District of Washington it's 11 months, and in Snohomish County it's 8 months. Given that this case has been in suit for a year and a tremendous amount of discovery has occurred to date, we see no need to delay trial for over 1.5 to 2 years. We would propose, as a compromise, that we ask for a trial date in November of 2014. We anticipate that, given your need for three weeks of defense, that the parties should represent to the Court that the overall time necessary for this trial should be six weeks.

The third issue we would like to address is the continuation of the deposition of Coach Shane Roy. We have asked for several dates on that and, to date, your office has not been forthcoming with possible available dates. We must now reiterate our request so that we can complete Mr. Roy's deposition. In terms of compensating Mr. Roy for his time, we do not believe that that is appropriate. We will work with his calendar, however, and will make ourselves available on weekends or off hours to conduct his deposition. Please contact Sabrina Horne (HorneS@NLElaw.com) at Nelson Blair Langer & Engle with proposed dates.

Also, in Mr. Biggs' August 20, 2013 correspondence, you acknowledged receipt of the game video footage from Ms. Escamilla. You asked whether or not she had any other video footage from the 2009/2010 school year. We don't know the answer to that question. We only know that all of the video footage that she had for the subject game has been provided to you. We are more than willing to contact her individually or jointly with you to determine whether or not she has any video footage from games prior or post the September 18, 2009 game.

Finally, we have received the available date of September 17, 2013 at 10:30 a.m. from witness Kelley Welsh for his deposition. Mr. Welsh is a college student at the University of Washington and wishes to have his deposition completed before school commences that following week. Mr. Welsh has agreed to appear for his deposition at our Bellevue office location of Adler Giersch P.S., 14710 SE 36th Street. Enclosed is his Notice of Deposition and Subpoena. On the subject of depositions, kindly provide three to five available dates over the next 30 days for the deposition of Highland School District employee Dennis Richardson.

Mark Northeraft and Aaron Bigby
August 28, 2013
Page 3

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

NELSON LANGER ENGLE, PLLC


Frederick P. Langer
Attorney at Law

cc: Adler Giersch, PS (via email)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State governmental agency,

Defendant.

No. 12-2-03162-1

ACCEPTANCE OF SERVICE OF NOTICE
OF DEPOSITION AND SUBPOENA IN A
CIVIL CASE

The undersigned hereby declares under penalty of perjury that he accepted service of
process on the date shown below of his Notice of Deposition and Subpoena In a Civil Case.

Dated August 23, 2013 at Benton Washington.

Kelly Welsh
Kelly Welsh

ACCEPTANCE OF SERVICE OF NOTICE OF
DEPOSITION AND SUBPOENA IN A
CIVIL CASE - Page 1

ADLER GIERSCHE, ES
Attorneys at Law
333 Taylor Avenue North
Seattle, Washington 98109
Tel (206) 682-0300
Fax (206) 224-0102

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

No. 12-2-03162-1

SUBPOENA IN A CIVIL CASE

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State governmental agency,

Defendant.

TO: KELLY WELSH

YOU ARE COMMANDED to appear in the Superior Court of the State of
Washington at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below
to testify at the taking of a deposition in the above case.

1 Any organization not a party to this suit that is subpoenaed for the taking of a deposition
2 shall designate one or more officers, directors, or managing agents, or other persons who
3 consent to testify on its behalf, and may set forth, for each person designated, the matters
4 on which the person will testify. CR 30(b)(6).

5 PLACE: 6 <i>Adler Giersch, PS</i> 7 <i>14710 SE 36th St.</i> 8 <i>Bellevue, WA 98006</i>	9 DATE AND TIME: 10 <i>September 17, 2013</i> 11 <i>10:30 a.m.</i>
---	--

12 YOU ARE COMMANDED to produce and permit inspection and copying of the
13 following documents or tangible things at the place, date, and time specified below

14 (list documents or objects):

15 PLACE	16 DATE AND TIME
----------	------------------

17 DATED this 23rd day of August, 2013.

18 ADLER GIERSCH, PS

19 */s/ Melissa D. Carter*
20 Melissa D. Carter, WSBA # 36400
21 Attorneys for Plaintiffs
22 Adler Giersch PS
23 333 Taylor Avenue North
Seattle, WA 98109
Telephone: (206) 682-0300
Fax: (206) 224-0102
Email: aleritz@adlergiersch.com
mdcarter@adlergiersch.com MC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State governmental agency,

Defendant.

No. 12-2-03162-1

NOTICE OF DEPOSITION UPON ORAL
EXAMINATION OF KELLY WELSH

TO: KELLY WELSH

AND TO: MARK NORTHCRAFT, counsel for Defendant

PLEASE TAKE NOTICE that the testimony of Kelly Welsh will be taken upon oral
examination at the instance and request of the plaintiffs in the above-entitled action before a
Notary Public at the offices of Adler Giersch, PS 14710 SE 30th St. on
9/17/13 commencing at 10:30 a.m. the said oral examination to be subject to
continuance or adjournment from time to time or place until completed, and to be taken on the

NOTICE OF DEPOSITION UPON ORAL
EXAMINATION OF KELLY WELSH - Page 1

ADLER GIERSCH, PS
Attorneys at Law
333 Taylor Avenue North
Seattle, Washington 98109
Tel (206) 682-0300
Fax (206) 224-0102

1 ground and for the reason the said witness will give evidence material to the establishment of
2 the plaintiffs' case.

3 DATED this 23rd day of August, 2013.

4 ADLER GIERSCH, PS

5
6 /s/ Melissa D. Carter
7 Melissa D. Carter, WSBA # 36400
8 Attorneys for Plaintiffs
9 Adler Giersch PS
10 333 Taylor Avenue North
11 Seattle, WA 98109
12 Telephone: (206) 682-0300
13 Fax: (206) 224-0102
14 Email: mdcarter@adlergiersch.com

11
12
13
14
15
16
17
18
19
20
21
22
23

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 15



NORTHCRAFT, BIGBY & BIGGS, P.C.

ANDREW T. BIGGS
andrew_biggs@northcraft.com

September 3, 2013

Fred P. Langer
Nelson Langer Engle, PLLC
1015 NE 113th Street
Seattle, WA 98125

SENT VIA EMAIL

Re: *Newman, et al. v. Highland School District No. 203*
Cause No.: 12-2-03162-1
Our File No.: 10.1081

Dear Mr. Langer:

Thank you for your letter dated August 28, 2013. Your first item was the Dustin Shafer deposition set for September 16, 2013. From your letter, I infer that none of the many attorneys you have handling this case is available on September 16th. Is that correct? The deposition is expected to last approximately 30 minutes and, of course, you are welcome to attend by telephone, if you wish. Alternatively, you might be able to arrange for video facilities if that better suits your needs.

I do not intend to address your accusation that we are engaging in "sharp practice," other than to say that we provided 20 days' notice of the deposition, which is normally plenty of notice, and we are willing to adjust the date if necessary. Your continued use of inflammatory and accusatory language only serves to diminish the civility in the case, and one would hope that could be avoided.

If you (or one of the other four attorneys who are actively working on this case) are not able to attend the Shafer deposition as noticed, then we are agreeable to moving it, but only on the condition that the pending motion is also moved, in order to accommodate the time needed for obtaining the deposition. Just let us know your preference.

In response to your next questions: Like every deposition, Mr. Shafer's deposition will be taken for all purposes contemplated and permitted by the Rules. Mr. Shafer is not our client, however, if asked, we will represent him for the purpose of the deposition. With regard to your question about the location of the deposition, the Rules do not restrict the location in which a deposition may be taken (and certainly, Mr. Shafer's deposition

Fred Langer, Esq.
September 3, 2013
Page 2

will not be the only out-of-state deposition to be taken in this case). Further, a party requesting a deposition may, but is not required to serve a subpoena on the witness. We have chosen not to do so in this instance, because Mr. Shafer has agreed to attend the deposition without a subpoena. Obviously, no foreign court action is needed in that instance. We are confident that you are familiar with the Rules and, therefore, we would appreciate you refraining from suggesting that we have somehow run afoul of them. We do not have any obligation to "provide [you] with the authority on which [we] rely" for setting a deposition, but we have offered the above explanation to resolve any confusion you might have.

Regarding the trial date, we agree that the total case is estimated to last approximately six weeks, divided equally between the parties. We also agree that a trial date in November 2014 might work, though we have another trial set for October 14, 2014, and it is expected to end about November 10, 2014. If we set this trial for mid-November, we will potentially run into both the Thanksgiving and Christmas holidays, which presents many challenges, including selecting jurors. We are certainly willing to discuss a trial date that will work with all of the concerns of the parties and the court.

I am not sure what the difficulties are with the continuation deposition for Mr. Roy, but perhaps the scheduling difficulties stem from Lilly Tang's time away for vacation. She will return shortly, and it should not be a problem obtaining a deposition date. We will also need to specifically discuss compensating Mr. Roy for his time. Although we appreciate your offer to hold the deposition during off-hours, we must respectfully decline. Again, that matter can be handled when the date is selected.

The deposition scheduled for Kelly Welsh on September 17, 2013, works fine for us.

Please let me know if you have any further questions.

Sincerely,



Andrew T. Biggs

ATB:mt
w:\newman\corres\langer

Newman, et al. v. Highland School District
(Yakima County Superior Court No.: 12-2-03162-1)

**Declaration of Fred P. Langer in Support of
Plaintiffs' Motion to Disqualify and/or For Other Relief**

EXHIBIT 16



NELSON | BLAIR | LANGER | ENGLE
TRIAL ATTORNEYS

September 5, 2013

Andrew T. Biggs, Esq.
Northcraft, Bigby & Biggs, PLLC
819 Virginia Street, Suite C-2
Seattle, WA 98101-4421

Re: *Newman v. Highland School District No. 203*
Yakima County Superior Court Cause No.: 12-2-03162-1
Our File No.: 202632

Dear Mr. Biggs:

This letter is being written in response to your September 3, 2013 correspondence. In short, we will not be able to accommodate the date you unilaterally selected for this out of state deposition. As you are no doubt aware, the deposition of Mr. Shafer from Plaintiffs' standpoint was taken by Arthur Leritz. Mr. Leritz has just started trial in Mary Yu's Court in King County and he is unable to commit to that deposition due to that trial and none of the other attorneys have the ability to accommodate this deposition.

We also object to this deposition being taken for several reasons. First, Mr. Shafer's deposition was taken on March 15, 2013 and lasted four hours. Mr. Northcraft was able, at that time, to have examined or cross-examined him on any factual matter that Mr. Shafer had respecting this case. We do not believe that the Court will allow this deposition to go forward given the fact that CR 26(b) clearly limits unnecessary discovery, and this deposition request, is both cumulative and duplicative, or is obtainable in a less burdensome fashion. The fact that you have chosen to go to videotape this deposition in California warrants our attendance at the same. This is the most costly and burdensome way to accomplish this. Although we could, as you suggest, attend this conference telephonically, that is not our practice and we will not deviate in this circumstance.

We also see no need for it in terms of the case or the Motion for Protective Order moving forward. Your suggestion that Mr. Shafer has some information that has bearing on the Motion for the protective order is difficult to understand. The Motion for the protective order has been noted for many months. In fact, it has been continued once because of the Court's calendaring; and then again because of Mr. Northcraft's vacation schedule, which pushed out the Beach and Belton depositions by two months. There is no conceivable reason why we should agree to renote the Motion another time.

Overall, we are very troubled with the way that your office has handled Mr. Shafer in general. He is, as best we can tell, most legitimately characterized as a non-party fact witness. Nevertheless, your firm asserted that it represented him for the purposes of the deposition, then no longer represented him. When we attempted to get information during his deposition claimed were in his closet, you refused to accept service of process of a subpoena for him and indicated that he was no longer your client and represented to the court that he was not returning your phone calls. Now, in your most recent correspondence, you have scheduled this deposition and state that there was no need to serve a subpoena on him as he is cooperating with you at this point and you refused to specifically answer whether or not you are representing him or not and leaving that decision up to him possibly until the time of deposition. This is unheard of.

Further, we do not believe that our position in any way prejudices your position if there is information that newly came to Mr. Shafer. The truth of the matter is that you are not seeking discovery – you just want to get his opinion memorialized. For that we suggest you obtain an affidavit from him and submit it to the court and the court will give it the weight that it affords, if any.

During your last discussions with us, we asked you whether or not you could make yourself available for the deposition of Kelly Welsh. You indicated to us that you were available on the 24th of September at the time that the witness requested; however, you would only do so if we again agreed to move the protective order hearing. Those are two unrelated issues. You are either available or not. We have not agreed to move the protective order hearing and we need to know whether or not you are available for the date specified by the witness, or give us other alternatives on that matter.

Finally, we are happy that Lilly Tang is back in the office. She has contacted us and appears to be working cooperatively with our staff. Again, we reiterate our need to identify some dates that are mutually agreeable to get more depositions accomplished.

Your prompt attention to the issues raised in this correspondence would be appreciated as we may be seeking relief from the Court regarding the deposition, again, unilaterally noted by your office respecting Dustin Shafer.

Thank you for your attention to this matter.

Sincerely,

NELSON BLAIR LANGER ENGLE, PLLC


Fred P. Langer
Attorney at Law

cc: Adler Giersch (via email)

DECLARATION OF ERIC DIENER

Eric Diener, being of adult years and competent to testify, hereby makes the following declaration on the basis of personal knowledge:

1. I am currently the principal at Wapato High.
2. I was formerly employed by the Highland School District and worked as a teacher, head football coach and athletic director.
3. I had my deposition taken on October 21, 2013 in Yakima regarding the Newman vs. Highland School District case.
4. Prior to my deposition I had a spoke with the attorneys for the Newman family, Mr. Adler, and on another occasion with Mr. Adler and Ms. Carter.
5. Also, I met with the attorney for the Highland School District, Mr. Mark Northcraft, at my office at Wapato High days before my deposition.
6. I want to bring to the attention of the judge overseeing this case regarding certain aspects of Mr. Northcraft's conduct and action that are concerning and troubling.
7. When Mr. Northcraft arrived at my office we had a brief introduction as to the purpose of his visit. Within about 10 minutes of the meeting, he mentioned that he had my personnel file with him. Initially, I was taken aback by that but didn't think much about it. After the meeting I thought about what he did and was trying to do, and I upset at what happened.
8. That evening I spoke with my spouse who works in the Human Resource Department of the Selah School District about what happened. She advised me that

it was not proper for Mr. Northcraft to have my personnel file and that the rules, policies and procedures are clear no one has access to an employee's personnel file unless and until the employee first receives formal notice. I never received any notice and certainly did not and would not release my personnel file to Mr. Northcraft.

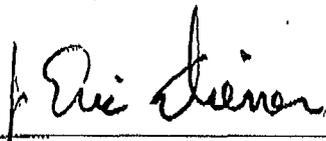
9. Following this conversation I then contacted my Assistant Superintendent for the Wapato School District regarding this incident. He reaffirmed that an individual can only have access to a teacher's personnel file after notice and approval. I also talked with the former President of the Highland Teacher's Association. All individuals confirmed that anything to do with a teacher's personnel file, such as mine at Highland High School, required written notification with a formal process for the release of the file and providing me a copy
10. I have nothing to hide in my personnel file. But using this in his presentation was clearly orchestrated to make me feel like the guilty person. It was out of bounds for Mr. Northcraft to try to use this as a lever or intimidation tactic.
11. At the deposition I did my best to maintain a professional demeanor and believe I did so; however, I was boiling under my skin when this subject matter was brought up. I communicated my displeasure at his tactic. He then apologized during the deposition that his intent was not to intimidate me. But I know what happened. I know what I heard. I know what I saw. I am a principal of a high school and I have to handle many different kinds of situations, including talking with gang members.

There is no doubt as to what he was trying to do. And this does not sit well with me, even to this day.

12. Mr. Northcraft's taking of my file is a clear breach of personnel policies. I think this was an improper and possible illegal action. I am not pleased that he did this.
13. There was no reason for him to have my personnel file and it is a clear violation of rules and policy for him to have done that. The Court should know about this and address the issue.
14. Also during the meeting, Mr. Northcraft mentioned that there are two sides to every story and then told me his version of things. He also insisted that the other side was "trying to screw" the Highland School District. That was an unnecessary and unprofessional thing for him to tell me. I was quite surprised by his comment and language in trying to manipulate my opinions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

DATED this 27th day of November 2013.



J. Eric Diener