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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Appeal from the Court of Appeals – Division III

No. 32223-8 III

Yakima County Superior Court Cause No. 12-2-03162-1

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

Respondent,

v.

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

Petitioner.

PETITIONER'S BRIEF

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I. Introduction

At issue in the case before this Court is the scope of the corporate attorney-client privilege, the importance and vitality of which this Court recently emphasized in *Youngs v. Peacehealth*, 179 Wn.2d 645, 316 P.3d 1035 (2014). The underlying case arose from an injury to a high school student-athlete during a football game in 2009. Matthew Newman received serious, permanent brain injuries while playing quarterback for the Highland School District's football team.

During the resulting lawsuit, the plaintiffs' attorneys have aggressively and persistently sought to discover the communications between the Highland School District's attorneys and the coaches whose conduct is directly at issue in the case. Even though the coaches subsequently left employment with the School District, the communications between the School District's attorneys and the coaches should be protected by the School District's corporate attorney-client privilege.

This Court should take this opportunity to announce the clear rule that the attorney-client privilege extends to such conversations between counsel and former employees whose alleged negligent acts and omissions give rise to a personal injury lawsuit against their former corporate

employer, which in this case is a municipal corporation school district. The Highland School District asks this Court to reverse the trial court's decision of January 28, 2014, denying the School District's motion for a protective order.

II. Assignments of Error

1. The trial court erred in its order of January 28, 2014, by applying the incorrect legal standard relating to the attorney-client privilege and denying the Highland School District's motion for a protective order.

Issues Pertaining to Assignments of Error

1. Are communications between a school district's attorney and the coaches who have direct knowledge of the facts and circumstances giving rise to the plaintiffs' claims, and whose actions are alleged to have triggered the liability to the plaintiffs, protected by the school district's corporate attorney-client privilege, even if the coaches are no longer employed by the school district?

III. Statement of the Case

This case involves injuries that occurred during a high school football game on Friday, September, 18, 2009. Student football player Matthew Newman received a late, hard hit during the overtime period of the game, from which he developed an acute subdural hematoma causing

him to experience a neurological emergency during the game. (See, CP 4 at ¶2.1; CP 6-8 at ¶¶ 2.11-2.16, 3.1.1; Appendix A31 at 17:8-23.) Matthew received immediate medical attention at the field and he was then transported to the Yakima Valley Medical Center emergency room. (CP 7-8 at ¶ 2.16.) Tragically, the injury resulted in a severe, permanent brain injury, but fortunately, Matthew did not die as a result. (CP 8-10 at ¶¶ 3.1-3.3.)

The plaintiffs' attorneys waited nearly three years to file the lawsuit against the Highland School District. (CP at 3-11.) It is notable that the plaintiffs included as parties neither the present Highland School District coaches, nor the former coaches, even though they claim the coaches are the negligent actors for whom the School District is vicariously liable. (*Id.*) The plaintiffs' attorneys are highly experienced and tenacious, and one can only assume that the failure to sue the coaches individually was a tactical decision, not an oversight.

There are significant disputes about the facts surrounding the football practice, the game itself, and the injury. Naturally, those disputes will be decided by the jury and are not at issue here. For the purpose of understanding the case, though, it is important to know more about the nature of the plaintiffs' legal and factual assertions.

The plaintiffs claim that Matthew's injury was the result of what has been referred to as a "secondary impact syndrome." (See, Appendix at A37 at ¶ 3.) In its simplest form, the disputed syndrome involves a player who sustains a concussion, and then returns to play before the concussion is healed. Then a second head impact occurs, causing serious brain injury. The syndrome theorizes that the damage done by the second impact is more significant than would otherwise be expected, due to the unhealed first concussion.

Although there are significant facts to the contrary, the plaintiffs claim they can show that Matthew received a concussion during practice the day before the fateful game. They further claim that the coaches knew about the concussion, but they negligently allowed Matthew to play while he still had symptoms from the concussion. In essence, the plaintiffs claim that the coaches violated the Lystedt Act, RCW 28A.600.190, which describes the method for dealing with suspected head injuries.

The plaintiffs must prove several independent facts to establish that Matthew's injury was from a "secondary impact syndrome," as opposed to a different type of closed-head injury such as a sudden, large, subdural hematoma. The plaintiffs must convince the jury that Matthew suffered a concussion during practice the day before the game; that the coaches were aware that Matthew had symptoms of a suspected

concussion, and that the coaches ignored the standard of care set forth in the Lystedt Act and allowed Matthew to play in the game the following day. (*Id.* at A174-A175, ¶¶ 19-21.)

The Lystedt Act requires that, if coaches are aware or suspect that an athlete is suffering from a concussion, then the athlete must not be allowed to continue to play and can only return to play after being cleared by a trained health care provider. RCW 28A.600.190. Consequently, the key to the plaintiffs' "secondary impact syndrome" theory against Highland School District is to vilify the coaches. Unless the plaintiffs can establish that Matthew suffered a concussion during practice the day before the game, and that the coaches knew he was suffering from concussion symptoms (both of which are contrary to significant evidence), then the plaintiffs' claims fail. Such a pre-existing and unresolved concussion is the critical hallmark of the "secondary impact syndrome." (*Id.* at A174-A175, ¶¶ 19-21.)

The School District will present compelling evidence that plaintiffs' negligence claims, and the evidence the attorneys contend support those claims, are simply untrue. Matthew was not injured during practice and, unbeknownst to Matthew's coaches, he hurt himself while playing catch with friends after practice. (*Id.* at A40:1-21-A46:12.) Matthew's girlfriend, Lisa Sorensen, testified that she talked to Matthew

the evening after practice, and Matthew told her that he was playing ball with his friends after practice, and he hit his head. Matthew told Lisa that he had a headache as a result. Ms. Sorensen further testified that Matthew told actually told her that he was going to hide the injury from the coaches, because he knew that they would not let him play in the big, rival game the next day if the coaches knew or suspected he had sustained a concussion. (*Id.*)

The coaches had no knowledge of Matthew getting any injury to his head, either during or after practice. (See, Appendix at A34:22-A35:13; A51:5-12, A52:16-A53:3; A58:12-A59:3, A61:11-18, A62:6-23; A66:21-A67:21, A68:5-21; A70:16-A71:20.) Any evidence to the contrary has either been fabricated or “suggested” to Matthew’s former teammates, who obviously would like to help Matthew as a result of his catastrophic injury.

In fact, one of the players who was carefully coached and interviewed by the plaintiffs’ attorneys later testified at his deposition that the coaches knew Matthew suffered a headache during practice. That player has since specifically recanted his testimony that the coaches knew Matthew had a headache. (*Id.* at A73:19-A74:19; A81.) Likewise, the teammate who actually tackled Matthew during the practice play in which the concussion supposedly occurred – the player who was in the best

position to see what happened – does not agree with the plaintiffs’ claim that Matthew was injured during the play. (*Id.* at A83:3-A86:10, A87:13-A88:15.)

Another of the players who was “interviewed” by one of the plaintiffs’ attorneys has since directly accused that attorney of misleading him. The attorney misled the player about the attorney’s identity, and the attorney told the player that he was a brain surgeon doing medical research. The player was angry when he learned that the person who introduced himself as a medical researcher was actually a lawyer representing the plaintiffs for the purpose of bringing a lawsuit against the Highland School District. (*Id.* at A90:15-A94:1.) That same player testified that the written statement the plaintiffs’ attorneys following the meeting does not represent what the player actually told the “brain surgeon.” (*Id.* at A165-A166.) Not surprisingly, and in violation of Civil Rule 26(b)(4), the audio recording of this player’s statement has been destroyed by the plaintiffs’ attorneys, so there is now no way to compare what the player actually said with the written statement created by the plaintiffs’ attorneys. (*Id.* at A182.)

Other players interviewed by that same attorney have also testified that the attorney misrepresented himself, telling the players that he was a person doing medical research, and that he was working with the

Seahawks to help prevent future catastrophic football brain injuries. (*Id.* at A75:21-A77:17; A96:20-A97:16; A99:11-A100:17; A102:5-15; A104:24-A105:13.)

Contrary to the plaintiffs' attorneys' claims, Matthew did not suffer a concussion during practice, nor did he exhibit a headache or any other symptoms of a concussion during practice. None of the coaches had any reason to suspect that Matthew suffered a concussion during practice, and they had no reason to restrict him from playing in the game. The coaches were well aware of the details of the Lystedt Act, and had there been any reason to suspect the Matthew was injured in practice, they would not have allowed him to play in the game. The coaches would also have notified his parents of the suspected injury. (*Id.* at A174-A175, ¶¶ 21-22; A34:22-A35:4; A58:12-A59:3, A60:11-21, A61:11-18, A62:6-23; A51:5-12, A52:16-A53:3; A66:21-A67:21, A68:5-21; A70:16-A71:20.)

The compelling facts show that Matthew injured himself after practice, and he actively concealed his headache from the coaches and from his parents. (*Id.* at A40:1-A46:12.) Notwithstanding Matthew's concealment that evening after practice, however, the parents did see signs and symptoms of a possible head injury. (*Id.* at A107-A108.) The Highland School District taught Matthew's parents, and the other parents of student-athletes, what symptoms could indicate a possible head injury.

The parents saw such signs the evening after practice. (*Id.* at A109-A116.) The parents did not, however, notify the coaches of what they saw, nor did they seek medical intervention for Matthew. (*Id.* at A130:1-5.) The plaintiffs' theory stands in stark contrast with many facts in the case, and though the injury was very unfortunate, it is clear that the parents, and Matthew himself, are responsible for the injury. (*Id.* at A175, ¶ 22.) Matthew failed to tell the coaches that he had a headache as a result of a playing around after practice (and he hid it from them), and the parents failed to report to the coaches their observations that Matthew was out of character, highly reactive, very upset, and extremely agitated the evening after the practice. (*Id.* at A106-A108; A118:12-A129:3; A132-A144:1.) This case presents an exceedingly unfortunate injury to a nice young man, but the "facts" as presented by the plaintiffs and their attorneys are misleading and untrue.

As this Court can easily see, the knowledge and actions of the former coaches are at the center of the disputes in this case. In its defense of the case, the Highland School District's attorneys have met with the former coaches and discussed the facts and circumstances of the practice and the game. Those communications should be protected by the corporate attorney-client privilege held by the School District.

During discovery, the plaintiffs' attorneys have aggressively sought to obtain the actual communications between the Highland School District's attorneys and the School District's former football coaches. (*Id.* at A36-A37.) The coaches, who are no longer employed by the School District, are the individuals with the best knowledge of the events, and whose actions allegedly triggered the liability. (*Id.* at A50:3-22; A64:13-18, A65:5-16; A55:10-A57:5; and A32:11-A33:19.)

The plaintiffs served interrogatories asking for "any communications between [the coaches] and anyone employed by ... the law firm ..., relating to Matthew Newman and/or the instant lawsuit...." (*Id.* at A41). The plaintiffs also requested production of "all communications, in any form, between" the coaches and the School District the law firm, including "all documents or other material shared with [the coaches]... relating to this lawsuit...." (*Id.*)

The Plaintiffs also noted the third deposition of Coach Shafer and a second deposition of Coach Roy. (*Id.* at A51-A59). The plaintiffs subpoenaed a list of "things to be produced," including all emails, correspondence, cell phone records and texts between the School District's attorneys and the coaches. (*Id.* at A53-A54). The plaintiffs are seeking a host of communications between the Highland School District's attorneys and the coaches whose knowledge is at the heart of the plaintiffs' claims.

Those inquiries must not be permitted because they invade the School District's attorney-client privilege.

The plaintiffs have deposed the former coaches, and the coaches responded to every question other than those specifically designed to invade the privilege. (*Id.* at A172-A173, ¶ 15.) The coaches answered all factual questions – but it is not the facts which the plaintiffs' attorneys seek: they want the privileged communications and mental impressions of the School District's attorneys. (*Id.*)

The plaintiffs' attorneys have deposed all of the coaches, and Assistant Coach Schafer has been deposed twice. At the coaches' request, the School District's counsel also represented the coaches for the purpose of their individual depositions, including meetings and preparation time related thereto. The School District's counsel discussed the facts and the other matters with the former coaches for two purposes: (1) as the District's counsel, as part of the investigation of the facts and circumstances of the occurrences at the heart of the plaintiffs' claims; and (2) as counsel for the former coaches themselves in connection with their depositions.

During the coaches' depositions, the plaintiffs' attorneys asked questions about the details and substance of the communications between the coaches and the District's counsel. Objections were made because the

School District believes that such communications are covered by the attorney-client privilege. The former coaches were allowed to answer all questions pertaining to the facts and circumstances allegedly giving rise to Matthew Newman's injury, as well as all other discoverable factual matters. There can be no dispute that all of the facts known to the witnesses have been available to the plaintiffs' attorneys. It is only the privileged communications that have been withheld.

The plaintiffs' attorneys have never been barred from contacting the coaches directly, other than during the specific times they were represented by counsel. At the present time, for example, the coaches are not represented by counsel, and the plaintiffs' attorneys are free to contact them.

In a separate proceeding unrelated to this motion, the trial court erroneously held that the attorneys representing the School District could no longer simultaneously represent the School District and its former coaches. (Note that the order dealt only with former employees; there was no restriction placed on simultaneously representing the District and current employees). Although the District believes that the Court's order was incorrect, review was not taken from that order, and it is not at issue here.

At issue here are the communications during times when the coaches were not represented by counsel, but during times when the School District's attorney was investigating and defending the District itself.

A. The trial court erroneously denied the Highland School District's proper motion for a protective order, thereby setting the stage for the plaintiffs to obtain privileged communications and legal mental impressions.

In order to protect the privileged communications from being reached by the plaintiffs' attorneys, the School District asked the trial court to enter a protective order shielding the privileged communications from the plaintiffs' attorneys' reach. (*Id.* at A168, ¶ 2.) Unfortunately, the trial court applied the incorrect test and ruled that the communications are not privileged. The trial court's reasoning was that the privilege does not apply because the coaches had left their employment during the years following the injury. (*Id.* at A168, ¶ 3.)

B. The trial court initially issued a narrow, partial stay of discovery, but later declined to do so while the issue is on appeal in this Court. The trial court instead erroneously held that the School District is in contempt.

The trial court issued a partial stay of discovery protecting the communications while the matter was before the Court of Appeals. (CP 90-91). The order stayed only the specific portion of discovery involved in the issues on appeal: (1) all dates of communication between counsel and

the Highland School District's former coaches; (2) all people involved in those communications; and (3) all dates the School District's counsel represented its former coaches. Following the decision by the Court of Appeals, however, the trial court declined to issue an additional stay while the Supreme Court considers the same issues. (*Id.* at A184-A185).

Within approximately two weeks of the stay expiring, the plaintiffs aggressively sought contempt sanctions against both the School District and its counsel, saying that it was "two weeks after the Court denied" the School District's motion for a stay, and the District "is now in violation of the Court order of January 30, 2014, and should be held in contempt." (*Id.* at A185-A186). The trial court was advised of the Supreme Court holdings in *Dike v. Dike*, 75 Wn.2d 1, 5, 448 P.2d 490 (1968) and *Seventh Elect Church in Israel v. Rogers*, 102 Wn.2d 527, 688 P.2d 506 (1988), which tell us that parties should not be held in contempt when an attorney makes a claim for privilege in good faith; the proper course is for the trial court to stay all sanctions for contempt pending appellate review of the issue.

Surprisingly, the trial court did not follow *Dike* and *Seventh Elect Church*, and instead found the School District in contempt for not providing the communications to the plaintiffs – despite the fact that the matter remains on appeal before this Court, and despite the fact that an

emergency motion for stay was then pending in this Court. Not only did the trial court refer to the present appeal as “frivolous” and hold the Highland School District in contempt, but it also ordered the District to pay the substantial amount of \$2,500 *per day* until the discovery is provided. (*Id.* at A186). It is impressive to not that the severe amount of sanctions the trial court attempted impose even exceeds the trial court’s statutory authority. RCW 7.21.030.

In response to the trial court’s action, the School District provided the plaintiffs with the dates of representation for the former coaches, because that information is less likely to result in irreparable harm in the litigation. The remaining communications, however, are at the very center of the issues before this Court and disclosing them could result in significant prejudice to the School District. The School District sought and obtained a partial stay of discovery from this Court, protecting the disputed communications until the matter is resolved here. (CP 84-87).

This Court is urged to provide guidance to lower courts and to clearly hold that communications such as those at issue here are protected by the corporate attorney-client privilege.

IV. Argument

A. Standard of Review.

This appeal involves the trial court's application of the scope and applicability of the attorney-client privilege. A trial court's decision to grant or deny a motion for a protective order is normally discretionary and is reviewed on the basis of abuse of discretion. *King v. Olympic Pipeline*, 104 Wash. App. 338, 16 P.3d 45 (2001). However, in the case of rulings made on the basis of the applicability of the attorney-client privilege to the issue before the trial court, the issue is reviewed *de-novo*. *Dietz v. Doe*, 80 Wash. App. 785, 911 P.2d 1025 (1996), *Rev'd* 131 Wn.2d 835, 935 P.2d 611 (1997). In a situation which was similar to the case at hand, the court stated:

We generally review discovery orders for abuse of discretion. A trial court abuses its discretion when "discretion is exercised on untenable grounds or for untenable reasons, considering the purposes of the trial court's discretion." Here, the trial court held that the attorney-client privilege barred discovery. The trial judge did not believe that he had any discretion to grant discovery. This ruling was based on tenable grounds if the privilege applies, and untenable grounds if it does not. Accordingly, we review the ruling *de novo* to determine whether the attorney-client privilege protects the identity of the unknown driver.

(*Id.*)(citations omitted). *See e.g., United States v. Ruehle*, 583 F.3d 600 (9th Cir. 2009) (whether a party has met the requirements to establish the existence of the attorney-client privilege is reviewed *de novo*; as is the district court's rulings on the scope of the privilege).

B. The trial court order infringes on the oldest of common law privileges, the attorney-client privilege, and it restricts the School District's ability to develop a proper defense to the case.

The issue in this appeal – the scope of the attorney-client privilege as it applies to employees and former employees of the School District – should be viewed in light of *Upjohn v. United States*, 449 U.S. 383 (1981), the federal Ninth Circuit appellate decisions decided thereafter, as well as the precedent and reasoning set forth in *Wright v. Group Health Hospital*, 103 Wn.2d 192, 195, 691 P.2d 564 (1984) and *Youngs v. Peacehealth*, 179 Wn.2d 645, 316 P.3d 1035 (2014).

The plaintiffs' attorneys are very directly seeking, and the trial court intends to allow them to obtain, attorney communications with former School District employees. If the trial court's erroneous order is permitted to stand, the plaintiffs' attorneys will be allowed to obtain the details and substance of the School District's communications and mental impressions, which should be protected from disclosure.

“The attorney-client privilege is the oldest of privileges for confidential communications known to the common law.” *Upjohn Co. v. U.S.*, 449 U.S. 383, 389 (1981) (citing 8 J. Wigmore, Evidence § 2290 (McNaughton rev. 1961)); *Youngs v. Peacehealth*, 179 Wn.2d at 650 (citations omitted). The purpose of the attorney-client privilege is “to

encourage full and frank communications between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Upjohn*, 449 U.S. at 389. The privilege “exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice.” *Upjohn*, 449 U.S. at 390 (citing *Trammel v. U.S.*, 446 U.S. 40, 51 (1980); *Youngs v. Peacehealth*, 179 Wn.2d at 664. Fundamentally, the attorney-client privilege provides a client and an attorney freedom – freedom to candidly communicate, freedom to investigate and to advise, and freedom to intelligently act on that advice, without fear that the attorney’s efforts on behalf of the client will be disclosed to those with adverse interests.

In *Upjohn*, the Supreme Court established that the attorney-client privilege may apply to corporate counsel’s communications with both managerial and non-managerial employees. *Upjohn*, 449 U.S. at 386. This Court has specifically agreed with the *Upjohn* decision that “the attorney-client privilege may in certain instances extend to lower level employees not in a ‘control group’, (citation omitted), [but advised that] the privilege extends only to protect communications and not the underlying facts.” *Wright v. Group Health Hospital*, 103 Wn.2d 192, 195, 691 P.2d 564 (1984). In refusing to limit the corporate attorney-client privilege to

communications with a corporation's control group the *Upjohn* court reasoned that in the "corporate context . . . it will frequently be employees beyond the control group . . . – officers and agents responsible for directing the [company's] actions in response to legal advice – who will possess the information needed by the corporation's lawyers." *Upjohn*, 449 U.S. at 391.

The *Upjohn* court further reasoned that in the corporate context, low and mid-level employees might well be the only source of information relevant to legal advice, since they can, "by actions within the scope of their employment, embroil the corporation in serious legal difficulties." *Upjohn*, 449 U.S. at 391. Without talking to these employees, the court reasoned, corporate counsel "may find it extremely difficult, if not impossible, to determine what happened." *Upjohn*, 449 U.S. at 391.

With this reasoning in mind, *Upjohn* held that a flexible, case-by-case analysis for applying the corporate attorney-client privilege must be used in determining the scope of the attorney-client privilege in the corporate context. *Upjohn*, 449 U.S. at 396-397). This flexible approach to determining whether the attorney-client privilege extends to lower level employees was favorably endorsed by this Court in *Wright v. Group Health Hosp.*, 103 Wn.2d 192, 202, 691 P.2d 564 (1984).

Contrary to the trial court's ruling, in *Youngs* this Court adopted the *Upjohn* decision's reasoning, regarding the detrimental effect upon the attorney-client relationship where a narrow view of the scope of the attorney-client privilege is sanctioned, as the trial court did in this case. *Youngs*, 179 Wn.2d at 662. The *Youngs* court explicitly endorsed the flexible test for determining the scope of the corporate attorney-client privilege as was done in the *Wright* case. (*Id.*)

Even though the principles and reasoning set forth in the *Upjohn*, *Wright*, and *Youngs* cases surely provide the basis for extending the privilege to former employees, the facts and issues in the *Wright* and *Youngs* cases did not require this Court to determine the precise question at issue here. That is, whether the attorney-client privilege extends to attorney communications with former employees who have critical information and who would otherwise be covered by the attorney-client privilege, but who happen to have departed from employment with the corporate client prior to the time when the communications occurred.

In consideration of the *Upjohn* decision's emphasis on flexibility and the purposes underlying the attorney-client privilege, many other courts have naturally applied *Upjohn*'s test to communications with both current and former corporate employees and corporate counsel. For example, the Ninth Circuit has applied *Upjohn*'s reasoning to

communication between corporate counsel and both current and former employees. See *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). The Ninth Circuit reasoned that:

[a]lthough *Upjohn* was specifically limited to current employees . . . **the same rationale applies to 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.**

(*Id.* (Emphasis supplied)). Several years later, in *Admiral Ins. Co. v. U.S. Dist. Court for Dist. of Arizona*, the Ninth Circuit reaffirmed that “the *Upjohn* rationale necessarily extended the privilege to former corporate employees . . .” *Admiral Ins. Co.*, 881 F.2d 1486, 1493 (9th Cir. 1989). Again, the Ninth Circuit affirmed that “[t]he attorney-client privilege applies to communications between corporate employees and counsel, made at the direction of corporate superiors in order to secure legal advice . . . [and] **[t]his ‘same rational applies to ex-employees.’**” *U.S. v. Chen*, 99 F.3d 1495, 1502 (9th Cir. 1996) (citing *In re Coordinated*, 658 F.2d at 1361, n. 7) (emphasis supplied). Following the same trend, the Fourth Circuit applied *Upjohn* to communications with former employees. See *In re Allen*, 106 F.3d 582, 605-06 (4th Cir. 1997) (holding communications

between former employee and retained counsel were subject to attorney client privilege.

Like the aforementioned courts, this Court should acknowledge that the scope of the corporate attorney-client privilege includes those communications with former employees who may possess the relevant information needed by corporate counsel to advise the client with respect to actual or potential difficulties. Such an approach is consistent with the laudable goal of extending the attorney-client privilege to a greater number of corporate employees, which was a policy consideration endorsed by this Court 30 years ago in the *Wright* case. It also is in line with the specific adoption by this Court of the *Upjohn* reasoning that “corporate counsel ‘may find it extremely difficult, if not impossible, to determine what happened’ to trigger potential corporate liability” should the attorney-client privilege not be extended to mid- and low-level corporate employees. *Youngs*, 179 Wn.2d at 662.

C. There are compelling and logical reasons for this Court to adopt the School District’s reasoning and to provide attorney-client privilege protection in the case of former employees whose actions are at the heart of the issues in litigation.

In effect, the ruling by the trial court here sanctioned what was specifically rejected by this Court in *Youngs*, *i.e.*, the supervision by the plaintiff’s attorney of the corporate counsel’s interviews of corporate

employees who have knowledge of the facts giving rise to the allegations in the *Youngs*' complaint. The only difference here is that the trial court's ruling will allow the plaintiffs' attorneys in this case to learn after the fact what this Court said the plaintiffs' attorney in *Youngs* could not learn by being in the same room. That is, the trial court's ruling will allow the plaintiffs' attorneys to ask detailed questions of the School District's former employees/coaches concerning the substance of the communications between the attorneys and its former employee/coaches – communications which were undertaken for the purpose of obtaining information that is not held by either the current Highland School District management, or by other District employees. Such information is obviously essential to the proper representation of the Highland School District.

The adoption of a test that defines the scope of the corporate attorney-client privilege based solely on whether or not a person continues to be employed at the time the communication takes place, as the trial court is attempting to allow, ignores the principles, reasoning, and holdings of the *Upjohn*, *Wright*, and *Youngs* cases. The test adopted by the trial court is not flexible and it does not recognize the stated goals underlying the attorney-client privilege. The trial court's approach is incorrect and it allows discovery of legal communications with former

employees who have knowledge of the events giving rise to the plaintiffs' complaint, but who for whatever reason no longer work for the District.

The trial court's approach further allows discovery of past communications which would be privileged under 9th Circuit law. The trial court's approach does not recognize the conflict and inconsistency that a simple choice of venue creates: had this case been filed in federal court in Washington instead of state court, the communications would be protected from discovery. The trial court ruling also created a "Hobson's choice" for the School District's counsel; whether it is better to engage in further communications with the former coaches and risking having those communications being discoverable, or foregoing such communications at the expense of proper preparation of the case. A corporation's counsel should not be put in that situation, and following the natural path started by *Upjohn* will avoid such an outcome.

It is also true that the trial court's approach discourages the former coaches from having discussions the Highland School District's attorneys, because they now know that the trial court will not protect those communications. The trial court order will have a chilling effect, since the former coaches know their legitimate communications will have to be disclosed to the plaintiffs' attorneys, who are claiming that the coaches were negligent. The trial court's approach discourages frank

communications about the facts giving rise to the plaintiffs' complaint between an attorney defending a corporation and the former employees. That is particularly true with respect to former head coach Shane Roy, whose first deposition has not been completed.

Permitting inquiry into privileged communications allows the plaintiffs' attorneys to obtain the mental impressions of the School District's counsel, whether expressed directly to the coaches, or whether gleaned from the types of questions asked and information sought by the School District's counsel. Further, the trial court's approach opens the door for the plaintiffs' attorneys to take attempt to depose a School District's counsel concerning communications with the District's former employees because the communications, based upon the trial court's ruling, are not protected under RCW 5.60.060(2). That approach creates the risk that ancillary issues, such as communications between a school district and former coaches, become the improper focus in a case. Allowing inquiry into such communications inhibits those goals the attorney-client privilege is designed to promote, *i.e.*, the giving of information to a corporation's attorney so that attorney can provide sound and informed legal advice as to matters that are alleged to have triggered liability.

There is no good reason to hold that a school district's attorney-client privilege, or that of any corporation, should be lost simply because an employee leaves the corporation at some point after an event occurs. Surely, such an important privilege should not be lost solely due to such vagaries.¹ It would be contrary to the rationale and holdings of the *Upjohn*, *Wright*, and *Youngs* cases to hold that – by waiting a considerable amount of time between the alleged liability-producing acts and filing the case – the plaintiffs themselves can affect the application of the District's privilege. By simply waiting three years to file an action, the likelihood of employees leaving the corporation increases, thereby increasing the chance of losing the privilege. Likewise, according to the trial court, the plaintiffs' attorneys can affect the District's attorney-client privilege by choosing not to include the former employees as individual defendants.

The trial court's analysis fails to follow logic and it ignores one of the main purposes for having the corporate privilege. The trial court significantly impaired the School District's freedom to act – to continue to develop its defense and, consequently, the Highland School District's

¹ Coach Borland, who also has knowledge concerning relevant facts and circumstances pertaining to the plaintiffs' negligence claim, is still employed by the District. Communications with him are protected by the District's attorney-client privilege. However, if Coach Borland quits his job today, according to the trial court, any future communications with him are not privileged. That result is not "flexible," does not meet the requirement of determining privileges on a case-by-case basis, and does not further the laudable goals of the attorney-client privilege. Instead, it illustrates the fallacy of the trial court's "employment" test.

counsel “may find it extremely difficult, if not impossible, to further determine what happened.” The attorneys are restricted from having candid and forthright conversations with the coaches whose alleged negligence is at the heart of the plaintiffs’ case, so as to obtain the information bearing on liability issues and to fully advise the School District.

The School District’s attorneys have engaged in previous communications with both current and former employees, and it should be allowed to continue doing so without having those communications subject to discovery. If the trial court’s rigid view of the scope of attorney-client privilege is allowed to stand, all prior communications by the School District’s counsel – which were thought to be privileged – are now subject to inquiry by the plaintiffs’ attorneys. Future communications will be discoverable as well. This Court is urged to take action and resolve this critical issue.

V. Conclusion

For many valid reasons, communications between a corporation’s attorneys and those employees with knowledge of the events leading to legal claims and litigation have been protected by the corporate attorney-client privilege. Although this Court has addressed similar issues, the precise factual scenario present here has not been addressed. This Court

has not specifically ruled that the privilege applies to communications involving former employees whose allegedly negligent acts or omissions gave rise to personal injury litigation against the corporation.

The Court is urged to take this opportunity to close the small void through which the trial court passed, and to establish clear guidance for lower courts to follow.

RESPECTFULLY SUBMITTED this 8th day of January, 2015.

NORTHCRAFT, ~~BIGGS~~ & BIGGS, P.C.



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Subject: RE: Newman v. Highland School District -- Supreme Court No. 90194-5 -- Petitioner's Brief

Rec'd 1/8/15

The appendices exceed the allowable page limit. We have printed the brief itself and the certificate of service. Please forward the appendices separately by USPS mail. Thank you.

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Sent: Thursday, January 08, 2015 1:33 PM
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Cc: Marks Northcraft; Andrew Biggs; Lilly Tang
Subject: Newman v. Highland School District -- Supreme Court No. 90194-5 -- Petitioner's Brief

Dear Supreme Court Clerk:

Attached please find the following:

1. Petitioner's Brief (with Appendices); and
2. Certificate of Service

Petitioner graciously thanks the Court for granting us permission to submit the over-length appendices with our brief.

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Supreme Court No. 90194-5

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Appeal from the Court of Appeals – Division III

No. 32223-8 III

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

Respondent,

v.

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

Petitioner.

MOTION FOR EMERGENCY PARTIAL STAY OF DISCOVERY

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A. IDENTITY OF PARTY FILING THE MOTION

The Highland School District No. 203 (“District”) brings this motion.

B. STATEMENT OF RELIEF BEING SOUGHT

The District requests that this Court issue an emergency partial stay of discovery in the underlying action, staying discovery only as to communications between the District’s attorneys and the District’s key former employees, pending the resolution of the District’s Motion for Discretionary Review.

C. ISSUES PRESENTED FOR REVIEW

1. Should this Court hear the District’s motion for a stay on an emergency basis because the trial court ordered the District’s attorneys to reveal allegedly privileged communications and revealing those communications will irreparably prejudice the District?
2. Should this Court issue a partial stay of discovery to protect potentially privileged communications until this court considers the motion for discretionary review?

D. STATEMENT OF THE CASE

This lawsuit arises out of a high school football game that occurred on Friday, September, 18, 2009, in which Matthew Newman received a late, hard hit during the overtime period thereof, developed an acute subdural hematoma after the late hit, and which, as a result, caused him to experience a neurological emergency during the game. See, Appendix at

A22 at ¶2.1; A24-A27 at ¶¶ 2.11-2.16, 3.1.1; A31 at 17:8-23. Matthew received immediate medical attention and was transported to Yakima Valley Medical Center for emergency treatment. See, Appendix at A25, at ¶ 2.16. Tragically, Matthew Newman suffered a severe, permanent brain injury because of the late hard hit, but fortunately, did not die as a result. See, Appendix at A26-A27, at ¶¶ 3.1-3.3.

The plaintiffs waited nearly three years to file their action against the District. See Appendix at A21. However, the plaintiffs did not sue the present or former coaches, who they claim are the negligent actors for whom the District is vicariously liable. *Id.* Contrary to the actual facts of this case as discussed below, the plaintiffs' attorneys' theory of negligence is that the injury to Matthew was the result of a "secondary impact syndrome." See Appendix at A37. In order to prove a "secondary impact syndrome" negligence claim against the District, the plaintiffs' attorneys must prove that Matthew suffered a concussion during practice the day before the game, that the coaches were aware of Matthew having concussion symptoms, and that the coaches let Matthew play the next day in the big, rival game notwithstanding the standard of care set forth in the Lystedt Act. RCW 28A.600.190. See Affidavit of Counsel in Support of Motion for Emergency Partial Stay of Discovery (hereinafter "Affidavit of Counsel") filed concurrently herewith, at 8-9, ¶¶19-21.

The Lystedt Act requires that if coaches are aware or suspect that an athlete is suffering from a concussion, then the athlete must not be allowed to continue to play and can only return to play after being cleared by a trained health care provider. RCW 28A.600.190. Consequently, the key to the plaintiffs' attorneys' "secondary impact syndrome" theory of negligence against the District is to come up with evidence that Matthew received a concussion during football practice the day before the big game; that his coaches were aware of such injury, and that the coaches let him play in the game nevertheless. If the plaintiffs' attorneys cannot prove that Matthew suffered a concussion during the practice the day before the game or that the coaches knew Matthew was suffering from concussion symptoms, then their negligence claim against the District fails, as such a pre-existing and unresolved concussion is the critical hallmark of the "secondary impact syndrome." See, Affidavit of Counsel at 8-9, ¶¶19-21.

The plaintiffs' negligence claims, and the evidence their attorneys contend support their claims, are simply untrue. Matthew was not injured in practice the day before, but rather, unbeknownst to the District's coaches, he hurt himself while playing catch with friends after practice. See, Appendix at A40:1-21-A46:12. Matthew's girlfriend, Lisa Sorensen, testified that Matthew told her the evening before Friday's big game that

he had hit his head **after practice**, that he had a headache as a result, and that he was going to **hide the injury from the coaches** because he knew full well that if the coaches knew or suspected he had sustained a concussion, then they would not let him play in the big, rival game the next day. *Id.*

The coaches had no knowledge of Matthew getting any injury to his head during practice, and, in fact, no such injury during practice occurred. See, Appendix at A34:22-A-35:13; A51:5-12, A52:16-A53:3; A58:12-A59:3, A61:11-18, A62:6-23; A66:21-A67:21, A68:5-21; A70:16-A71:20. Any evidence to the contrary has been fabricated or suggested by the plaintiffs' lawyers to Matthew's former teammates, who obviously would like to help Matthew as a result of his catastrophic injury.

In fact, one of the players who was interviewed by the plaintiffs' attorneys and then testified at his deposition to the effect that the coaches knew Matthew suffered a headache during practice, has specifically recanted his testimony that the coaches knew Matthew had a headache. See, Appendix at A73:19-A74:19; A81. Likewise, the teammate who actually tackled Matthew during the play in which the concussion supposedly occurred does not in any way support the idea that Matthew was injured whatsoever. See, Appendix at A83:3-A86:10, A87:13-A88:15.

Another player interviewed by one of the plaintiffs' attorneys flat out accuses that attorney of misleading him as to who he was by representing to the player that he was a brain surgeon doing medical research and by not disclosing that he was a lawyer representing the plaintiffs for the purpose of bringing a negligence action against the District. See, Appendix at A90:15-A94:1. Other players interviewed by that same attorney have also testified that he represented himself as a person doing medical research and/or was working with the Seahawks to help prevent future catastrophic football brain injuries. See, Appendix at A75:22-A77:17; A96:20-A97:16; A99:11-A100:17; A102:5-15; A104:24-A105:13.

In addition, the same player who was told that the person interviewing him was a brain surgeon believes that the written statement prepared by the plaintiffs' attorneys after he was interviewed does not represent what he actually told the "brain surgeon." See, Appendix at A165-A166. Not surprisingly, and in violation of Civil Rule 26(b)(4), the audio recording of this player's statement has been destroyed by the plaintiffs' attorneys such that there is no way to compare what the player actually said with the written statement created by the plaintiffs' attorneys. See, Affidavit of Counsel at Ex. 3.

Contrary to the plaintiffs' attorneys' claims, Matthew did not suffer a concussion during practice, did not exhibit any symptoms of a concussion, such as a headache, during practice, and none of the coaches had any reason to suspect that he had suffered a concussion during practice, so as to require that he be removed from play in accordance with the Lystedt Act, about which they were well aware. See Affidavit of Counsel at 8-9, ¶¶21-226; Appendix at A34:22-A35:4; A58:12-A59:3, A60:11-21, A61:11-18, A62:6-23; A51:5-12, A52:16-A53:3; A66:21-A67:21, A68:5-21; A70:16-A71:20. Likewise, because Matthew did not suffer a head injury during practice, because it never occurred during practice, the District's coaches had no reason to inform Matthew's parents of an injury they did not know had occurred. *Id.*

The facts of this case are that Matthew actively concealed his after-practice injury from the coaches and that he did not tell his parents about the injury. See Appendix, at A40:1-A46:12. Notwithstanding Matthew's concealment, however, the parents saw signs and symptoms of a head injury that evening after practice. See, Appendix at A107-A108. Matthew's parents had been taught by the District what signs could indicate a head injury, and they saw such signs. See, Appendix at A109-A116. The parents did not, however, notify the coaches of what they saw, nor did they seek medical intervention for Matthew. See, Appendix at

130:1-5. Not only are the facts concocted by the plaintiffs' attorneys to support their "secondary impact syndrome" theory of negligence in stark dispute in this case, it also is clear that the parents and Matthew himself stand liable for his injury. See, Affidavit of Counsel at 9, ¶ 22. Matthew failed to report to the coaches that he had a headache as a result of a collision after practice, and the parents failed to report to the coaches their observations at home that Matthew was out of character, highly reactive, very upset, and extremely agitated the evening after the practice before the big game the next night. See, Appendix at A106-A108; A118:12-A129:3; A132-A144:1. This case presents an exceedingly unfortunate injury to a nice young man, but the "facts" as presented by the plaintiffs and their attorneys are misleading and untrue.

As this Court can easily see, the knowledge and actions of the former coaches are at the center of the disputes in this case. The Motion for Discretionary Review is based on the District's belief that the case of *Upjohn v. United States*, 449 U.S. 383 (1981), the federal Ninth Circuit appellate decisions decided thereafter, as well as the precedent and reasoning set forth in *Wright v. Group Health Hospital*, 103 Wn.2d 192, 195, 691 P.2d 564 (1984) and *Youngs v. Peacehealth*, 179 Wn.2d 645, 316 P.3d 1035 (2014) provide that the attorney-client privilege applies to employees and former employees of the District.

During discovery, the plaintiffs' attorneys have aggressively sought the communications between the District's counsel and the District's and Matthew's former football coaches. See, Appendix A36-A37. The coaches, who are no longer employed by the District, are the individuals with knowledge of the events, and whose actions allegedly triggered liability for the District. See, Appendix at A50:3-22; A64:13-18, A65:5-16; A55:10-A57:5; and A32:11-A33:19.

The former coaches have provided deposition testimony and responded to every question other than those specifically designed to invade the attorney-client privilege. See, Affidavit of Counsel at 6-7, ¶ 15. Reaching the facts, however, is not what the plaintiffs' attorneys are after: they want the privileged communications and mental impressions of the District's attorneys. *Id.* To that end, the plaintiffs' attorneys have served interrogatories and requests for production, in addition to attempting to reach the privileged communications through depositions.

As is more fully described in the Motion for Discretionary Review, which is incorporated herein by this reference thereto, the District asked the trial court to enter a protective order shielding the privileged communications from the plaintiffs' attorneys' reach. *Id.* at 2, ¶ 2. The trial court applied the incorrect test and then ruled that the communications are not privileged because the subject coaches had left

their employment during the years following the year of the injury. See, *Id.* at 2, ¶ 3. Subsequently, the court declined to issue a narrow, partial stay of discovery while the present motion is heard – even though it had previously agreed to such an order. *Id.* at 4, ¶ 8. It is unclear why the trial court agreed to the narrow stay while the matter was being considered by the Court of Appeals, but declined to do so at the Supreme Court level. *Id.*

As a result of the trial court's rulings, including declining to issue a partial stay of discovery, the District is in the untenable position of being required to disclose information that it firmly believes is privileged. *Id.* at 7, ¶ 16. The District is faced with the choice of either: (1) declining to provide the communications, thereby making itself potentially subject to contempt or other sanctions; or (2) providing information that is later determined to be privileged, and suffering the irreparable prejudice attendant to having an opponent learn of the privileged communications and the mental impressions of the District's attorneys. *Id.*

The District was ordered to disclose the dates of joint representation of the District and the coaches individually, as well as the dates of such communications, and it has been ordered to allow deposition questions in the area of privileged communications. *Id.* at 5, ¶ 11. Those narrow, specific areas of discovery should be stayed pending the outcome of the District's Motion for Discretionary Review. *Id.* To do otherwise

will cause irreparable harm to the District in its efforts to defend itself against the plaintiffs' negligence claims. *Id.*

E. ARGUMENT

1. To Prevent the Disclosure of Privileged Information and the Mental Impressions of the District's Attorneys, This Court Should Decide This Motion on an Emergency Basis and Issue the Stay Requested by the District.

“In an emergency, a person may request expedited consideration of a motion.” RAP 17.4(b). “The person presenting the motion, must at the time the motion is made, file an affidavit ...” *Id.* The affidavit must state the type of notice given and the time and date the notice was given to each person...” *Id.* The affidavit must also state why the motion should be decided on an emergency basis. *Id.* The commissioner or clerk may decide the motion if adequate relief cannot be given in the normal course, and the movant took reasonable steps to provide notice. *Id.* The present motion for partial stay of discovery satisfies RAP 17.4(b) because the lower court declined to issue a partial stay of discovery while the District seeks discretionary review from this Court.

Without a stay from this Court, the plaintiffs' attorneys are free to immediately re-note the depositions of the former coaches and inquire into the communications between the former coaches and the District's attorneys. In fact, within days of the lower court's oral ruling declining to

enter a stay, the plaintiffs' attorneys began seeking dates for depositions of the former coaches, even though they previously have been deposed as to the facts of the case. See, Affidavit of Counsel at 5, ¶ 12, Ex. 1. The plaintiffs' attorneys also have already threatened to bring a motion for contempt. *Id.*

2. This Court Should Issue a Narrow Partial Stay of Discovery.

This Court has the authority, either before or after its acceptance of review, to stay the trial court's proceedings. RAP 8.1(a)-(b). To determine whether to stay enforcement of a trial court's order,

[t]he appellate court will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed.

RAP 8.1(b)(3). As summarized below, there clearly are debatable issues for appeal as to whether the attorney-client privilege extends to former employees who have knowledge of the facts and circumstances giving rise to a plaintiffs' complaint.

With respect to whether the plaintiffs will be injured if the narrow stay of discovery requested by the District is granted, no injury will occur. The plaintiffs' attorneys already have obtained from the coaches their

knowledge of the facts of the case. No injury to the plaintiffs will occur now or in the future even if they never obtain the details and substance of the District's attorneys' communications with the District's former coaches and the mental impressions of the District's attorneys. Litigants throughout this state proceed with discovery and complete trials of the issues where no disclosure of privileged communications and an attorney's mental impressions ever occurs. This case will be no different, and if the stay of the trial court's order occurs pending the resolution of the District's Motion for Discretionary Review, the plaintiffs' attorneys will not have in the meantime obtained an irreparable improper advantage.

3. In its Motion for Discretionary Review, the District Presents Debatable Issues for Appeal Involving the Scope of the Corporate Attorney-Client Privilege, and the Plaintiffs Will Not Suffer Any Harm While the District's Motion Is Resolved by This Court.

The issues raised in this appeal deal with the oldest and most fundamental of the common law privileges – the attorney-client privilege. In its Motion for Discretionary Review filed with this Court, the District has presented this Court with significant legal and factual analysis supporting the conclusion that the corporate attorney-client privilege held by the District protects the District's attorneys' communications with the District's former coaches and other key former employees from discovery by the plaintiffs' attorneys.

Whether the attorney-client privilege extends to former employees is clearly debatable. Not only is it debatable, the fact is that it is the **law of the Ninth Circuit that the privilege does extend to former key employees.** If this case were venued in federal court in the Eastern District of Washington – had a claim involving federal law been alleged – which often occurs in school district litigation, the District would not have been forced to engage in this costly legal battle and face contempt orders in an effort to prevent the plaintiffs’ attorneys from obtaining what they should not be allowed to learn, i.e., the substance and details of the District’s attorneys’ communications with their client’s former employees whose knowledge of the facts is at the heart of this matter and the mental impressions of the District’s attorneys in defending against the plaintiffs’ untruthful claims.

a. The District has Demonstrated in its Motion for Discretionary Review that Debatable Issues are Presented on Appeal.

As more fully set forth in the District’s Motion for Discretionary Review of the Court of Appeals’ denial of the District’s request to modify the commissioner’s ruling, the District’s interlocutory appeal meets the requirements of RAP 13.5(b)(2) and (b)(3). The purpose of the attorney-client privilege is “to encourage full and frank communications between attorneys and their clients and thereby promote broader public interests in

the observance of law and administration of justice.” *Upjohn Co. v. U.S.*, 449 U.S. 383, 389 (1981). The privilege “**exists to protect** not only the giving of professional advice to those who can act on it but also **the giving of information to the lawyer** to enable him to give sound and informed advice.” *Upjohn*, 449 U.S. at 390 (citing *Trammel v. U.S.*, 446 U.S. 40, 51 (1980); emphasis supplied); *Youngs v. Peacehealth*, 179 Wn.2d at 664.

This Court has specifically agreed with the *Upjohn* decision that “the attorney-client privilege may in certain instances extend to lower level employees not in a ‘control group,’ (citation omitted), [but advised that] the privilege extends only to protect communications and not the underlying facts.” *Wright v. Group Health Hospital*, 103 Wn.2d 192, 195, 691 P.2d 564 (1984).

Prior to the trial court’s rulings, this Court in the *Youngs* case explicitly adopted the *Upjohn* decision’s reasoning regarding the detrimental effect upon the attorney-client relationship where a narrow view of the scope of the attorney-client privilege is sanctioned, as the trial court and the Court of Appeals have done. *Youngs*, 179 Wn.2d at 662. The *Youngs* case also, again, explicitly endorsed the flexible test for determining the scope of the corporate attorney-client privilege as was done in the *Wright* case. *Id.* The trial court clearly did not employ this test in this case.

The Ninth Circuit has applied *Upjohn*'s reasoning to communications between corporate counsel and both current and former employees. *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). The Ninth Circuit reasoned that:

[a]lthough *Upjohn* was specifically limited to current employees . . . **the same rationale applies to 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.**

Id.-(emphasis supplied). This law was reaffirmed by the Ninth Circuit in *Admiral Ins. Co. v. U.S. Dist. Court for Dist. of Arizona*, 881 F.2d 1486, 1493 (9th Cir. 1989) and again in *U.S. v. Chen*, 99 F.3d 1495, 1502 (9th Cir. 1996) (citing *In re Coordinated*, 658 F.2d at 1361, n. 7). Following the same trend, the Fourth Circuit applied *Upjohn* to communications with former employees. See *In re Allen*, 106 F.3d 582, 605-06 (4th Cir. 1997) (holding communications between former employee and retained counsel were subject to attorney client privilege).

An extension of the scope of the corporate attorney-client privilege specifically to include communications with former employees who may possess the relevant information needed by corporate counsel to advise the

client with respect to actual or potential difficulties would be consistent with the laudable goal of extending the attorney-client privilege to a greater number of corporate employees, which was a policy consideration endorsed by this Court 30 years ago in the *Wright* case. It also is in line with the specific adoption by this Court in the *Youngs* case of the *Upjohn* reasoning that “corporate counsel ‘may find it extremely difficult, if not impossible, to determine what happened’ to trigger potential corporate liability” should the attorney-client privilege not be extended to mid- and low-level corporate employees. *Youngs*, 179 Wn.2d at 662.

The adoption of a test that defines the scope of the corporate attorney-client privilege based solely on whether or not a person continues to be employed at the time the communication takes place, as the trial court did, and as the Court of Appeals has allowed, ignores the principles, reasoning, and holdings of the *Upjohn*, *Wright*, and *Youngs* cases. The test adopted by the trial court is not flexible. It does not take into account the laudable goals underlying the attorney-client privilege and the extension of that privilege to communications with former employees who have knowledge of the events giving rise to the plaintiffs’ complaint, but who, for whatever reason, no longer work for the District. The District’s attorney-client privilege should not be lost simply because an employee leaves employment with the District at some point after an event occurs.

By declining to modify the commissioner's ruling and accept review of the case, the Court of Appeals has significantly impaired the District's freedom to act – to continue to develop its defense, as elaborated upon in the District's Petition for Discretionary Review. It will also allow the plaintiffs' attorneys to obtain the mental impressions of the District's attorneys as the trial court has ruled that no objections can be interposed by the District as to any questions concerning the District's attorneys' communications with the District's former coaches. See, Affidavit of Counsel at 6-7, ¶ 17; Appendix at A163.

**b. The Potential Harm to the District Is Irreparable
Whereas the Harm to the Plaintiffs Does Not Exist.**

The District's motion requests only a narrow, partial stay of discovery, solely for the purpose of preventing the plaintiffs' attorneys from conducting discovery into the communications between the District's attorneys and the former coaches pending the resolution of the attorney-client privilege issues raised by the District. Such a stay will not prevent the plaintiffs' attorneys from doing discovery or preparing their case, but it will protect the District from irreparable harm should this Court extend the attorney-client privilege to former employees as the *Upjohn*, *Wright*, *Youngs*, and Ninth Circuit cases strongly suggest should occur.

By narrowing its request to stay only those discovery matters that are directly at issue here, a stay will not impede the progress of the case. Even with the trial court's original stay in place, the plaintiffs' attorneys have proceeded with other motion work before the trial court and have never been prohibited from proceeding with the considerable amount of remaining discovery, including deposing other lay witnesses, expert witnesses, and damages witnesses, that must occur in this case before a trial will occur. See, Affidavit of Counsel at 6-8, ¶¶ 15, 17. In addition, a trial date has not been set, and the parties are discussing a fall 2015 trial date, the timing of which the trial court already has approved. *Id.* at 8, ¶ 18.

Absent the limited stay, the District will face the very outcome the attorney-client privilege is designed to prevent: the plaintiffs' attorneys will have obtained privileged communications and the mental impressions of the District's attorneys. If the plaintiffs' attorneys are allowed to infringe on the privilege and obtain the communications between the District's former coaches and counsel, the resulting damage cannot realistically be repaired, and the prejudice cannot be reversed. No matter what efforts the trial court may take to mitigate the damage done by allowing privileged communications to be revealed, the plaintiffs' attorneys will have the benefit of knowing the substance of the privileged

communications, as well as knowing the mental impressions of the District's attorneys. Until the resolution of the issue of whether the corporate attorney-client privilege extends to the communications between the District's attorneys and its former coaches, this Court should take all reasonable measures to protect the communications by issuing a stay.

F. CONCLUSION

The legal question presented by the District in its Motion for Discretionary Review is a very real and practical legal issue, the resolution of which is extremely important to all corporations and municipal corporations, such as school districts, throughout the State of Washington, as well as to the lawyers who represent them. The District has presented this Court with an opportunity to take the logical step of extending the attorney-client privilege to former employees for the same reasons that the privilege was extended to current employees who are not in the District's control group, as established by this Court in the *Wright* and *Youngs* cases.

The District is requesting the narrowest possible relief that serves the dual interests of protecting attorney-client communications but does not in any way prejudice the plaintiffs' attorneys' development of their clients' case. Simply put, the plaintiffs cannot be prejudiced by not discovering what they should never be entitled to obtain under the

common law, i.e., confidential communications and the mental impressions of defendant's attorneys.

The plaintiffs' attorneys have already deposed all of the coaches as to their knowledge of the facts and circumstances surrounding the injury to Matthew Newman. The only reason the plaintiffs' attorneys want to obtain the substance of the communications between the District's attorneys and the District's former employees is to learn the mental impressions of the District's attorneys disclosed to the former employees for the purpose of developing a defense for the District for the plaintiffs' negligence claims. This Court is urged to protect the confidential attorney-client communications from being disclosed to the plaintiffs' attorneys by issuing a narrow, appropriate stay of discovery pending this Court's consideration of the District's Motion for Discretionary Review.

RESPECTFULLY SUBMITTED this 1st day of May, 2014.

NORTHCRAFT, BIGBY & BIGGS, P.C.



Andrew T. Biggs, WSBA# 11746
Attorneys for Defendant-Petitioner

FILED

2012 SEP 13 A 10:46

KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

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
COMPLAINT FOR PERSONAL INJURIES

Plaintiffs, Matthew A. Newman, Randy Newman and Marla Newman, allege as follows:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff MATTHEW A. NEWMAN (hereinafter referred to as "MATTHEW") is a permanent resident of Yakima County, Washington, but is now residing, for traumatic brain injury treatment and neurological rehabilitation purposes, at the Centre for Neuro Skills ("CNS") in Bakersfield, California. Plaintiff was born on July 5, 1992.

1 2.2 Prior to September 17, 2009, MATTHEW had suffered a concussion while
2 playing school-sponsored sports for the SCHOOL DISTRICT, but had no ongoing memory,
3 speech, personality changes, or functional impairments, and did not have any ongoing history
4 of headaches or other continuing head injury complaints, and was performing well in school.

5 2.3 The SCHOOL DISTRICT was specifically aware of MATTHEW'S history of
6 concussion, as it had been sustained while playing school-sponsored sports for said school
7 district and observed by his then-basketball coach.

8 2.4 In football practice on September 17, 2009, MATTHEW suffered a head
9 injury/concussion. MATTHEW was running back a kickoff up the left sideline. At about
10 midfield and close to the out of bounds line, he was tackled/hit by a teammate playing defense.
11 MATTHEW went down out of bounds and his helmet hit the pole-vaulting track that is a few
12 feet from and parallel to the football field, with school coaches and other teammates standing
13 nearby.

14 2.5 The football team coaches had a suspicion of or knowledge that MATTHEW
15 had a head injury/concussion and removed MATTHEW from practice drills immediately
16 thereafter. One coach walked MATTHEW to the end zone.

17 2.6 After the concussion and during practice, MATTHEW continued to suffer and
18 exhibit post-concussion symptoms, but was never fully and properly assessed during practice
19 nor referred after practice for a concussion return-to-play evaluation by a licensed healthcare
20 professional trained in the evaluation and management of head injury/concussion

21 2.7 After MATTHEW'S concussion/head injury and removal from practice, he was
22 not returned to practice drills on September 17, 2009.

1 2.8 MATTHEW'S parents, RANDY and MARLA, were not contacted or notified of
2 the head injury/concussion incident, that MATTHEW complained of a headache, that his head
3 hurt, or that he had been removed from practice drills. No one from the SCHOOL DISTRICT
4 informed MATTHEW'S parents that he had been hurt during practice, nor did the SCHOOL
5 DISTRICT choose to discuss with RANDY and MARLA their opinions about MATTHEW'S
6 return to play following a concussion.

7 2.9 The SCHOOL DISTRICT failed to place MATTHEW'S health and safety first
8 by not requiring an evaluation of MATTHEW by a license healthcare professional who is
9 trained in the evaluation and management of concussions prior to allowing MATTHEW to
10 return to football practice or competition after his September 17, 2009 concussion/head injury.

11 2.10 The SCHOOL DISTRICT failed to obtain written clearance for return to play
12 from a licensed healthcare professional trained in the evaluation and management of
13 concussion as required by law.

14 2.11 The SCHOOL DISTRICT allowed MATTHEW to return, suit up, and play the
15 high school's football game on the next day, Friday, September 18, 2009.

16 2.12 During the football game on September 18, 2009, MATTHEW was never
17 monitored by the SCHOOL DISTRICT nor evaluated by a licensed healthcare professional
18 trained in the evaluation and management of concussion

19 2.13 After MATTHEW'S concussion incident on September 17, 2009, he continued
20 to exhibit post-concussive symptoms.

21 2.14 Despite MATTHEW'S difficulties and ongoing symptoms, the SCHOOL
22 DISTRICT:

23 1. Did not withhold MATTHEW from playing in the football competition of
 September 18, 2009;

1
2 2. Did not have MATTHEW seek the required medical evaluation and
3 clearance for return to play by a licensed healthcare professional trained in
4 the evaluation and management of concussions;

5 3. Did not obtain written clearance by a licensed healthcare professional
6 trained in the evaluation and management of concussions; and

7 4. Did not follow student safety rules.

8 2.15 During the school's football game on Friday, September 18, 2009, MATTHEW
9 was playing on offense and defense, involved with tackles and blocking, and incurred multiple
10 impacts to his body and head. Toward the end of the game, MATTHEW began to complain
11 that his legs were weak or hurting and one coach had him lie down MATTHEW then lost
12 consciousness and went into a coma as a result of his premature and negligent return to play.

13 2.16 Following MATTHEW'S collapse and coma, he was removed from the field
14 and transported to Yakima Valley Medical Center in Yakima, Washington, where he was
15 examined and ultimately underwent life-saving, emergency brain surgery involving a right
16 frontoparietal and subtemporal craniectomy, removal of hematoma and decompression, and
17 subsequent hospitalization and rehabilitation. Following this first surgery, MATTHEW
18 required the following eight (8) surgeries:

- 19 1. October 23, 2009: (1) Evacuation of pseudomeningocele and culture,
20 right scalp; and (2) Closure and revision of scalp wound 5 cm.
21 2. October 21, 2009: Craniotomy for drainage of epidural/subdural
22 abscess.
23 3. November 3, 2009: Redo craniotomy for evacuation of subdural
abscess.
4. November 10, 2009: Redo exposure for removal of intracranial abscess.
5. November 17, 2009: (1) Placement of lumboperitoneal shunt; (2)
Removal of lumbar drain; and (3) Scalp aspiration attempted.

1
2 6. November 24, 2009: Redo craniotomy for resection of abscess.

3 7. December 14, 2009: (1) Removal of lumboperitoneal shunt; and (2)
4 Removal of suture from scalp.

5 8. April 23, 2009: Bone flap replacement surgery (cranioplasty).

6 2.17 MATTHEW ultimately returned to high school with severe brain injury deficits
7 and learning disabilities.

8 2.18 MATTHEW became eligible for special education services from the District on
9 March 2, 2010 as a result of his traumatic brain injury.

10 2.19 MATTHEW and his parents were notified on December 1, 2010 that
11 MATTHEW would be exited from eligibility.

12 2.20 After being exited from eligibility for special education services, MATTHEW
13 was served under a Section 504 Accommodations Plan.

14 2.21 MATTHEW was declared fully incapacitated as to both his person and estate
15 pursuant to RCW 11.88 by the Yakima Superior Court on October 7, 2011.

16 III. INJURIES

17 3.1 As a result of the incident above-described, MATTHEW sustained serious
18 injuries to include, but not be limited to:

- 19 1. Severe traumatic brain injury consisting of an acute subdural
20 hematoma with massive brain swelling and signs of subfalcine and
21 uncus herniation and acute subdural hematoma;
- 22 2. Brain parenchymal injury including axonal shear and global
23 neurologic dysfunction;
3. Golf ball-size area of missing brain tissue from right frontal lobe
brain abscess;
4. Abnormal EEG documenting partial onset seizures requiring
medication;

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- 5. Right hemiparesis;
- 6. Right-sided tremor;
- 7. Cognitive deficits including working memory, problem solving, multi-tasking, logical reasoning, insight, attention span, impulse control and complex aspects of multi-sensory processing;
- 8. Expressive and reception language difficulties;
- 9. Highly reactive, unpredictable and socially inappropriate behavior; and
- 10. Balance difficulties.

3.2 MATTHEW'S providers or evaluators also made the following findings/diagnoses to include, but not be limited to:

- 1. Post-traumatic encephalopathy;
- 2. Hydrocephalus with shunt placement;
- 3. Diffuse brain ischemia and multiple, focal areas of infarction with specific deficits related to large areas of infarction and focal areas of encephalomalacia;
- 4. Diffuse and focal loss of brain substance with significant loss of corpus callosum fiber tracts;
- 5. Brain swelling resulting in midline shift to the left;
- 6. Uncal herniation with compression of the brainstem;
- 7. Dilation of the central fluid system resulting in dilation and enlargement of the ventricles;
- 8. Damaged thalamus tissue;
- 9. Scalp infection with abscess;
- 10. Cognitive Disorder Due to Football-Related Closed-Head Injury with Subdural Hematoma and Multiple Brain Surgeries;

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- 11. Adjustment Disorder with Depressed Mood;
- 12. Major Depressive Disorder, Single Episode, Moderate; and
- 13. Attention-Deficit Hyperactivity Disorder, NOS, Acquired Secondary to Traumatic Brain injury.

3.3 MATTHEW continues to have ongoing neurological and brain injury deficits, including but not limited to generalized neurologic deficits, cognitive, memory, attentional and educational deficits, emotional and behavioral difficulties, and motor deficits.

IV. NEGLIGENCE

4.1 MATTHEW'S above-described injuries were proximately caused by the negligence of the SCHOOL DISTRICT as alleged above.

V. DAMAGES

5.1 Items of damages suffered by MATTHEW are:

- a. General or "human" damages, including past and future mental and physical pain and suffering, loss of the ability to enjoy life, disability, impairment and disfigurement.
- b. Medical costs and expenses, both past and future.
- c. Loss of earnings and impairment of earning capacity.
- d. Other special and general damages permitted by law that will be proved at trial.

5.2 Items of damage suffered by RANDY and MARLA are loss of consortium.

The aforesaid damages are in amounts which will be proved at the time of trial

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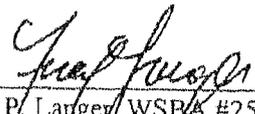
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VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs MATTHEW NEWMAN, and RANDY and MARLA NEWMAN, pray for their judgment against Defendant HIGHLAND SCHOOL DISTRICT NO. 203 for human and special damages in amounts to be proved at trial, together with Plaintiffs' costs and disbursements herein incurred along with prejudgment interest, and for such other relief as the Court may deem just and equitable.

DATED this 12th day of September, 2012.

NELSON LANGER ENGLE, PLLC



Fred P. Langer, WSBA #25932
Michael E. Nelson, WSBA #6027

ADLER GIERSCH, PS



Richard H. Adler, WSBA No. 10961
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333 Taylor Avenue N.
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Attorneys for Plaintiffs

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 MR. NORTHCRAFT: Object to the form.

2 A. I watched the video recently, yes.

3 BY MR. NELSON:

4 Q. And when was that?

5 A. Three weeks ago.

6 Q. Okay. Anybody watch it with you?

7 A. Myself.

8 Q. Was there that sort of knockdown punch or tackle
9 where he's immediately down and out and you recognize
10 that?

11 MR. NORTHCRAFT: Object to the form.

12 A. There's not a hit where he's immediately down and
13 out. There's the one play that, you know, we have
14 identified as a big hit in overtime, first play or
15 second play of the overtime session, where he gets his
16 face mask grabbed, falls on the ground. That's not
17 where we, as a staff, or me personally, looking at a big
18 hit, would say that is -- that is the moment. But
19 defensive player No. 70 for Naches has -- his weight
20 falls on Matthew's head on the ground, and that is the
21 one moment in the film overall where I say, whoa, that
22 could have been something, but the next play, he still
23 runs one more play after that.

24 Q. And does he do okay during that play?

25 A. I don't know. I don't remember the result as

1 But, you know, as far as education is concerned,
2 you know, it's my understanding is the Highland School
3 District is doing everything that is expected of them
4 from a WIAA governing body perspective. The WIAA says,
5 watch the seven-minute video, clear on concussions, so
6 be it, that's what we did.

7 Q. And I'm asking you, did you do anything other
8 than that, more than that?

9 A. I didn't go to a convention about concussions,
10 no.

11 Q. I didn't finish your -- or we didn't finish, I
12 apologize, your entire coaching career. How many years
13 did you stay at Highland?

14 A. I stayed at Highland through 2010 in a coaching
15 capacity. I resigned in February of 2011.

16 Q. Any reason for the resignation?

17 A. Sure. I was looking to move my family out of
18 Yakima. I didn't want my children raised in Yakima. I
19 didn't care for the area. Jobs brought us there. But,
20 you know, in my West Valley neighborhood that's nice and
21 sweet and pleasant, I got tagging and gang stuff going
22 on all the time. I don't want my kids exposed to that.
23 So for the previous five or six years, we couldn't wait
24 to get out of Yakima. It was just we needed the right
25 opportunity.

1 Q. What opportunity ultimately prevailed?

2 A. Colville School District, and lucky for us, one
3 of the groomsman in my wedding, he married a gal who's
4 father was a junior high school principal, so I had a
5 connection. Any time -- Any of these districts, you
6 need a connection to get in, and our dream has always
7 been we need to live in the Spokane area somewhere.
8 Colville is 60 miles away, perfect. We need two jobs,
9 my wife's a kindergarten instructor, there was a
10 kindergarten teaching position, along with a fourth
11 grade teaching position.

12 Q. You got the fourth grade?

13 A. Yes, not the kindergarten.

14 Q. Did you continue to coach?

15 A. No. I've been coaching my sons' teams. We just
16 got done with some flag football and basketball this
17 year in our second year up here. It's been great.

18 Q. Who took over for you as head coach at Highland?

19 A. Ryan Scott.

20 Q. Looking at the 2009 football season --

21 A. Sure.

22 Q. -- that year, did Matthew play as a defensive --
23 on the offense?

24 A. He was an offensive quarterback, yes.

25 Q. Starting quarterback?

1 that he got hurt on the kickoff return in the football
2 game. This is what everybody was saying, he got hurt on
3 this, he got hurt on that. And now we have this event,
4 where now it's the practice setting, and I can tell you
5 that I never heard from one of my student athletes
6 saying, hey, coach, what happened on that practice?
7 What happened during that practice? Did he get hurt? I
8 never had, coming out of Thursday's practice, any of my
9 student athletes coming up to me before a team dinner or
10 during team dinner or after team dinner, saying, hey,
11 coach, something's wrong with Matthew. I never had
12 that.

13 And I never had, after he had a traumatic brain
14 injury and almost lost his life that weekend, I didn't
15 have any of these student athletes, to my knowledge,
16 come to my administrators or athletic directors, hey,
17 Mrs. Maras, Mr. Thorson, Mr. Anderson, superintendant,
18 Coach Roy and Coach Shafer knew about this. I can tell
19 you if I was a cousin of Matthew, that is the first
20 thing I would have done.

21 Q. You did know about it, though, didn't you?

22 A. There's nothing. There's nothing for me to point
23 to in Thursday's practice where I have signs and
24 symptoms that say, wow, obviously, I didn't see the hit
25 as big as other people, right?

1 Q. There you go.

2 A. Okay. Understood. But I don't have a coach that
3 states anything like that. I don't have all these
4 players --

5 Q. The coach that would state it would be Dustin
6 Shafer?

7 MR. NORTHCRAFT: Excuse me, counsel, let him
8 finish. You can follow up later.

9 A. I don't have a coach that tells me of any event
10 that was big time in terms of hit. I don't have any of
11 these players, who I've read some of their depositions
12 as I've stated earlier, the things that I read, none of
13 that -- I don't hear from them at all. I don't --

14 Q. Would you expect to hear from them?

15 A. I would.

16 Q. Why?

17 A. If these kids were that concerned for their
18 brother, and they should be, and he was that injured,
19 staggering as some of them talked, I would expect one,
20 two, three of them to communicate that with us. That's
21 been an expectation of the Lystedt law, you know, when
22 we talked about here, Page 2, "All of our staff had been
23 educated on the new concussion policy and are required
24 and expected to report any of these signs and symptoms
25 that they feel or observe in others immediately to

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Honorable Blaine G. Gibson

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 government agency,

Defendant.

No. 12-2-03162-1

**HIGHLAND SCHOOL DISTRICT'S FIRST
SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO
PLAINTIFF MATTHEW NEWMAN**

**AND PLAINTIFF'S ANSWERS / RESPONSES
/ OBJECTIONS THERETO**

TO: MATTHEW NEWMAN, Plaintiff

AND TO: FRED P. LANGER, MICHAEL E. NELSON, and RICHARD H. ADLER, Attorneys for
Plaintiff

In accordance with Civil Rules 26, 33, and 34, please answer the following Interrogatories and
Requests for Production, separately and fully, under oath, within thirty (30) days of the date of service
upon you. These Interrogatories and Requests for Production are continuing in nature, and you must
provide any information which changes or adds to these answers at the time when you obtain such
additional information and prior to trial.

INSTRUCTIONS

HIGHLAND SCHOOL DISTRICT'S FIRST SET
OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO PLAINTIFF MATTHEW NEWMAN AND
PLAINTIFF'S ANSWERS/RESPONSES/OBJECTIONS - 1

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1. **Theodore Becker, Ph.D., RPT, ATC, CET, CDE, CEAS, CDA**
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Everett, WA 98204-8714
Phone: (425) 353-9300

Dr. Becker, an expert in the field of physical capacities has tested and interviewed Plaintiff. Dr. Becker's expected, but not limited to, testimony concerns his findings that Plaintiff is unable to work in any capacity due to the sequelae resulting from his severe traumatic brain injury. His testimony is based upon his training and education as a disability examiner, and his examination and testing of Plaintiff. Dr. Becker will also testify to the reasonableness and necessity of Plaintiff's care and treatment. Dr. Becker's *Performance-Based Physical Capacity Evaluation* report and *Curriculum Vitae* have previously been provided to Defendants with the Notice of Claim.

2. **Samuel R. Browd, PhD, MD**
7513 55th Place NE
Seattle, WA 98115
Phone: (206) 987-2544

Dr. Browd is a pediatric neurosurgeon at Seattle Children's Hospital. He is currently the neurosurgery advisor to the Seattle Children's Concussion Program and fills the role of Associate Program Director in the Department of Neurological Surgery at the University of Washington. Dr. Browd's focus on neuroimaging perspective to the neurosurgical issues and work with the pre-adult brain and neuroscience also provides him with a special foundation with which to examine the causation and damages issues herein. Dr. Browd's expected, but not limited to, testimony concerns his findings on examination of Plaintiff and/or review of the records. His testimony is based upon his training and education as a pediatric neurosurgeon, his examination of Plaintiff and/or review of Plaintiff's medical records. Dr. Browd will also testify to the reasonableness and necessity of Plaintiff's care and treatment. Dr. Browd has not yet prepared any documents. Dr. Browd's Curriculum Vitae is attached hereto.

3. **Robert Cantu, MA, MD, FACS, FICS**
John Cuming Building, Suite 820
131 ORNAC
Concord, MA 01742
Phone: (978-369-1386

Dr. Cantu is a neurosurgeon and is unquestionably the most widely known published and accepted expert on concussion and return to play questions and is the leading national/international expert on the topics of negligence, causation and damages. Dr. Cantu is one of the foremost experts on Second Impact Syndrome. He clearly states and will testify that Plaintiff's injury is a Second Impact Syndrome. Dr. Cantu has not yet prepared any documents. Dr. Cantu's Curriculum Vitae is attached hereto.

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
 LISA SORENSON

1:29 P.M.
 APRIL 16, 2013
 1701 EAST YAKIMA AVENUE
 YAKIMA, WASHINGTON

REPORTED BY: CARLA R. WALLAT, OOR 2578

1 '09.

2 So you dated continuously into the summer,
3 broke up for about a month and then you started dating
4 again by the time school started?

5 A. Uh-huh.

6 Q. "Yes"?

7 A. Yes, sorry.

8 Q. That's okay.

9 At what point -- as I understand it, you ended
10 up, the two of you ended up breaking up your
11 relationship; you weren't dating any longer. When did
12 that occur, approximately?

13 A. The last time?

14 Q. Yeah, after his injury --

15 A. After the injury?

16 Q. Yeah. Did you date him, continue dating him
17 for a while and then break up?

18 A. Yes.

19 Q. Okay. What time period did that involve?

20 A. Let's see. We broke up, I'm not 100 percent
21 sure when he went back to school. He went back to
22 school for about a month -- I'm not quite sure what
23 time period that was. It was in the spring I'm
24 assuming, and then we eventually broke up. The month
25 I'm not really sure of.

1 So you said that you spoke about the incident.
2 What incident are you talking about?

3 A. When he got his injury.

4 Q. And was that during the football game?

5 A. And before.

6 Q. Okay. So you think he was injured the day
7 before; is that what you're telling me?

8 MS. CARTER: Object to the form.

9 A. Yes.

10 Q. (BY MR. NORTHCRAFT) And why do you think he
11 was injured the day before?

12 A. Because he told me.

13 Q. And what did he tell you?

14 A. He said he hurt himself at practice, or after
15 practice. And -- do you just want me to tell you like
16 what he told me?

17 Q. Yeah, let me clarify that.

18 You said that, "He said he hurt himself at
19 practice or after practice." And so what I want to
20 know is when --

21 A. Which one?

22 Q. Yeah.

23 A. After practice.

24 Q. Did he tell you that he got hurt after
25 practice?

1 A. Yes.

2 Q. Okay. So let me make sure I understand what
3 you're telling me.

4 Was it after practice that he told you he'd
5 gotten hurt or are you telling me that he got hurt
6 after practice?

7 A. He told me he got hurt after practice and he
8 told me this after he had practice.

9 Q. All right. So what -- why don't you just tell
10 me what he told you.

11 A. What he told me?

12 Q. Yeah.

13 A. He said him and a few other of his friends
14 were just messing around and he injured himself and I
15 told him like if he told the coaches about it and he
16 said no. And he just said he had like a headache and I
17 told him he should talk to the coaches about it, but
18 they were playing Naches the next day and he didn't
19 want to be sat out.

20 Q. Did he tell you what other friends he was
21 messing around with after practice at which time he got
22 hurt?

23 MR. NORTHCRAFT: Object to the form.
24 Misstates testimony.

25 A. I'm pretty sure it was Tyler Nakala, Billy

1 Gellerson and Kavan Stoltenow, and if there's any
2 others I'm not really aware.

3 Q. (BY MR. NORTHCRAFT) Okay. What were they
4 going that resulted in Matthew getting hurt?

5 A. I'm not 100 percent sure. Like all I know is
6 that they were just messing around after practice, just
7 tossing the ball around. What they did exactly, it's
8 so long ago, I can't really remember.

9 Q. When was it that he told you that he got hurt
10 after practice was over?

11 MS. CARTER: Object to the form.

12 A. He called me that night.

13 Q. (BY MR. NORTHCRAFT) And do you remember what
14 he told you on the phone that night?

15 A. Yeah.

16 Q. What did he tell you?

17 A. He just -- well, he told me like what they
18 did. Like he hit his head on something and like I -- I
19 told him -- I just told him that he needed to tell the
20 coaches because what happened to his friend, John Hein,
21 because he can't -- he could never play sports because
22 he had so many concussions. And then he said that he
23 was just going to take some medicine and just hopefully
24 it would get better in the morning. And then the
25 conversation just kind of ended there about that.

1 Q. When you told him that he needed to tell the
2 coaches that he hit his head on something, was he
3 reluctant to do so?

4 MS. CARTER: Object to the form.

5 A. Yeah. I think he -- I think he was kind of
6 scared to tell them because they're -- I don't know,
7 they were pretty cautious with John, one of his
8 friends, like he couldn't even step foot on a football
9 field without, you know -- so it was a big game and I
10 don't think he wanted to risk the fact of sitting out.

11 Q. (BY MR. NORTHCRAFT) Okay. Did you -- do you
12 have any idea what he hit his head on after practice?

13 A. No.

14 Q. Did he tell you that when he hurt his head
15 practice was already over?

16 A. Yeah.

17 Q. Did you talk to him any more that evening?

18 A. No.

19 Q. Do you remember anything else that you talked
20 about during this phone call that you had with Matthew
21 during which he said that he had hurt his head after
22 practice was over?

23 A. No. Can you --

24 Q. Do you want me to repeat that?

25 A. Yeah.

1 Q. Sure. You've already told me some things that
2 you remember and what I want to know is: Do you
3 remember anything else that you and Matthew talked
4 about during this phone call in which he told you that
5 he had hurt his head after practice was over?

6 A. I mean, I'm pretty sure we talked about like
7 the day and just mindless talk.

8 Q. Okay. Did you ever -- and was this
9 conversation the day before the Friday --

10 A. It was Thursday night.

11 Q. This was Thursday night?

12 A. Yeah.

13 Q. And this was -- was this the Thursday night
14 before the Naches Valley game on Friday the next day?

15 A. Yeah.

16 Q. During this conversation, did Matthew ever
17 talk to you about what had happened during practice
18 that day?

19 A. During the phone conversation?

20 Q. Yes.

21 A. Yeah. He always talked about practice,
22 like -- he always talked about sports, so I'm pretty
23 sure he told me everything that happened at practice
24 that day.

25 Q. What did he tell you that happened at practice

1 that day?

2 A. He just told me just the drills that they ran
3 and talking about the guys on the team and...

4 Q. Okay. Anything else that sticks out about
5 what he spoke to you about practice that Thursday
6 before the Naches Valley game?

7 A. No, nothing really.

8 Q. Did he ever indicate to you that he was
9 tackled during that practice?

10 A. He -- well, he used to always tell me that he
11 would get hit hard because he wasn't that big, you
12 know, so I don't know specifically that night, but he
13 has told me like in other situations that he's been
14 tackled pretty hard and he's been hit and bumped around
15 quite a bit because he was a pretty small guy.

16 Q. Okay. How big was he, approximately?

17 A. Well, he was taller than me, so -- but he was
18 just like lengthy, so five-eight? Somewhere around
19 there.

20 Q. Do you have any idea how much he weighed that
21 junior year, beginning of the junior year?

22 A. Say maybe around 140-ish, somewhere around
23 there.

24 Q. So I understood what you told me, that he
25 generally talked about getting hit, but I want you to

1 focus in on whether or not he talked to you about
2 whether he had any sort of hits during that Thursday
3 night?

4 A. No.

5 MS. CARTER: Object to the form.

6 MR. NORTHCRAFT: What's the objection?

7 MS. CARTER: Asked and answered.

8 Q. (BY MR. NORTHCRAFT) During this Thursday
9 night phone conversation, was the only injury that he
10 talked about to you was an injury that he -- that he
11 incurred after practice was over?

12 A. Yes.

13 Q. Did you talk to Matchew the next day at
14 school?

15 A. Yes.

16 Q. I take it you probably didn't have any classes
17 together; is that correct?

18 A. No.

19 Q. That's not correct?

20 A. Oh, wait, no, it's correct that we did not
21 have any classes together. Sorry.

22 Q. That's all right. It always -- everybody
23 messes that one up, including me.

24 So how often -- when did you see him during
25 the day, typically?

1 A. He would usually walk me to class so between
2 class periods. He'd usually walk me to about three
3 classes, so, and then at lunch I would see him.

4 Q. Do you remember him talking about how he felt
5 that Friday when you were walking to class or at
6 lunchtime?

7 A. He -- the only time he mentioned how he felt
8 was when we were walking to our cars at the end of the
9 day right before the game.

10 Q. And what did he tell you?

11 A. He just said that he had a headache and I
12 asked him again if he was going to talk to the coaches
13 and he was like just joking around, like, No, I'm not
14 going to tell the coach. We're playing Naches. And
15 then he just said he was going to just go home, take
16 some medicine and his headache would go away.

17 Q. Did you talk to him at any other point in time
18 that day?

19 A. After, after school?

20 Q. Yeah, you said -- you said that the only time
21 he mentioned how he felt was when you were walking to
22 your cars at the end of the day. Okay. And then I
23 asked, What did he tell you? And you told me.

24 And so after you had walked to your cars,
25 between that time and the game, did you talk?

1 Matthew Thursday evening, the night before the Naches
2 game, did you call him or did he call you?

3 A. I'm pretty sure he always called me. Because,
4 I don't know, I was super shy back then so I always had
5 him call me. I wasn't really that outgoing to call
6 people.

7 Q. Okay. And do you remember what time he called
8 you?

9 A. I want to say probably around 8:00 or 9:00.

10 Q. How did he start out that conversation?

11 A. I don't really remember. I'm not 100 percent
12 sure.

13 Q. How far into the conversation were you before
14 he brought up the injury to his head?

15 A. It was -- it was pretty early in the
16 conversation. I remember it just because it was a big
17 significant thing that we talked about that night. And
18 that was mainly what we talked about which was football
19 practice and then football in general, and then like we
20 talked about the Naches game the next day and stuff
21 like that.

22 Q. Do you remember how long that conversation
23 lasted?

24 A. I'm not 100 percent sure.

25 Q. You said most conversations were about an

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 had in your possession.

2 A. Uh-huh.

3 Q. It does not appear that you have any documents with
4 you. Do you have any documents in your possession
5 currently that would be responsive to this request?

6 A. I don't. I, when you're in college you move a lot
7 and you kind of make room for the stuff you need and
8 I've been away from Highland for over two years now
9 so I just took of the paperwork I didn't need and
10 tossed it.

11 Q. Okay. So you didn't hold onto any written materials
12 that you had when you worked for Highland as a coach?

13 A. No.

14 Q. Okay. Thank you. All right. Going back to your
15 background, you've been in Richland for a year. What
16 are you doing there?

17 A. I'm a personal trainer at Columbia Basin Racquet
18 Club.

19 Q. How long have you been doing that?

20 A. Personal training?

21 Q. Yeah.

22 A. My first job, so a year now.

23 Q. Okay. And any plans to move out of the Richland
24 area?

25 A. No.

1 any, you know, any concerns Matthew was, I didn't see
2 it, but, you know, none of the coaches seemed all too
3 concerned about his well-being, so I assumed
4 everything was fine.

5 Q. Okay. Did you hear Matthew say he had a headache?

6 A. No.

7 Q. Did you hear Matthew say anything after this hit from
8 Joe Scott?

9 A. Um, I heard Matthew play calling, I heard him giving
10 the cadence, calling the plays, going through our
11 whole offensive script that we had before that, and,
12 yeah.

13 Q. Did you hear Matthew say anything to Joe?

14 A. No.

15 Q. Did you hear anyone reprimand Joe for this late hit?

16 A. No. Not that I can remember.

17 Q. Would you expect that to have happened?

18 MR. NORTHCRAFT: Object to the form.

19 A. I would, I would, I would expect a coach would
20 probably go say something along the lines.

21 Q. Coach Roy testified that he recalled Dustin Shafer
22 yelling after this particular play. Do you recall
23 that?

24 MR. NORTHCRAFT: Object to the form.

25 A. Not that I can remember. Coaches get their --

1 complains about everything, about the smallest nicks,
2 or is this a player who doesn't really talk that much
3 or doesn't, or doesn't really -- basically it's
4 basically kind of knowing who you're coaching,
5 basically. If this person is complaining a lot about
6 small things like that, it's one of those things
7 where you kind of just try and take it, talk the
8 person through it, and see, well, can you play
9 through it, Does it hurt when you do this? Well, no,
10 well, then let's try it out, you know.

11 Q. Do you have any reason to disagree with some of the
12 players' statements that Matthew said he had a
13 headache after he was tackled by Joe Scott?

14 MR. NORTHCRAFT: Object to the form.

15 A. Can you use a different way of wording the question?

16 Q. I'll try. Some of the players have stated that
17 Matthew said he had a headache after he was tackled
18 by Joe Scott. Do you have any reason to disagree
19 with the players?

20 MR. NORTHCRAFT: Object to the form.

21 A. Um, I didn't get to talk to those players about the
22 injury because Matt didn't bring anything up to us.
23 And the fact that he was running the plays, the
24 complicated plays that we were running with the
25 different formations, different, um, play calls,

1 playing offense and defense and playing it where we
2 didn't bring any, didn't bring anything to our
3 attention, that we thought everything was good to go.

4 Q. Okay. But my question was, do you have a reason to
5 disagree with the players?

6 MR. NORTHCRAFT: Object to the form.

7 Q. Was your answer yes?

8 A. Yes, I would obviously disagree.

9 Q. So Forrest Kopta, sounds like you two were pretty
10 close while he was on the team; is that true?

11 A. Relatively.

12 Q. Would you ever know Forrest to lie?

13 A. Um, Forrest, no, he's usually a straight shooter.

14 Q. Okay. So if Forrest states that Matthew got up after
15 he was hit by Joe Scott, tilted his helmet back,
16 makes a groaning noise, and then says really loud
17 that he has a headache, would you have a reason to
18 disagree with Forrest?

19 MR. NORTHCRAFT: Object to the form.

20 A. It depends where Forrest was. I mean, if he was
21 there to actually see the play, great, but he might
22 have been on the other side of the field, for all we
23 know.

24 Q. If Forrest says he has a clear view of this and this
25 is what he saw and this is what he heard, would you

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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 first got word of this and we were being contacted by
2 attorneys, and he said, Hey, did you get a call from
3 this guy? I said, No, not yet. He said, Okay, I did.

4 And that was the gist of it. I haven't talked
5 to Coach Burton or Coach Bunday since the end of that
6 season. Actually, I take that back, I wished Coach
7 Burton a happy birthday on Facebook recently.

8 Q. All right. Have you spoken with any of the
9 players -- well, let me back up.

10 When did you actually first move down to
11 California?

12 A. Right after the -- that last season. It would
13 have been December of 2009, I believe. I finished out
14 the season -- or was it December or January? I can't
15 remember the exact month. But I finished college that
16 spring prior, wanted to stay and coach football one
17 more season before I went down to California to start
18 my business.

19 Q. So December --

20 A. End of December.

21 Q. Of 2010?

22 A. Right after football season.

23 Q. So right after --

24 A. Right after the season was complete, I think I
25 stayed another week, packed my stuff and I went and

1 moved to California.

2 Q. Okay. And you've been down in California
3 continuously since --

4 A. Yes.

5 Q. -- December?

6 A. Yes, sir.

7 Q. What do you do down in California?

8 A. I started a retail propane delivery company in
9 Phelan, P-H-E-L-A-N, California.

10 Q. How did you get into that?

11 A. It's been a family business forever and I kind
12 of just grew up in the industry so it was a pretty
13 natural move for me when I got out of college to start
14 my own plant up.

15 Q. And you said when you got out of college,
16 where did you go to college?

17 A. Yakima Valley Community College.

18 Q. Okay. Did you get a degree?

19 A. Came up just short. It was more of a time
20 filler type thing for me. I already knew what I was
21 doing and...

22 Q. Okay. What was your main area of study?

23 A. Business management was the, was the major I
24 guess you would call it.

25 Q. Okay. Since you've been down in California,

1 have you done any coaching?

2 A. No. Oh, check that. I did Little League
3 coaching for about six weeks, Little League baseball.

4 Q. But no football coaching?

5 A. No.

6 Q. Why not?

7 A. Just busy. You know, I've -- I've contacted,
8 in the Phelan area, they got a pretty good football
9 team up there and I've been in talks with their coach,
10 you know, about in the future maybe, you know, helping
11 out, getting on staff, kind of working my way in. It's
12 a pretty successful program up there. So it's a
13 pretty, pretty tough gig to get into, but I would
14 definitely like to get into it once my, once my
15 business gets a little settled in and I have some time.

16 Q. Are you married?

17 A. No.

18 Q. Okay. Any kids?

19 A. No.

20 Q. Okay. So the business that you run down in
21 Phelan, California, are you the sole proprietor?

22 A. Yeah.

23 Q. So where were you working, Mr. Shafer, in the
24 2009-2010 school year?

25 A. I was coaching obviously, and I also worked at

1 place.

2 Q. (BY MR. LERITZ) Okay. So just make sure I've
3 got it right in my head. So you're around the ten, the
4 tackle happens around the, the 25 or 30?

5 A. Yeah.

6 Q. Okay.

7 A. Something in there. Like I say, somewhere
8 along this general region.

9 Q. Okay. So you have to walk 15 to 20 yards to
10 get to them?

11 A. Yeah, not far, no.

12 Q. Okay. From the time that you're -- you see
13 the tackle to the time that you walk over to them, did
14 you hear anything, remember hearing anything from
15 either Joe or Matthew?

16 A. No. Like I said, I was the first one to say
17 anything to Joe, you know, I just kind of yelled, Joe,
18 be smart, or something along that lines. And then they
19 both get up, you know, I smack Joe Scott on the butt
20 and Matthew had a couple things to say real quick, I
21 mean, within, you know, a couple snapoffs to Joe, not
22 happy that he got tackled to the ground unexpectedly,
23 and that was really all the dialogue that I heard.

24 Q. Okay. Did you ever hear Matthew say he had a
25 headache?

1 A. No, sir.

2 Q. Did you ever hear Matthew say his head hurt?

3 A. No, sir.

4 Q. Okay. So what happened after that play and
5 the tackle, what happened next?

6 A. We would have just -- I mean, I don't know
7 what happened. I can tell you what should have
8 happened. I mean, we would have gone back, had a
9 couple more kickoff returns, probably got into our
10 kickoff, our punt, our punt return, watered up and then
11 moved on to defense.

12 Q. That's what should have happened, right?

13 A. Yeah.

14 Q. What did happen?

15 A. I can't remember.

16 Q. Okay. You don't have any recollection of what
17 happened after that tackle with Matthew?

18 A. I mean, I remember practice going as planned.

19 Q. So you didn't -- after that tackle with Joe
20 Scott and Matthew, you didn't take Matthew down to the
21 end zone?

22 A. No, sir. Matthew would have returned to the
23 end zone, but I didn't take him there.

24 Q. Did Matthew ever take his helmet off --

25 A. No, sir.

1 A. Not in contact with them. I mean, just
2 don't -- yeah, we just don't talk. I mean, they're
3 still good friends, but we don't talk very much. Like
4 I said, wished Coach Burton a happy birthday on
5 Facebook is about the most contact I've had with him
6 since that school year.

7 Q. Okay. So right before the break we were
8 talking about the tackle with Joe Scott and Matthew
9 Newman. After the tackle happened when they're both on
10 the ground, did you see how Matthew got up?

11 A. Yeah, like I said, he popped up, he was -- you
12 know, to be frank, he was pretty "grumpy" I guess would
13 be the word. He's kind of ticked off at Joe, you know,
14 because he didn't expect to go to the ground. And then
15 he went back to the, to the end zone.

16 Q. And when you say "popped up," what do you mean
17 by that?

18 A. Well, he jumped up, got up off the ground, had
19 a couple words with Joe and then moved on.

20 Q. So he wasn't slow to rise or slow to get up
21 after the tackle?

22 A. I wouldn't say that, no.

23 Q. Okay. Did you ever see him put his hands on
24 his helmet?

25 A. In like a --

1 Mr. Northcraft objects to the form and the
2 answer is, "Yes."

3 Do you see that?

4 A. Yes.

5 Q. Okay. So Tyler says that, Mr. Newman, Matthew
6 Newman had a headache. And you disagree with that,
7 correct?

8 MR. NORTHCRAFT: Object to the form.

9 A. I don't disagree with that. I was never -- a
10 headache was never reported to me.

11 Q. (BY MR. LERITZ) Well, you never -- Matthew
12 Newman never reported a headache to you; that's your
13 position, correct?

14 A. Nobody ever reported to me that Matthew Newman
15 had a headache.

16 Q. And Matthew Newman did not report to you that
17 he had a headache, correct?

18 A. He did not.

19 Q. Would you describe Tyler Hakala as an honest
20 person?

21 MR. NORTHCRAFT: Object to the form.

22 A. That's not my judgment.

23 Q. (BY MR. LERITZ) Just asking you a question:
24 Do you think he's an honest person?

25 MR. NORTHCRAFT: Object to the form.

1 definitely had his helmet off, he's not remembering
2 something correctly.

3 Q. It's not just him.

4 MR. NORTHCRAFT: Object to the form.

5 A. Didn't happen that way.

6 Q. (BY MR. LERITZ) Antonio Gonzalez, Kavan
7 Stoltenow, Tyler, Billy, all of these kids have a
8 different version of what happened than you do. Are
9 you saying they're all mistaken about what happened?

10 MR. NORTHCRAFT: Object to the form.

11 A. Absolutely.

12 Q. (BY MR. LERITZ) And why do you -- why do you
13 say that?

14 A. Because Matthew Newman did not have his helmet
15 off during practice, period.

16 Q. And Matthew Newman never had a headache after
17 the tackle with Joe Scott?

18 A. Not that was reported to me.

19 Q. So you're saying he might have had a headache,
20 he just didn't report it to you?

21 MR. NORTHCRAFT: Object to the form.

22 A. I can't answer that for you. No headache was
23 reported to me during a practice or a game.

24 Q. (BY MR. LERITZ) Going down to the next
25 page -- actually, starting at the bottom of Page 29 on

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 A. Yep.

2 Q. Okay. Sorry about that. All right. So West Valley
3 High School in 2006.

4 A. Uh-huh. I took the gray off.

5 Q. What did you do after high school?

6 A. I attended Central Washington University. I
7 graduated from there in 2011.

8 Q. What was your degree in?

9 A. History.

10 Q. Did you have a minor at all?

11 A. I just studied wine. I received a wine certificate,
12 but it's not a wine minor.

13 Q. Okay. All right. So what did you do after
14 graduating from Central in 2011?

15 A. I'm at my current position, food safety manager for
16 Gilbert Orchards, Inc.

17 Q. And how long have you been at Gilbert Orchards?

18 A. This is my third year. I'm in my third year.

19 Q. Okay. So did you play football in high school?

20 A. Yes, I did.

21 Q. Okay. Did you play all four years?

22 A. I played, yes, my freshman, yes, I did.

23 Q. Okay. And what position did you play in high school?

24 A. Defensive tackle and offensive tackle.

25 Q. At some point did you also become a coach at Highland

1 at 2:20.

2 (A SHORT RECESS WAS HAD.)

3 THE VIDEOGRAPHER: We're going back on the
4 record at 2:30.

5 Q. (By Mr. Leritz) Mr. Hale, we took a short break and
6 we just started asking you about the practice the day
7 before the Naches game, September 17th of '09.
8 Before we get into that, though, do you remember
9 Matthew after his injury coming back and watching any
10 of the practices in the 2010 football season?

11 A. No, I do not.

12 Q. Did you coach in the 2010 football season?

13 A. No.

14 Q. Okay. So the last time you coached Highland High
15 School football was the 2009 season?

16 A. Correct.

17 Q. Why didn't you go back the following year?

18 A. I had, I started a job with Gilbert Orchards.

19 Q. Did Coach Roy ask you to come back in 2010?

20 A. If I was available, he asked if, you know, if I would
21 be available to coach, and I said no, I would not.

22 Q. Okay. And the reason you didn't go back was because
23 of your job at the orchards?

24 A. Correct.

25 Q. Okay. All right.

1 report it because I care about the person that I'm
2 playing with. That's part of the brother's keeper,
3 that's part of the respect and you have to the
4 program and to your teammate and to your coaches.

5 Q. Uh-huh. Are you aware that Billy Gellerson has
6 testified that he heard Matthew Newman telling Coach
7 Shafer that his head hurt after the tackle?

8 MR. NORTHCRAFT: Object to the form.

9 A. Like I said before, I haven't heard any testimonies,
10 anything.

11 Q. All right. That's completely brand new information
12 to you?

13 A. Yeah, you just told me that.

14 Q. Okay. And you've never -- all right. So you have no
15 information regarding what Tyler Hakala may have said
16 or heard after the tackle with Joe Scott and Matthew
17 Newman, fair to say?

18 A. Have I heard?

19 Q. Yeah.

20 A. It's fair to say that I do not know.

21 Q. Okay. If Tyler Hakala says that he heard Matthew say
22 he had a headache after the tackle with Joe Scott and
23 Matthew, would you have any reason to disagree with
24 Tyler?

25 MR. NORTHCRAFT: Object to the form.

1 A. Repeat or restate, please.

2 Q. Sure. If Tyler Hakala says that he heard Matthew say
3 he had a headache --

4 A. Okay.

5 Q. -- after that tackle, would you have any reason to
6 disagree with Tyler?

7 MR. NORTHCRAFT: Object to the form.

8 A. Are you saying do I believe that Tyler Hakala is a
9 liar?

10 Q. I'm asking you if you have any reason to disagree
11 with what he recalls.

12 A. If he came to me and approached me with a question,
13 or the statement that there was a head injury; is
14 that what you're asking?

15 Q. I'm just asking you if you have any reason to
16 disagree with Tyler if that's what he recalls
17 happening.

18 MR. NORTHCRAFT: Object to the form.

19 A. I do have reason to disagree with him. If there was
20 a head injury, I would have been -- we would have
21 known.

22 Q. Well, that's your assumption, right, you were --

23 A. Well, you asked me if I would have a reason to and I
24 told you I would.

25 Q. So if Tyler says that he heard Matthew say he had a

1 post-, obviously postseason, so I'm confused on where
2 you're going. You're going back to the Thursday back
3 to after the season, so I'm confused. That's why I
4 asked for clarity.

5 Q. I'm glad you're doing that. I'm just trying to find
6 out from you if, for example, if Dustin Shafer's
7 memory of the events, in your mind, would be more
8 accurate than the players' version of events of what
9 happened back in September 17th of '09.

10 MR. NORTHCRAFT: Object to the form.

11 A. I, I wouldn't, I, again, if it came to an injury, I
12 would not weight either one. It's about Matthew
13 Newman, speak to Matthew Newman. Do I believe Dustin
14 Shafer? Yes. Do I -- I wasn't informed about any
15 scenarios, so I have no comment on it.

16 Q. Okay. And frankly, if the players have their version
17 of events, you have no reason to doubt them either,
18 right?

19 MR. NORTHCRAFT: Object to the form.

20 A. Again, I have no comment on the situation because I
21 wasn't aware of either side.

22 Q. So if Matthew or, let's say a player, hypothetically,
23 has a tackle, gets up and says to you something to
24 the effect of, Boy, coach, my head's killing me --

25 A. Uh-huh.

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.)

NO. 12-2-03162-1

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

Defendant.)

VIDEO DEPOSITION UPON ORAL EXAMINATION OF
JUSTIN BURTON

July 2, 2013
11:21 a.m.
917 Triple Crown Way
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

1 recollection of Matthew Newman being tackled during a
2 play?

3 MR. NORTHCRAFT: Object to the form.

4 A. I mean, like I told you, I'm sure he did get tackled,
5 but I don't have any recollection of any specific
6 tackle that happened. Like I said earlier, he's a
7 running quarterback and we did that pro thud that I
8 had explained earlier.

9 Q. (By Mr. Leritz) Would it have been unusual for a --
10 for a quarterback to have been tackled during a
11 practice before a game, a Thursday practice?

12 A. I -- in our system he was a running quarterback, he
13 was -- like I said, he would be pro thud, just hit him
14 up top, wrap up, blow the whistle, we're on to the
15 next play.

16 Q. Do you know if any coach saw a play where Joe Scott
17 tackled Matthew during September 17, '09 practice?

18 A. If they did I -- they didn't tell me about it.

19 Q. Okay. Did you ever hear Matthew Newman say that he
20 had a headache after a particular play during practice
21 on September 17 of 2009?

22 MR. NORTHCRAFT: Object to the form.

23 A. Could you restate it, please?

24 Q. (By Mr. Leritz) Did you ever hear Matthew Newman say
25 that he had a headache after any play during practice

1 on September 17 of 2009?

2 MR. NORTHCRAFT: Object to the form.

3 A. I did not hear that.

4 Q. (By Mr. Leritz) Did you ever see Matthew taken out of
5 practice during the September 17, 2009 practice for
6 any reason?

7 A. I did not.

8 Q. So you never saw him walk down to the end zone with
9 one of the coaches after a hit with Joe Scott?

10 A. No, I did not.

11 Q. Do you recall if Matthew played the entire practice on
12 September 17 of '09?

13 A. Yeah, if he wouldn't have been in the practice we
14 would have noticed. He was our quarterback for the
15 offensive session. I think we're back -- if we look
16 at the Exhibit 4. During the offensive session if he
17 wasn't in that session I would have noticed because we
18 would probably would have put Tyler Hakala there
19 because he played the year before. So I would have
20 noticed just from that standpoint alone.

21 Q. Did Tyler Hakala ever play any quarterback positions
22 or plays during the practice on September 17 of '09?

23 A. I couldn't tell you for sure. I know that we had
24 repped him in at quarterback throughout just as a
25 safety net because our next quarterback was a freshman

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

DEPOSITION UPON ORAL EXAMINATION OF WILLIAM E. GELLERSON

December 13, 2012
10:55 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 A. During our junior year, the same year.

2 Q. Okay. And who was the other player that was with
3 you?

4 A. Alex Laughery.

5 Q. Can you spell Alex's last name?

6 A. L-A-U-G-E-R-Y (sic). That's a guess.

7 Q. Okay. Do you recall Coach Roy saying anything in
8 response to you and Alex when you discussed the
9 headache and the tackle during practice with him?

10 MR. NORTHCRAFT: Object to the form.

11 A. Not anything direct. He just, you know, kind of like
12 we ran through the scenario altogether. Like because
13 I think Coach Roy wanted to know what we saw, like if
14 there was something he didn't know happened, and he
15 didn't discuss it, though.

16 Q. Okay.

17 MR. NORTHCRAFT: Move to strike as non-
18 responsive.

19 Q. Did Coach Roy ever indicate to you and Alex during
20 that discussion that he was not aware that Matthew
21 had a headache during the pregame practice before the
22 Naches game?

23 A. No. He --

24 MR. NORTHCRAFT: Object to the form.

25 A. He, he knew about it, he knew that Matthew had a

1 headache.

2 Q. And why do you say that?

3 A. Because he, he saw it. Everybody knew, you know,
4 there was something wrong with him. Um, we told him,
5 you know, like, Hey, well, when we talked to Matthew
6 sixth period he said he had a headache. And he said,
7 Oh really? Yeah, we all did. Coach Roy didn't
8 discuss it, he was kind of getting information from
9 us and, um, this, this was after it happened, though.

10 Q. Okay.

11 MR. NORTHCRAFT: Move to strike.

12 Q. And you say Coach Roy knew, we all knew that Matthew
13 had a headache, are you talking about on the day of
14 practice?

15 A. Yes.

16 Q. For the Naches game?

17 A. We all knew Matthew got hurt that day.

18 MR. NORTHCRAFT: Object to the form. Move to
19 strike as nonresponsive.

20 Q. Billy, can I have you sign Exhibit 4 and date it?
21 Use this pen here right there in the corner.

22 MS. CARTER: I'm just going to look over my
23 notes.

24 MR. LERITZ: Do you want to take a break?

25 MS. CARTER: Yeah, why don't we take a five-

1 Q. You don't remember that?

2 A. I don't remember, I just remember that we all went up
3 there after a team dinner, I think. I can't
4 remember.

5 Q. So there was a team football dinner on July 20, 2010?

6 A. No, it wasn't. I can't remember why or when or how
7 we got there, but I just remember being asked to go
8 there and that's all, no problem, we all wanted to.

9 Q. Where were you when you were asked to go to the
10 Newmans' house?

11 A. I also cannot remember.

12 Q. You don't remember?

13 A. I can't remember.

14 Q. And you don't remember whether it was Mr. Newman or
15 Mrs. Newman that asked you to go to their house?

16 A. I do not.

17 Q. And did you go to their house?

18 A. Yes.

19 Q. And what was -- what did, though, either Mr. and Mrs.
20 Newman tell you about why you were going there?

21 A. They told us that we were going to be interviewed and
22 asked questions about what happened to Matthew.

23 Q. Okay. And did they say by whom you were going to be
24 interviewed?

25 A. Yes, they told us -- no, they just, they told us that

1 he was a guy doing research on, um, head injuries.

2 Q. Okay. And did they, did they represent that Mr.

3 Adler was the man that was doing research on head

4 injuries and he was the person that was going to talk

5 to you?

6 A. Yes, once we got there, he introduced himself as such

7 too.

8 Q. So he represented to you that he was a person doing

9 research for football injuries?

10 A. Yes.

11 Q. All right.

12 A. He also did state that he was a lawyer, I believe,

13 or, not -- I think that's his title. He told us that

14 is one thing he was, but he wasn't there for that.

15 Q. So he wasn't there as a lawyer, he was there as a

16 medical researcher?

17 MS. CARTER: Object to the form.

18 MR. NORTHCRAFT: What's the objection?

19 MS. CARTER: There's been no testimony that it

20 was medical research.

21 Q. So he told you what, he was there to do medical

22 research?

23 A. Yes, I believe that's in our statement, he says, or,

24 I remember him introducing, all of us went, I talked

25 to Tyler about it, but we do remember him saying, Hi,

1 you know, I'm Richard Adler, I'm a lawyer, or
2 attorney, but I'm not here for that, I'm here to
3 just, he gave us his background with medical history
4 and he was doing research for it, and that was what
5 we, he only asked us questions about what happened to
6 Matthew and not, and he only asked us questions about
7 what happened to Matthew and not about coaches,
8 really, so we assumed it really was for medical
9 research.

10 Q. Okay. So when he introduced himself as a medical
11 researcher, did he at that time tell you he was also
12 an attorney?

13 A. Yes.

14 Q. And he told you at that time he was not there with
15 respect to bringing a lawsuit, but that he was there
16 to do research?

17 A. Yes.

18 Q. Do you know when it was that the Newmans hired Mr.
19 Adler as their attorney?

20 MS. CARTER: Object to the form.

21 A. No.

22 Q. Was there anyone else there like Mr. Adler? Did he
23 bring somebody else, another researcher or another
24 lawyer or an assistant or --

25 A. Not that I can remember.

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 TYLER HAKALA

December 13, 2012
3:32 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 A. Yes, Mr. Newman.

2 Q. What did he tell you about why he was calling a
3 meeting?

4 A. He told us that an attorney, Richard Adler, that was
5 working with the, whatever, the concussion
6 foundation, whatever, the association or program he
7 was working with, wanted to talk to us about and
8 figure out, you know, why this injury happened to
9 Matthew and, you know, how it can be, you know,
10 determined and figure out what happened.

11 Q. Did Mr. Newman actually tell you that Richard Adler
12 was an attorney?

13 A. He did not, but when I went there, Richard told me he
14 was an attorney.

15 Q. And when, when did he tell you that?

16 A. When he introduced himself to me, Hi, I'm Richard
17 Adler, I'm an attorney, but I'm working for the
18 concussion foundation, or whatever that program,
19 that's how he introduced himself to me.

20 Q. Did he tell you whether or not he had been retained
21 by the Newman family?

22 A. No.

23 Q. He didn't say that either way?

24 A. Yeah. I don't believe he was at that point.

25 Q. Why don't you think that?

1 A. Because, well, at least to my knowledge, there wasn't
2 a lawsuit at that time, so there was no reason to
3 believe that it was anything more than just figuring
4 out why this happened.

5 Q. Did you think that Mr. Adler was looking for facts to
6 support a lawsuit for Newmans?

7 A. Not at the time, no.

8 Q. At some point did you?

9 A. Well, as soon as I was aware of the lawsuit that's in
10 place now, that's when, you know, you kind of look
11 back and think, well, you know, was that his
12 intention at that time, or was it not. I don't know.

13 Q. Okay. So you mentioned a number, a couple of other
14 fellows that went to this meeting, I think Billy and
15 Kavan and Forrest and a couple of other players. You
16 don't remember the names of those two?

17 A. I don't remember exactly which ones he called, no.

18 Q. And did you have one, more than one meeting at the
19 Newman residence?

20 A. Yes.

21 Q. How many meetings did you have?

22 A. I think in total I've met with Newmans and Richard
23 three or four times.

24 Q. At the Newman residence?

25 A. Yes.

Messages Billy GeFerson Edit

Call

FaceTime

Contact

Hey coach, just wanted to say idk what you are hearing.. But we arnt attacking you. Me and the other players are honest to god saying what we remembered. I dont think that you did anything wrong. And you had no idea matthew had a headache. I dont want bad blood. I feel a loyalty to you coaches and wouldn't want u to think we were picking sides

Exhibit 3
D. Shafer
September 16, 2013
Diana L. Porter, CSR No. 12729

SHAFER 10



Send

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 A. No. My back was turned to him after the
2 tackle.

3 Q. So where was -- where was Matthew located
4 right after the tackle, after you -- let me ask you
5 this.

6 Did you help him up?

7 A. No. Oh, yes, I did, sorry. I -- as I -- when
8 I got up, I turned around and he was just laying there,
9 I grabbed his hand and I said -- I was like, I'm sorry,
10 man. Because I could hear people saying, Don't go all
11 the way to the ground, it was one of the coaches, I
12 think it was like Shafer or Roy, one of those two said,
13 Don't go all the way to the ground. And I helped him
14 up and said, Sorry. And when he was on his feet I
15 turned around and walked away because I could hear
16 everybody's like, Dude, what are you doing? That was
17 dumb. So I just walked away because I didn't want to
18 hear anything they had to say.

19 Q. Did you reach down to try and help him up?

20 A. Yeah.

21 Q. Did he grab your hand?

22 A. Pretty sure.

23 Q. Did you help pull him up?

24 A. Yeah.

25 Q. When you reached down to pull him up, was he

1 on the grass?

2 A. I'm not certain, but I'm pretty sure.

3 Q. Did he grab -- did you extend your right hand?

4 A. Yes.

5 Q. Did he -- which hand did he use to grab ahold
6 of you?

7 A. I'm not sure.

8 Q. Did he still have the ball in his hand?

9 A. No, I think he let go of that a while ago.

10 Q. Okay. As -- did you pull him all the way up,
11 help him all the way up so he was standing?

12 A. Yeah.

13 Q. At that point, had you said anything to him
14 yet?

15 A. I said -- I think I said, I'm sorry, man, and
16 then I just -- that's all I said to him and then I just
17 walked away.

18 Q. Did Matthew say anything to you?

19 A. It was more of like -- I knew it was more like
20 a, Yeah, whatever. Like, Yeah, you're fine? Yeah,
21 fine, whatever. Kind of like that.

22 Q. Did he -- did you think he was mad?

23 MS. CARTER: Object to the form.

24 A. I figured.

25 Q. (BY MR. NORTHCRAFT) Pardon me?

1 A. I figured he was because I wasn't supposed to
2 tackle him anyway.

3 Q. All right. When he said, "Yeah, fine,
4 whatever," how did you interpret that?

5 A. It was just he didn't want to talk to me at
6 the moment so I just turned around and walked away.

7 Q. Did he say anything else to you?

8 A. Not to my knowledge.

9 Q. And how close were you to him when he said
10 that?

11 A. It was like as he was -- as I was helping him
12 up, I was saying, Yeah, I'm sorry, I was saying sorry
13 to him, and then as he got to his feet he said, Yeah,
14 that's when I started walking away as he was saying it.
15 Because I could sense it in his like voice that he
16 didn't want to talk to me.

17 Q. Did he say anything else to you?

18 A. No.

19 Q. Did you ever hear him say, Oh, I have a
20 headache?

21 A. Right after that or --

22 Q. Yeah, at that point?

23 A. No, I didn't listen to him after that.

24 Q. Okay. Did you ever hear him say he had a
25 headache?

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A. Not during that day.

Q. When? Did you ever hear him say he had a headache?

A. No.

Q. At any point in time?

A. No.

Q. After this tackle?

A. No.

Q. Either that day or the next day?

A. Nope.

Q. When you stood up, how close was he to you from where you stood up from where you had fallen?

A. I took about three or four steps to get to him, so he was a distance, about five, six feet away from me.

Q. Was he still -- was he still inbounds?

A. I don't think so.

Q. Do you think he was out of bounds?

A. Yeah.

Q. Was he on the out-of-bounds line?

A. I don't know if -- the lines weren't painted that day so I'm not really sure.

Q. Okay.

A. The lines were painted, but they were more faint because we'd been running on them already. So I

1 A. Probably like Antonio.

2 Q. But they didn't indicate to you --

3 A. Nobody.

4 Q. -- the school district attorneys didn't
5 indicate to you that they talked to any other players?

6 A. Not that I remember.

7 MS. CARTER: All right. I think that's
8 all I have for now. I may have a few more questions
9 for you. Thanks.

10

11

FURTHER EXAMINATION

12

BY MR. NORTHCRAFT:

13

14

Q. When you went over to help Matthew up off the
ground, did anyone else actually come over and pull him
up like you did?

15

16

17

18

19

A. I can't remember. To my knowledge, I'm the
only one that was there, but as -- from this statement
I read with Tyler and Antonio, some -- there was other
people there, too.

20

21

22

23

24

25

Q. Do you remember that?

A. No.

Q. As far as you know, it was just you pulling
him up, right?

A. Yeah.

Q. And when he said, Whatever, fine, did he slur

1 his words?

2 A. Not that I remember.

3 Q. Could you understand him?

4 A. Yeah.

5 Q. Did he act sluggish?

6 A. No.

7 Q. Did he look shaken up?

8 A. No.

9 Q. Did he stumble or list to one side or anything
10 like that?

11 A. He got up just fine that I could tell.

12 Q. Did he act groggy?

13 A. No.

14 Q. Did he say he was hurt?

15 A. No.

16 Q. For the rest of the tackle, after the juniors,
17 Forrest and Billy and possibly others had given you a
18 bad time about this accidental tackle, were you really
19 paying any attention to where Matthew was during the
20 rest of the practice?

21 MS. CARTER: Object to the form.

22 A. No, not really.

23 Q. (BY MR. NORTHCRAFT) And why did you leave the
24 locker room so quickly?

25 A. I just didn't want to deal with all the stuff

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

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

Deposition of FORREST TYLER KOPTA
Friday, November 22, 2013

Reported by: Vicki A. Saber
CSR No. 6212, RPR, CRR, CCRR, CLR

1 A. No, I don't remember where I got this from. I
2 don't remember who gave it to me or anything.

3 Q. And you haven't had a discussion with Billy or
4 Tyler or Kavan about whether they reviewed statements
5 and signed statements?

6 A. No, I haven't talked -- I've talked to Billy
7 one time since I went to boot camp, and we never talked
8 about this.

9 Q. If you thought it was weird that you were
10 being asked to review and sign it, why not bring that up
11 with someone?

12 A. I was a kid. I mean, I trusted them. I had
13 no reason to think that -- you know, who would -- I
14 don't know. I was just a dumb kid, I guess.

15 Q. Is there anything contained in this statement
16 that we've just reviewed in careful detail marked as
17 Exhibit 8 and Exhibit 12 that you believe is not
18 accurate as you sit here today?

19 MR. NORTHCROFT: Object to the form.

20 THE WITNESS: Without the tape I couldn't tell
21 you for sure.

22 BY MS. CARTER:

23 Q. As you review this transcript is there
24 anything -- any of the words that you believe are
25 inaccurately transcribed?

1 A. I don't remember.

2 Q. When you received the phone call -- I believe
3 you said it was Mrs. Newman that called you to come over
4 to the house initially; is that right?

5 A. I'm not a hundred percent sure on that. I
6 can't remember who asked me to come over.

7 Q. If it wasn't Mrs. Newman, would it have been
8 Mr. Newman?

9 A. Yes, it was one of the two.

10 Q. And do you remember what you were doing when
11 the phone call came in?

12 A. I remember I was at home, and I told my
13 parents. And -- but I don't remember if I left that day
14 or if I left later on that week, or when it was.

15 Q. And what did you tell your parents?

16 A. I told them that I was asked to go see a brain
17 specialist, and that I'd be back in an hour or two.

18 Q. And did they have any questions for you about
19 that?

20 A. No.

21 Q. And did you ever tell your mother that you
22 were meeting with a brain surgeon?

23 A. I might have. Brain -- I don't remember
24 exactly what he said. It was either brain specialist or
25 brain surgeon. Something along those lines. That's

1 what I was told.

2 Q. Are those two kind of the same thing in your
3 mind?

4 A. They're both not a lawyer, so yes.

5 Q. So if somebody is not a lawyer, then it
6 doesn't matter?

7 MR. NORTHCROFT: Object to the form.

8 THE WITNESS: In this case I was lied to so
9 your question, regardless, is still I was lied to, and
10 that's the way I see it.

11 BY MS. CARTER:

12 Q. Okay. Were you told that the purpose of the
13 meeting was to find out what happened to Matthew?

14 A. With a lot more detail added to that. I said
15 it I think three or four times today. I was told that
16 he was researching how this happens, and that he was
17 trying to figure out how -- the symptoms of concussions
18 and how to prevent this in the future. And that's what
19 I was told.

20 Q. And did Mr. Adler, when you met him in person,
21 tell you that he was the president of the Brain Injury
22 Association of Washington? Does that sound familiar?

23 A. He might have, but I don't remember.

24 Q. Okay. And do you remember hearing of that
25 group, the Brain Injury Association of Washington?

1 A. I don't remember that, no.

2 Q. Is it possible that when you got the phone
3 call from either Mr. or Mrs. Newman that they asked you
4 to meet with the president of the Brain Injury
5 Association of Washington?

6 MR. NORTHCROFT: Object to the form.

7 THE WITNESS: Okay. If they did say that,
8 regardless, they never told me that he was a lawyer, and
9 he never told me that he was a lawyer. So I mean, it's
10 pretty convenient that that was left out. I see what
11 you're getting at, but regardless, it was left out.

12 BY MS. CARTER:

13 Q. Sure. And I understand your position about
14 that. What I'm trying to get at is whether they told
15 you that you were meeting an individual who was
16 associated with the Brain Injury Association.

17 Do you have a recollection of that?

18 A. I don't remember that.

19 Q. And when you met with Mr. Adler did he give
20 you a business card?

21 A. Not that I remember.

22 Q. Do you recall him showing you a business card?

23 A. No, not that I remember.

24 Q. Do you recall him telling you that he had two
25 jobs, a day job and a night job?

1 A. Not that I remember, no.

2 MS. CARTER: Do you want to take a break?

3 (Recess taken.)

4 BY MS. CARTER:

5 Q. Mr. Kopta, I'm going to read to you from Tyler
6 Hakala's deposition. He was deposed just like you're
7 being deposed right now, and he was asked a question
8 about his meeting with Mr. Adler at the Newman home.

9 And the question was:

10 "Did Mr. Newman actually tell you that
11 Richard Adler was an attorney?"

12 And Tyler's answer, this is page 52, line 11
13 of his deposition:

14 "He did not, but when I went there,
15 Richard told me he was an attorney."

16 A. Okay.

17 MR. NORTHCROFT: Object to the form.

18 THE WITNESS: That wasn't what I was told
19 though.

20 BY MS. CARTER:

21 Q. Your experience was different?

22 A. Yes.

23 Q. I'm going to read to you from Antonio
24 Gonzalez's deposition. You know Antonio, right?

25 A. Yes.

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 RYAN MARTIN

December 19, 2012
1:09 p.m.
917 Triple Crown Way
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

1 And at the time that seminar was going on and Marla,
2 Randy, Matthew Patrick and Benjamin Newman were all
3 there. And the seminar, I can't remember where it was
4 exactly, it was in the Seattle area and my mom, you
5 know, asked me if I wanted to stay with them and, you
6 know, go to that seminar or whatever. And, you know,
7 Patrick was really close to me and he wanted me to go
8 and hang out with him and stuff so I did.

9 Q. And when was that relative to July 28th, 2010?

10 A. I don't recall, I know it was that summer.

11 Q. Okay. You have real summers in Eastern Washington,
12 so -- and we really don't over here, so could you tell
13 me maybe what month it was?

14 A. Okay.. Yeah, it was -- it was either June, July or
15 August, one of those months, probably not August
16 because we had a -- my aunt's wedding was during that
17 time and I went to school mid-August, August like
18 20th, I think, so it probably wasn't August, I think
19 it was more June or July.

20 Q. All right. And then you met with Mr. Adler on
21 July 28th, 2010?

22 A. Yes.

23 Q. That was the next time you saw him?

24 A. Yes.

25 Q. What did you understand was his reason for wanting to

1 talk to you?

2 MS. CARTER: Object to form.

3 A. I was -- I was talking to him -- well, from my
4 understanding was he was -- like I said, he was a
5 representative of the brain association. I'm not sure
6 if that's the full name of it, but -- and he was
7 talking to me on behalf of them.

8 Q. (By Mr. Northcraft) Did he tell you that he was a
9 lawyer at that time?

10 A. Not that I remember.

11 Q. At some point did you learn that he is a lawyer?

12 A. Yes.

13 Q. When did you learn that?

14 A. I don't remember.

15 Q. I take it it was after July 28th, 2010?

16 A. Yes.

17 Q. Have you seen him -- how did you learn that he was --
18 that he is a lawyer?

19 A. I don't remember.

20 Q. Have you met with him since July 28th, 2010?

21 A. Yes.

22 Q. How many times?

23 A. Once. I met with him over my Thanksgiving break,
24 which was the week of Thanksgiving.

25 Q. And where did this meeting occur?

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

Plaintiffs,)

vs.)

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

Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF TYLER HAKALA

December 13, 2012
3:32 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 A. Yes, Mr. Newman.

2 Q. What did he tell you about why he was calling a
3 meeting?

4 A. He told us that an attorney, Richard Adler, that was
5 working with the, whatever, the concussion
6 foundation, whatever, the association or program he
7 was working with, wanted to talk to us about and
8 figure out, you know, why this injury happened to
9 Matthew and, you know, how it can be, you know,
10 determined and figure out what happened.

11 Q. Did Mr. Newman actually tell you that Richard Adler
12 was an attorney?

13 A. He did not, but when I went there, Richard told me he
14 was an attorney.

15 Q. And when, when did he tell you that?

16 A. When he introduced himself to me, Hi, I'm Richard
17 Adler, I'm an attorney, but I'm working for the
18 concussion foundation, or whatever that program,
19 that's how he introduced himself to me.

20 Q. Did he tell you whether or not he had been retained
21 by the Newman family?

22 A. No.

23 Q. He didn't say that either way?

24 A. Yeah. I don't believe he was at that point.

25 Q. Why don't you think that?

1 A. Because, well, at least to my knowledge, there wasn't
2 a lawsuit at that time, so there was no reason to
3 believe that it was anything more than just figuring
4 out why this happened.

5 Q. Did you think that Mr. Adler was looking for facts to
6 support a lawsuit for Newmans?

7 A. Not at the time, no.

8 Q. At some point did you?

9 A. Well, as soon as I was aware of the lawsuit that's in
10 place now, that's when, you know, you kind of look
11 back and think, well, you know, was that his
12 intention at that time, or was it not. I don't know.

13 Q. Okay. So you mentioned a number, a couple of other
14 fellows that went to this meeting, I think Billy and
15 Kavan and Forrest and a couple of other players. You
16 don't remember the names of those two?

17 A. I don't remember exactly which ones he called, no.

18 Q. And did you have one, more than one meeting at the
19 Newman residence?

20 A. Yes.

21 Q. How many meetings did you have?

22 A. I think in total I've met with Newmans and Richard
23 three or four times.

24 Q. At the Newman residence?

25 A. Yes.

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.)

NO. 12-2-03162-1

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

Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF JOHN HEIN

February 22, 2013
10:57 a.m.
917 Triple Crown Way
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

1 Q. You explained what you'd heard?

2 A. Yeah, what I've heard.

3 Q. Because you didn't see it?

4 A. Yeah, I didn't.

5 Q. Did he tell you whether or not he was a lawyer
6 representing the Newman family?

7 A. He did not tell me at that point in time, no.

8 Q. Did he tell he was a medical researcher?

9 A. No, he told me that he was -- he worked with the --
10 the people from the Seahawks and the U-Dub, he works
11 with them to help with their head injury programs.
12 That he's in that area with them. He never told me he
13 was a medical or a doctor or anything like that.

14 Q. Did you understand he was a lawyer?

15 A. No, I didn't.

16 Q. How long a meeting was this?

17 A. I don't know. I'd say 30 minutes.

18 Q. Okay. And were there any other participants?

19 A. No.

20 Q. Did he take any audio -- did he tape record any of
21 your discussion?

22 A. No, he did not.

23 Q. Did he videotape any of your discussion?

24 A. No, he did not.

25 Q. Do you remember anything else he said besides what

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 KAVAN STOLTENOW

December 19, 2012
11:03 a.m.
917 Triple Crown Way
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

1 A. Yes.

2 Q. It said that there was a camera crew there?

3 A. Yeah, they were in the basement and I did the
4 interview in the living room upstairs. And once I
5 finished with the interview I went downstairs and they
6 asked me some questions about Matthew and just the
7 situation.

8 Q. And this interview that you gave that was -- that had
9 been apparently transcribed and identified in
10 Exhibit 3, was that interview that you gave
11 videotaped?

12 A. No.

13 Q. And other than the videotaping that occurred
14 downstairs, were you videotaped at any other time
15 prior to this meeting on the 28th?

16 A. No.

17 Q. Did you meet with Mr. Adler or any other person prior
18 to the 28th?

19 A. No, I did not.

20 Q. How is it that you came to be at the Newman residence
21 on the 28th of July, 2010?

22 A. Matthew's father called me and asked me if I would be
23 willing to come over and talk to Mr. Adler.

24 Q. Did anybody tell you who Mr. Adler was?

25 A. Not beforehand, but once I got there he introduced

1 himself to me and spoke to me about what he was doing.

2 Q. What did he say he was doing?

3 A. I don't remember specifically, but I remember that he
4 was -- he was trying to figure out what Matthew was --
5 I mean, what happened to Matthew and that's about all
6 I can remember.

7 Q. Did he identify himself as a lawyer at that time?

8 A. I can't remember, but I know he never told me that he
9 was with Matthew, he told me he was there for the
10 brain injury foundation or whatever it's called. And
11 that he was just trying to figure out what happened
12 and the best way to prevent things like this happening
13 in the future.

14 Q. What did you understand the purpose of this
15 videotaping in the basement?

16 A. For some kind of compilation of cases like Matthew's
17 and just this brain injury. I think -- I think it was
18 specifically to football and just them getting some
19 background information for some cases and putting it
20 together.

21 Q. What was your part, I mean, in this movie that was
22 being prepared as you understood it, what part did you
23 play?

24 MS. CARTER: Object to form.

25 A. I just was there to provide some information about

DECLARATION OF CUSTODIAN OF RECORDS:

The Records Custodian for:

Stephen T. Glass, MD/Northwest Child Neurology

RECEIVED

answers the following questions regarding:

MAY 06 2013

Matthew Andrew Newman
DOB: 07/05/1992
SSN: XXX-XX-3164

NORTHCRAFT, BIGBY & BIGGS, P.C

1. What is your name and work address?
~~Matthew Andrew Newman~~
 STEPHEN T. GLASS, MD, R.S.
 NORTHWEST CHILD NEUROLOGY
 19516 NORTH CREEK PARKWAY, SUITE 308
 BOTHELL, WA 98011
2. State the capacity in which you are employed by the above named facility and state whether you are one of the authorized record librarians.
 medical assistant, yes.
3. Are the attached documents the complete records, including billings, of the above named facility or physician regarding the above named person?
 yes
 If not, what records have been omitted?
4. Were these records made, kept, and maintained by the above named person/entity in the regular course of business at or near the time of the act, condition, or event recorded therein?
 yes
5. If photocopies have been made of the original records, were such copies made under your direction and control and are they true and correct copies of such records?
 yes

Pursuant to RCW 9A.72.085, I hereby certify and declare under the penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Tawyn Brinkland
Authorized Custodian

Dated at 5/2/13,
this ___ of _____, _____

STEPHEN T. GLASS, MD Northwest Child Neurology 19515 North Creek Parkway, Suite 308 Bothell, WA 98011		NAME NEWMAN, Matthew A.
		B.D. 07/05/92
		PHONE
		REF.
Date & Problem	HISTORY <p>Matthew is an 18:1:1 y/o right-handed male referred for a comprehensive evaluation by Richard Adler, Esq. following traumatic brain injury. History today is obtained today from Matthew and his parents, who accompany him to the office today. Also present for the visit is Mary Sussex, MN, RN. No prior medical records are available before today's visit though at the time of the visit, substantial volume of medical records revolving around Matthew's injury and postinjury course are provided for review.</p> <p>Matthew was in his usual state of health until September of 2009 when he suffered a severe closed-head injury. The date in question for the major injury was 09/18/09, though on the day prior, Matthew apparently suffered an injury as well as possibly injuries even prior to this point in time as well.</p> <p>On 09/17/09, Matthew suited up with practice gear in anticipation of the football game the following day, suffered a fall and apparent injury. The details of this are not known as parents did not witness it and it falls back on Matthew's recall of the event. Matthew recalls being in "practice gear" including his helmet when abruptly a "little kid" jumped him from behind and pulled him down to the concrete, striking his helmet and head on concrete below. Parents were not aware of the injury though that evening, Matthew came home and parents, who had not yet come home, later arriving, indicated Matthew was extremely agitated on the phone. Matthew was involved in a cooking project for French class and mom had not yet come home to help him and beyond the usual level of frustration and agitation, Matthew was out of character, highly reactive, very upset and agitated and did not come home until 9 pm. Apparently, teammates on that day of this initial injury indicated that Matthew had claimed after this fall "my head hurts" and in fact saw enough to ask him "Are you okay?" At the end of practice, in fact, Matthew did not continue on with the rest of his teammates but rather, slowed down although he did engage in some running. Regardless, he suffered an injury, had a change in mental status, headache but did continue with some though a lower level of physical activity after its occurrence.</p> <p>Apparently, the month prior, while in football camp, Matthew also suffered injury where he was apparently hit out of bounds. Mom had called to check up on him. Matthew indicates that he was tackled by a "kid from Foppenish" where his back struck a golf cart-like vehicle on the side-line as well as suffering a head injury and after which he had a headache. Finally, as far back as the spring of 2009, perhaps late March early April, Matthew while playing basketball was "kneed in the head" and following that he had a headache and didn't even play the first few games, the coach having taken him out.</p>	

PROGRESS NOTES

GLASS 2

STEPHEN T. GLASS, MD Northwest Child Neurology 19515 North Creek Parkway, Suite 308 Bothell, WA 98011		NAME NEWMAN, Matthew A.
		B.D. 7/5/92 PHONE
		REF.
Date & Problem 11/1/11	<p>Matthew returns for reevaluation of his posttraumatic encephalopathy and associated neurologic concerns. Matthew is now 19-4 and is accompanied to the office today by both parents and also by Mary Sussex, R.N., M.N. Matthew was last seen on 6/14/11.</p> <p>First, parents and I discussed additional history which they wanted to share to clarify some issues discussed during the visit on 6/14/11. At the time of that visit, I had asked of Matthew his recall and details regarding the practice that occurred on 9/17/09, and then the game during which he suffered an injury on 9/18/09. Parents clarify today that because of his head injury, his recall after being tackled at practice was very likely not as accurate as parents were told and as I was told in that he really does not have a clear memory of what happened at all. Rather, he learned indirectly from his teammates what happened, and in fact, they spoke that when he was tackled during practice, he was pushed out of bounds and his helmet impacted the track that sits very close to the football field. Matthew learned from his friends, moreover, that he was taken out of practice by both or one of his coaches and did not return to practice. One of his coaches was apparently with him in the end zone. After this event, he had a headache, having been tackled when his helmet hit the track. Following this, parents never received a phone call or a note from any of the coaches or from the school or other personnel about what had happened at practice on September 17 or the fact that Matthew struck his head or that he had had a headache that was persistent or that he was removed from practice because of all of these events.</p> <p>Secondly, we discussed an event which occurred a month prior while Matthew was in football camp. Matthew had indicated to me that he was "tackled by a kid from Toppenish," and in fact, Matthew was tackled by a player from Toppenish where Matthew's back struck a golf cart-like vehicle that was sitting on the sidelines. On this occasion, however, there was no injury to the head, just to the back. Following this, Matthew did not complain of headaches nor did he show any signs of head injury.</p> <p>Subsequently, when we discussed the game on the evening of 9/18/09, Matthew was playing in an overtime portion of the game where the game was tied. Parents clarified the events that occurred on which I then elaborated, again acknowledging that Matthew did not recall the event specifically. Parents recall of the sequence of what happened was that a play was called by the coach during that overtime, and Matthew or someone else called a time-out as Matthew was not able to remember the play. He then began to complain of dizziness, numbness and tingling in his legs and then dropped on the field, losing consciousness and all responsiveness. In addition, the later discussion of Matthew being violently "sandwiched" between two</p>	

PROGRESS NOTES

Highland School District Concussion Information Sheet

A concussion is a brain injury and all brain injuries are serious. They are caused by a bump, blow, or jolt to the head, or by a blow to another part of the body with the force transmitted to the head. They can range from mild to severe and can disrupt the way the brain normally works. Even though most concussions are mild, all concussions are potentially serious and may result in complications including prolonged brain damage and death if not recognized and managed properly. In other words, even a "ding" or a bump on the head can be serious. You can't see a concussion and most sports concussions occur without loss of consciousness. Signs and symptoms of concussion may show up right after the injury or can take hours or days to fully appear. If your child reports any symptoms of concussion, or if you notice the symptoms or signs of concussion yourself, seek medical attention right away.

Symptoms may include one or more of the following:	
<ul style="list-style-type: none"> • Headaches • "Pressure in head" • Nausea or vomiting • Neck pain • Balance problems or dizziness • Blurred, double, or fuzzy vision • Sensitivity to light or noise • Feeling sluggish or slowed down • Feeling foggy or groggy • Drowsiness • Change in sleep patterns 	<ul style="list-style-type: none"> • Amnesia • "Don't feel right" • Fatigue or low energy • Sadness • Nervousness or anxiety • Irritability • More emotional • Confusion • Concentration or memory problems (forgetting game plays) • Repeating the same question/comment

Signs observed by teammates, parents and coaches include:
<ul style="list-style-type: none"> • Appears dazed • Vacant facial expression • Confused about assignment • Forgets plays • Is unsure of game, score, or opponent • Moves clumsily or displays incoordination • Answers questions slowly • Slurred speech • Shows behavior or personality changes • Can't recall events prior to hit • Can't recall events after hit • Seizures or convulsions • Any change in typical behavior or personality • Loses consciousness

Adapted from the CDC and the 3rd International Conference on Concussion in Sport
Document created 6/15/2009

Highland School District Concussion Information Sheet

What can happen if my child keeps on playing with a concussion or returns too soon?

Athletes with the signs and symptoms of concussion should be removed from play immediately. Continuing to play with the signs and symptoms of a concussion leaves the young athlete especially vulnerable to greater injury. There is an increased risk of significant damage from a concussion for a period of time after that concussion occurs, particularly if the athlete suffers another concussion before completely recovering from the first one. This can lead to prolonged recovery, or even to severe brain swelling (second impact syndrome) with devastating and even fatal consequences. It is well known that adolescent or teenage athlete will often under report symptoms of injuries. And concussions are no different. As a result, education of administrators, coaches, parents and students is the key for student-athlete's safety.

If you think your child has suffered a concussion

Any athlete even suspected of suffering a concussion should be removed from the game or practice immediately. No athlete may return to activity after an apparent head injury or concussion, regardless of how mild it seems or how quickly symptoms clear, without medical clearance. Close observation of the athlete should continue for several hours. The new "Zackery Lystedt Law" in Washington now requires the consistent and uniform implementation of long and well-established return to play concussion guidelines that have been recommended for several years:

"a youth athlete who is suspected of sustaining a concussion or head injury in a practice or game shall be removed from competition at that time"

and

"...may not return to play until the athlete is evaluated by a licensed health care provider trained in the evaluation and management of concussion and received written clearance to return to play from that health care provider".

You should also inform your child's coach if you think that your child may have a concussion. Remember it's better to miss one game than miss the whole season. And when in doubt, the athlete sits out.

For current and up-to-date information on concussions you can go to:
<http://www.cdc.gov/ConcussionInYouthSports/>

Adapted from the CDC and the 3rd International Conference on Concussion in Sport
Document created 6/15/2009

Highland School District Concussion Information Sheet

A concussion is a brain injury and all brain injuries are serious. They are caused by a bump, blow, or jolt to the head, or by a blow to another part of the body with the force transmitted to the head. They can range from mild to severe and can disrupt the way the brain normally works. Even though most concussions are mild, all concussions are potentially serious and may result in complications including prolonged brain damage and death if not recognized and managed properly. In other words, even a "ding" or a bump on the head can be serious. You can't see a concussion and most sports concussions occur without loss of consciousness. Signs or symptoms of concussion may show up right after the injury or can take hours or days to fully appear. If your child reports any symptoms of concussion, or if you notice the symptoms or signs of concussion yourself, seek medical attention right away.

Symptoms may include one or more of the following:

- Headaches
- "Pressure in head"
- Nausea or vomiting
- Neck pain
- Balance problems or dizziness
- Blurred, double, or fuzzy vision
- Sensitivity to light or noise
- Feeling sluggish or slowed down
- Feeling foggy or groggy
- Drowsiness
- Change in sleep patterns
- Amnesia
- "Don't feel right"
- Fatigue or low energy
- Sadness
- Nervousness or anxiety
- Irritability
- More emotional
- Confusion
- Concentration or memory problems (forgetting game plays)
- Repeating the same question comment

Signs observed by teammates, parents and coaches include:

- Appears dazed
- Vacant facial expression
- Confused about assignment
- Forgets plays
- Is unsure of game, score, or opponent
- Moves clumsily or displays incoordination
- Answers questions slowly
- Slurred speech
- Shows behavior or personality changes
- Can't recall events prior to hit
- Can't recall events after hit
- Seizures or convulsions
- Any change in typical behavior or personality
- Loses consciousness

Adapted from the CDC and the 3rd International Conference on Concussion in Sport
Document created by US, 2009

Highland School District Concussion Information Sheet

What can happen if my child keeps on playing with a concussion or returns too soon?

Athletes with the signs and symptoms of concussion should be removed from play immediately. Continuing to play with the signs and symptoms of a concussion leaves the young athlete especially vulnerable to greater injury. There is an increased risk of significant damage from a concussion for a period of time after that concussion occurs, particularly if the athlete suffers another concussion before completely recovering from the first one. This can lead to prolonged recovery, or even to severe brain swelling (second impact syndrome) with devastating and even fatal consequences. It is well known that adolescent or teenage athlete will often under report symptoms of injuries. And concussions are no different. As a result, education of administrators, coaches, parents and students is the key for student athlete's safety.

If you think your child has suffered a concussion

Any athlete even suspected of suffering a concussion should be removed from the game or practice immediately. No athlete may return to activity after an apparent head injury or concussion, regardless of how mild it seems or how quickly symptoms clear, without medical clearance. Close observation of the athlete should continue for several hours. The new "Zackey Lystedt Law" in Washington now requires the consistent and uniform implementation of long and well-established return to play concussion guidelines that have been recommended for several years.

"A youth athlete who is suspected of sustaining a concussion or head injury in a practice or game shall be removed from competition at that time"

and

"... may not return to play until the athlete is evaluated by a licensed health care provider trained in the evaluation and management of concussion and received written clearance to return to play from that health care provider"

You should also info in your child's coach if you think that your child may have a concussion. Remember its better to miss one game than miss the whole season. And when in doubt, the athlete sits out.

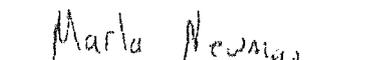
For current and up-to-date information on concussions you can go to:
<http://www.cdc.gov/ConcussionInYouthSports/>

Matthew Newman
Printed Name of Student Athlete


Student Athlete Signature

Date

Marla Newman
Printed Name of Parent or Legal Guardian


Parent or Legal Guardian Signature

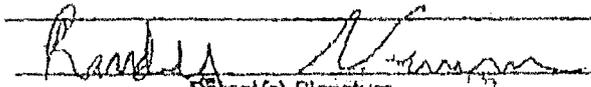
Date

Adapted from the CDC and the 1st International Conference on Concussion in Sport
Document created 6/15/2009

SHARED RESPONSIBILITY FOR SPORT SAFETY The responsibility for sport safety must be shared by all. I, the undersigned, am aware that there is a certain risk of injury involved in my participation in the athletic program at Highland High School. It is understood by the school and myself that signing this document does not relieve the school of its responsibilities toward my welfare. It is intended to indicate that I understand that the responsibility is shared and to acknowledge that there is a risk of injury in any activity.

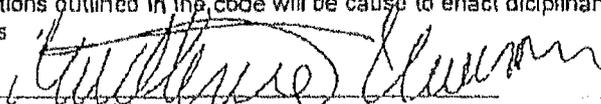

Participant's Signature

Date


Parent(s) Signature

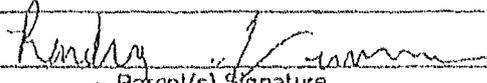
Date

Section 3: ATHLETIC/ACTIVITY CODE CONTRACT I have read the Highland School District Athletic/Activity Code and I understand its conditions and procedures. I realize that a violation of the conditions outlined in the code will be cause to enact disciplinary procedures or suspensions.



Participant's Signature

Date



Parent(s) Signature

Date

HIGHLAND PATH SCHOOL ATHLETICS/EXTRA-CURRICULAR
EMERGENCY MEDICAL RELEASE 2009 - 2010

STUDENT: Matthew W. [unclear] ACTIVITY: Football
 One card must be completed for each activity (fall, winter, or spring sport; weights; band, drill or rally)

Recognizing that the possibility exists that my son or daughter may need the services of a doctor and/or hospital during participation in athletic or extra-curricular activities, I do, by my signature, give permission for the school official in charge (teacher, coach, principal or other) to sign in lieu of the parent so that the needed emergency care may be administered. I understand that the school and its representatives will make all reasonable efforts to contact me prior to exercising the permission to seek medical assistance.

Check YES I give permission for school authority to sign for emergency care.
 here NO I do not wish to grant this authority and therefore release the school of all liability.

Sign Here
 My signature here indicates that I have read and understand the above information concerning medical releases. As parent or guardian I give permission for my student to participate and I have completed the emergency medical release request.
Pewee [unclear]
 Parent's Signature

Emergency Information
833-9650-9449-1692
 Home Phone #
(678) 833-9650
 Emergency Phone #
D. Bartlett
 Family Physician
Merrill [unclear]
 Hospital Preference
 List Medical Concerns

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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,)

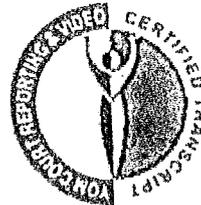
12-2-03162-1

Plaintiffs,)

vs.)

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

Defendant.)



VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF

MARLA NEWMAN

9:39 A.M.

APRIL 17, 2014

6 SOUTH 2ND STREET, SUITE 316

YAKIMA, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578



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(Mr. Newman entered the room.)

Q. (BY MR. BIGGS) For the injuries in September and in December, you began engaging counsel?

A. Yes.

Q. Okay. All right.

So your testimony is until you came home that evening after practice, you did not talk to Matthew, correct?

A. Before I came home?

Q. Yes.

A. No, I did not talk to him.

Q. Okay. And after you came home, every single thing about Matthew's behavior, everything you observed and everything he said led you to believe he was 100 percent normal?

MS. CARTER: Object to the form.

A. Yes.

Q. (BY MR. BIGGS) Do you know if anybody else observed anything about Matthew's behavior that was in any way unusual that evening?

MS. CARTER: Object to the form.

A. Nobody said anything, no.

Q. (BY MR. BIGGS) Okay. So I take it then that your husband did not make any comments about anything unusual about Matthew that evening?



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1 A. No.

2 Q. So nobody, your husband or anybody else,
3 nobody said to you that Matthew was extremely agitated
4 that evening?

5 A. No.

6 Q. And nobody said to you that Matthew was beyond
7 his usual level of frustration and agitation that
8 evening?

9 A. No.

10 Q. Nobody said to you that Matthew was acting in
11 any way out of character?

12 A. No.

13 Q. Nobody said to you that Matthew was highly
14 reactive?

15 A. No.

16 Q. Nobody said to you that Matthew that evening
17 was very upset?

18 A. No.

19 Q. Nobody said to you that Matthew said his head
20 hurt?

21 A. No.

22 Q. Or that he had a headache?

23 A. No.

24 Q. And you told me already that you never made
25 any of those claims to anybody else. You never said



1 that anybody said those things. Did you ever hear
2 anybody else claim any of those topics I just talked
3 about; did your husband or anybody else ever say
4 anything else like that that you heard?

5 MS. CARTER: Object to the form.

6 A. No.

7 Q. (BY MR. BIGGS) Who's Dr. Glass?

8 A. A neurologist in Seattle, Matthew's doctor.

9 Q. Someone that your attorneys sent you to?

10 A. Yes.

11 Q. Did you ever tell Dr. Glass any of those
12 things?

13 A. No.

14 Q. Okay. I'm going to hand you what's marked as
15 Exhibit 2 to your deposition. Sorry, these are not
16 stapled.

17 Have you ever seen these records before?

18 MS. CARTER: Take a minute and look at
19 it, please. Look at both pages.

20 Q. (BY MR. BIGGS) The question before you is,
21 have you seen these records before?

22 MS. CARTER: You asked her to look at
23 the document. She's looking at the document. Please
24 let her finish.

25 MR. BIGGS: I did not ask her to look.



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1 I asked her if she's seen it before.

2 MS. CARTER: Well, she needs to look at
3 it to know if she's seen it before. So please let her
4 finish looking at it.

5 MR. BIGGS: She can tell me if she's
6 having a problem.

7 A. (Witness reviewing document.)

8 I guess I've seen it before. Yes.

9 Q. (BY MR. BIGGS) You have seen this record
10 before?

11 A. Yes.

12 Q. Have you read Dr. Glass's medical file?

13 A. Not until today.

14 Q. When did you read it first?

15 A. Just now.

16 Q. You said you've seen it before. When did you
17 see it before?

18 A. Well, didn't we answer questions?

19 Q. That's okay. I'll withdraw that question.

20 Let's go ahead and take a look -- Dr. Glass's
21 report dated June 14, 2011, says that the history was
22 obtained from Matthew and his parents.

23 Were you present when the history was taken by
24 Dr. Glass?

25 A. Yes.



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1 Q. And who else was present that day?

2 A. My husband.

3 Q. Who else?

4 A. Randy, my husband, and Matthew.

5 Q. Was there anybody else there?

6 A. No.

7 Q. Was there anybody there from the law firm that
8 represents you?

9 A. Maybe Mary Sussex, but I don't recall.

10 Q. And who is Mary Sussex?

11 A. She's a nurse.

12 Q. What does Mary Sussex have to do with this
13 case?

14 A. She handles all our doctors' appointments and
15 helping us get doctors' appointments and medical
16 records.

17 Q. Is Mary Sussex someone that you hired?

18 A. No.

19 Q. Who hired her?

20 A. Our lawyers.

21 Q. But she's the one that coordinates medical
22 care?

23 A. Yeah.

24 Q. Okay. You've had a chance now to take a look
25 at Dr. Glass's --



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1 A. Yes.

2 Q. -- record from this day. And I'd like to
3 direct you to a couple of particular parts. I'd like
4 to talk to you about that and see if it changes your
5 recollection of anything.

6 About halfway down the page, there's a
7 sentence that begins, Parents were not aware of the
8 injury.

9 Do you spot that part?

10 A. Yes.

11 Q. Okay. And I'll just read a section of that.

12 Parents were not aware of the injury, though
13 that evening, Matthew came home and parents, who had
14 not yet come home, later arriving, indicated Matthew
15 was extremely agitated on the phone.

16 Now, let me ask you one more time, did Matthew
17 demonstrate any agitation that evening?

18 A. No. He was mad.

19 Q. The doctor wrote "extremely agitated." Did
20 you use those words?

21 A. We did not talk to him on the phone.

22 Q. Did you use those words talking to Dr. Glass?

23 A. I don't remember back then.

24 Q. Do you have any reason to believe that
25 Dr. Glass misunderstood what you said?



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1 A. I don't know.

2 Q. You have no reason to say that he
3 misunderstood it, right?

4 A. I don't know.

5 MS. CARTER: Object to the form.

6 Q. (BY MR. BIGGS) Don't you agree that Dr. Glass
7 was very careful with you when he was taking the
8 history?

9 MS. CARTER: Object to the form.

10 A. I never saw the notes after. I don't know.

11 Q. (BY MR. BIGGS) But he was being careful with
12 you to understand what was going on, right?

13 MS. CARTER: Object to the form.

14 A. He probably was.

15 Q. (BY MR. BIGGS) Okay. So let me ask you this
16 question: Do you deny that you ever used the words
17 "extremely agitated" with reference to Matthew the
18 evening after practice?

19 MS. CARTER: Object to the form.

20 A. I don't recall. I know he was mad.

21 Q. (BY MR. BIGGS) The question is, do you deny
22 using those words?

23 MS. CARTER: Object to the form. She's
24 asked -- she's answered the question.

25 MR. BIGGS: She did not answer the



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1 question.

2 A. I don't recall.

3 MS. CARTER: She said she doesn't
4 recall. Page 54. I can read it to you.

5 Q. (BY MR. BIGGS) So you don't deny it?

6 A. I don't recall.

7 Q. You might have said those words, you might not
8 have said those words?

9 MS. CARTER: Object to the form.

10 A. I don't remember.

11 Q. (BY MR. BIGGS) Okay. Let's go on.

12 Matthew was involved in a cooking project for
13 French class and mom had not yet come home to help him
14 and beyond the usual level of "frustration and
15 agitation?"

16 Do you see those words?

17 A. Yes.

18 Q. Did you use those words to Dr. Glass when you
19 met with him in June of 2011?

20 A. I don't recall.

21 Q. Do you deny using those words?

22 MS. CARTER: Object to the form.

23 A. I don't recall.

24 C (BY MR. BIGGS) So you might have used the
25 words?



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1 MS. CARTER: Object to the form.
2 A. I don't recall.
3 Q. (BY MR. BIGGS) Okay. Next, Matthew was "out
4 of character."
5 Did you use those words?
6 A. I do not recall.
7 Q. So you -- do you deny using those words?
8 MS. CARTER: Object to the form.
9 A. I don't recall.
10 Q. (BY MR. BIGGS) Okay. Matthew was highly
11 reactive.
12 Did you say something along those lines?
13 A. I do not recall.
14 Q. Okay. He was "very upset and agitated."
15 Did you say those words?
16 A. I don't recall.
17 Q. Down at the second line from the bottom of
18 that same paragraph, it begins with, Regardless?
19 A. Regardless, yes.
20 Q. Okay. Regardless -- again, we're reading from
21 Dr. Glass's notes, Regardless, he suffered an injury,
22 had a change in mental status.
23 Did you say anything to Dr. Glass about a
24 change in mental status?
25 A. I don't recall.



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1 Q. Okay. Change in mental status, comma,
2 headache.

3 Did you say anything to Dr. Glass about
4 Matthew having a headache?

5 A. No.

6 Q. Okay. So all the categories that I just
7 talked about, extremely agitated, beyond usual level of
8 frustration and agitation, out of character, highly
9 reactive, very upset and agitated, you remember -- you
10 don't remember whether or not you ever used any of
11 those words, but you remember for sure you never said
12 he had a headache, right?

13 A. Exactly.

14 Q. All right. And you know, don't you, that the
15 question of whether or not he had a headache is
16 important in this case?

17 MS. CARTER: Object to the form.

18 A. He never -- I never asked him if he had a
19 headache because I didn't have any clue that anything
20 happened that day. So why would it come up?

21 Q. (BY MR. BIGGS) Again, I know you're trying
22 hard, you're trying to be helpful. I know that. I
23 asked you whether you ever used the words "headache"
24 and you're certain that you never said that word and
25 you know it's important in this case; correct?



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MS. CARTER: Object to the form.

A. I -- why would I say it if I didn't know any -- he had a headache?

Q. (BY MR. BIGGS) The question is, do you know that that word is important in this case?

MS. CARTER: Object to the form.

A. I don't know if I used -- no, I don't know.

Q. (BY MR. BIGGS) Okay. You know --

A. I don't recall.

Q. -- whether or not Matthew had a headache is an important issue in this case, don't you?

MS. CARTER: Object to the form.

A. Yeah.

Q. (BY MR. BIGGS) Okay. And that's the one category that you're sure you never said to Dr. Glass of all the ones I mentioned?

MS. CARTER: Object to the form.

Q. (BY MR. BIGGS) Right?

A. No, I never said it because I never knew he had a headache.

Q. But you might have said he was extremely agitated?

MS. CARTER: Object to the form.

A. I don't recall.

Q. (BY MR. BIGGS) And you might have said he had



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1 a change in personality and so forth?

2 MS. CARTER: Object to the form.

3 A. I don't recall.

4 Q. (BY MR. BIGGS) Okay. Now, you told us that
5 in March of 2009 this incident that happened in the
6 middle school, something about an elbow and a head, you
7 don't know all the details. You didn't mention it to
8 the physician that was examining Matthew before his
9 season to give him clearance to play, right?

10 MS. CARTER: Object to the form.

11 A. Don't recall.

12 Q. (BY MR. BIGGS) Wait --

13 A. No.

14 Q. Did you or did you not tell the doctor who did
15 the preseason medical examination that Matthew had had
16 an injury in March 2009?

17 MS. CARTER: Object to the form.

18 A. No. I checked no.

19 Q. (BY MR. BIGGS) But you told Dr. Glass about
20 that, didn't you?

21 No, no. I don't want you to look at the
22 document. I want you to tell me from your recollection
23 whether you told Dr. Glass about that.

24 A. I don't remember.

25 Q. So you might have or might not have?



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1 Q. And just so we're clear, that evening, you did
2 not take Matthew in for an exam --

3 A. No.

4 Q. -- by a physician or anybody else?

5 A. No.

6 Q. You did not talk to any coaches that evening
7 or any time before the game about any concerns you had
8 about Matthew, correct?

9 A. Correct.

10 Q. You did not make any suggestion that Matt
11 should sit out a game or in any other way be protected
12 from anything; is that correct?

13 A. Correct.

14 Q. And as far as you, your husband and Matt were
15 concerned, he was 100 percent fine to play in the game,
16 correct?

17 A. Correct.

18 Q. And at no time did any of Matthew's friends
19 suggest anything to you otherwise, right?

20 A. Right.

21 Q. No coach, no parent, nobody ever suggested in
22 any way that Matthew wasn't 100 percent fine to play
23 the game, correct?

24 A. No.

25 Q. That is correct?



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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
RANDY NEWMAN

1:05 P.M.

APRIL 17, 2014

6 SOUTH 2ND STREET, SUITE 316

YAKIMA, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578



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1 easier to see a bad -- a sprained ankle, a broken bone.

2 Q. It relies in some ways on the student athlete
3 telling you what's going on, doesn't it? If they're
4 having a headache they got to tell you they're having a
5 headache, right?

6 MR. LERITZ: Object to the form.

7 A. Yeah, partly.

8 Q. (BY MR. BIGGS) And if they hide the fact from
9 you that they're having a headache, there's no way
10 you're going to know they have a headache typically,
11 right?

12 A. Not -- yeah. If they're going to hide it.

13 Q. Let's change time frame a little bit. And I
14 would like to talk to you about the day of practice
15 before your son's injury in the game. Are you with me?
16 The injury in the game and the day before there was a
17 practice. And you knew there was a practice that day,
18 right?

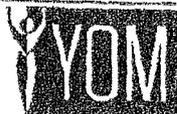
19 MR. LERITZ: Object to the form.

20 A. Right.

21 MR. BIGGS: What was your objection on
22 that one?

23 MR. LERITZ: It's compound.

24 Q. (BY MR. BIGGS) Okay. You understand the
25 question don't you, sir?



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1 A. Yes.

2 Q. Okay. Sometimes I think your counsel may be
3 having a hard time with it so I just want to make sure.

4 MR. LERITZ: I'm going to move to
5 strike. Counsel, that's not a question, that's a
6 comment. It's improper.

7 MR. BIGGS: It is a comment, yes, it is.

8 MR. LERITZ: And it's improper.

9 MR. BIGGS: Take it up.

10 MR. LERITZ: If you force me to, I will.

11 Q. (BY MR. BIGGS) Mr. Newman, you knew that day
12 after practice that Matt was extremely agitated, didn't
13 you?

14 MR. LERITZ: Object to the form.

15 A. No.

16 Q. (BY MR. BIGGS) You knew that that evening
17 after practice Matt was showing behavior beyond his
18 usual level of frustration and agitation, correct?

19 MR. LERITZ: Object to the form.

20 A. No. I did not know that.

21 Q. (BY MR. BIGGS) And you knew that Matthew was
22 acting out of character that evening, right?

23 MR. LERITZ: Object to the form.

24 A. No.

25 Q. (BY MR. BIGGS) You knew that Matthew was



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1 highly reactive that evening, didn't you?

2 MR. LERITZ: Object to the form.

3 A. No.

4 Q. (BY MR. BIGGS) It's true, is it not, that you
5 knew that Matthew was very upset that evening?

6 MR. LERITZ: Object to the form.

7 A. I wouldn't say very upset. Things weren't
8 going his way on this particular cooking -- dessert he
9 was trying to prepare and so he was a little bit
10 frustrated with that. But out of character? I
11 wouldn't say that.

12 Q. (BY MR. BIGGS) So it's typical for him to get
13 angry over that sort of thing?

14 MR. LERITZ: Object to the form.

15 A. I wouldn't say he was angry. He was just --
16 it wasn't going quite the way he would, you know,
17 wanted and --

18 Q. (BY MR. BIGGS) Was he upset?

19 A. He was a little frustrated.

20 Q. Your wife said he was mad. Do you agree with
21 that?

22 A. I wasn't around when they, they were -- had
23 their conversation.

24 Q. And you knew, didn't you, that following the
25 football practice Matthew said that his head hurt?



1 A. No.

2 MR. LERITZ: Object to the form.

3 A. I never knew that.

4 Q. (BY MR. BIGGS) When did you come home that
5 evening? Or when did you come into the house, let's
6 say, that evening?

7 A. I'm going to -- so it's the middle of harvest,
8 we're -- we've been picking all day, we've got 100 bins
9 sitting out on the deck, got a truck just showed up, I
10 run out of staples. I come in the house real quick to
11 get some staples, I'm in the house and heading right
12 back out. So that was my brief contact with Matthew.

13 Q. What time was that?

14 A. I would guess 7:00.

15 Q. 7 o'clock p.m.?

16 A. 7:00, 7:30, something like that.

17 Q. Okay. Then when did you next come into the
18 house?

19 A. Boy. You know, I don't know. Quarter to
20 9:00.

21 Q. When you came back into the house at about a
22 quarter of 9:00 in the evening, was your wife home?

23 A. Yes.

24 Q. When was Matthew doing this cooking project
25 that you referred to?



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1 A. He was doing that right when he got home from,
2 from football.

3 Q. What time was that?

4 A. And I would assume -- got home around 6:00,
5 6:30, and he was doing that. So he was -- when I came
6 in the house there, it was, I can't remember if he
7 was -- it was just going into the oven or just coming
8 out. But it just seems like it -- it -- it didn't --
9 didn't look quite like what it was supposed to.

10 Q. What did your son do or say that led you to
11 believe that he was frustrated with the process?

12 MR. LERITZ: Object to the form.

13 A. Just -- yeah, I don't really totally remember.
14 I just remember he was, you know, it wasn't going the
15 way he wanted it to and, you know, and I did not really
16 have time to -- and my advice was, Well, just slow
17 down, read the recipe, you know, just follow the recipe
18 through. That's about all I remember really.

19 Q. (BY MR. BIGGS) What do you know about him
20 being angry with his mother about the cooking project?

21 MR. LERITZ: Object to the form.

22 A. I don't know.

23 Q. (BY MR. BIGGS) So you didn't see any
24 interaction between your wife and your son related to
25 the cooking project?



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1 A. No, I did not.

2 Q. You would agree, wouldn't you, that at any
3 rate you did not take Matthew in for an examination
4 that night?

5 MR. LERITZ: Object to the form.

6 A. We had -- we had no reason to. I mean, he's
7 not acting abnormally.

8 Q. (BY MR. BIGGS) But you agree you did not do
9 that?

10 A. No, we did not do that. And why should we? I
11 mean, if -- if something had happened at practice that
12 day, the coaches should have notified us and then we
13 would have reason to have a more in-depth further
14 conversation with Matthew as to what, if something's
15 going on. But as it was, we had no reason to suspect
16 or think.

17 Q. And you did not talk to the coaches that
18 evening about anything going on in Matthew's life,
19 right?

20 A. Right.

21 Q. And you did not suggest for any reason that
22 Matthew should sit out the big game against Naches,
23 right?

24 MR. LERITZ: Object to the form.

25 A. Why would we suggest that when we --



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1 Q. (BY MR. BIGGS) I'm just asking if you did or
2 not?

3 A. No, we did not.

4 Q. And basically your testimony is that Matthew
5 was 100 percent fine, nothing out of the ordinary,
6 everything was typical that evening; is that correct?

7 MR. LERITZ: Object to the form.

8 A. I wasn't around Matthew long enough to know if
9 everything was absolutely hunky dory, perfect, normal.
10 Our brief, you know, interaction was probably about a
11 minute long.

12 Q. (BY MR. BIGGS) Okay. That was your total
13 interaction that evening?

14 A. Yes.

15 Q. After you returned inside the house, where was
16 Matthew?

17 A. He was in his room doing homework.

18 Q. Okay. Why don't you take a look, if you
19 would, please, at Exhibit Number 2 in front of you.

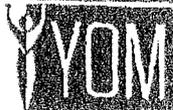
20 A. Two pages.

21 Q. Yes, we'll just be looking at the second
22 page --

23 A. Okay.

24 Q. -- on that.

25 A. (Witness reviewing document.) Okay.



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1 Q. Have you seen this medical note before today?

2 A. I have not.

3 Q. You know who Dr. Glass is, don't you?

4 A. Yes, I do.

5 Q. And this would appear to be the first visit
6 with Dr. Glass. Is that consistent with your
7 recollection?

8 A. Yes. Yes.

9 Q. Who was present that day?

10 A. My wife, myself, Matthew, Mary Sussex and
11 Dr. Glass.

12 Q. Why was Mary Sussex there?

13 A. She was our case manager.

14 Q. What do you mean by that?

15 A. She was just advising us on directions to go,
16 doctors to see and therapy and whatnot. Just helping
17 us, and then keeping everything in line.

18 Q. Why were you seeing Dr. Glass that day?

19 A. He was Matthew's neuropsychologist.

20 Q. Who sent you there?

21 A. Mary set us up there.

22 Q. Were you there at the suggestion of your
23 attorneys?

24 A. Mary's suggestion.

25 Q. Right, but is Mary speaking on behalf of the



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1 attorneys sending you there?

2 MR. LERITZ: Object to the form.

3 Q. (BY MR. BIGGS) What's your understanding?

4 A. I don't know. We just, you know, Mary's the
5 one that set this up and...

6 Q. (BY MR. BIGGS) Okay. During the interview
7 process to obtain the history, did Mary speak?

8 A. I don't believe she did. The stuff that she
9 always would talk about is more the medical, that type
10 of stuff she would speak on. Some of the doctors that
11 Matthew's seeing, some of the meds that Matthew's on.

12 Q. Okay. With particular emphasis on the history
13 part, the part that's before you there, do you recall
14 any of this information coming from Mary Sussex?

15 A. No, I don't.

16 Q. Okay. Between yourself, your wife and
17 Matthew, who did most of the talking?

18 A. I think my wife and I probably spoke more than
19 Matthew, but Matthew wanted to have his inputs, too.

20 Q. Was it important for you to give Dr. Glass an
21 accurate and complete history?

22 MR. LERITZ: Object to the form.

23 A. He was asking questions and we were answering
24 them.

25 Q. (BY MR. BIGGS) You didn't answer my question.



1 Was it important for you to give Dr. Glass a
2 complete and accurate history?

3 MR. LERITZ: Object to the form.

4 A. We were doing our best to answer his questions
5 accurately.

6 Q. (BY MR. BIGGS) Okay. And you knew that it
7 was important to do that for whatever medical opinions
8 he could provide, right?

9 A. Right.

10 Q. Why don't you take a look, it's the third
11 paragraph down, it's a large paragraph, it's about in
12 the middle of that paragraph, there's a sentence that
13 begins, Parents were not aware of the injury.

14 It's about the --

15 A. Yeah, I think I found it.

16 Q. You got it, okay.

17 A. (Witness reviewing document.)

18 Q. What I'm reading here is, Matthew came home,
19 the parents, that's you and your wife, who had not yet
20 come home, later arriving, indicated Matthew was
21 extremely agitated.

22 Did you tell Dr. Glass that Matthew was
23 extremely agitated that evening?

24 A. I don't believe -- I don't believe so, no.

25 Q. Who did?



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1 A. I don't -- I don't know. I don't recall. I
2 don't know where this information came from. And then
3 the phone call, I don't understand that either.

4 Q. Do you know whether or not Matthew was on the
5 phone that evening?

6 A. Well, we heard later that he was talking to
7 Lisa.

8 Q. But you didn't know that at the time this
9 record was made, right?

10 A. I did not know that.

11 Q. And are you aware of any other telephone calls
12 that evening?

13 A. I'm not.

14 Q. Okay. So you don't know what the reference to
15 the telephone is?

16 A. I don't.

17 Q. It says then. Matthew was involved in a
18 cooking project for French class and mom had not yet
19 come home to help him and beyond the usual level of
20 frustration and agitation.

21 Now, who told the doctor that Matthew was
22 beyond his usual level of frustration and agitation?

23 A. I really don't know.

24 Q. Do you remember hearing those words?

25 A. Well, I don't. That was -- I don't.



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1 Q. Do you believe that Dr. Glass just made up
2 those words and put them in his chart note?

3 MR. LERITZ: Object to the form.

4 A. I don't -- yeah, I don't know. I don't
5 recall.

6 Q. (BY MR. BIGGS) If they're in the chart note,
7 there's a good chance somebody actually said that,
8 right?

9 MR. LERITZ: Object to the form.

10 A. There is a chance.

11 Q. (BY MR. BIGGS) Good chance, right? High,
12 high likelihood?

13 MR. LERITZ: Object to the form.

14 Q. (BY MR. BIGGS) Right?

15 A. I suppose.

16 Q. Okay. Then it says, Matthew is out of
17 character.

18 Did you tell the doctor that Matthew was out
19 of character that evening?

20 A. No.

21 Q. Who did tell the doctor that Matthew was out
22 of character?

23 A. I don't know.

24 Q. Did you tell the doctor that Matthew was
25 highly reactive that evening?



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1 A. No.

2 Q. Who did say those words?

3 A. I don't know where those -- where this came
4 from.

5 Q. Okay. There's a sentence that says,
6 Apparently teammates on that day of this injury
7 indicated that Matthew had claimed after this fall, and
8 quote, my head hurts.

9 Do you know where the doctor got that
10 information?

11 A. He might have gotten that from Matthew, and
12 Matthew hearing it from his teammates.

13 Q. Do you know which players the doctor's
14 referring to in this note?

15 A. Oh, I have no idea.

16 Q. Do you --

17 A. I don't think -- he never talked to any
18 players. It was just a generality, and I think the --
19 like I say, the comment might have come from Matthew
20 because he had heard some of his teammates saying it.

21 Q. Then the sentence goes on to say, And in fact,
22 saw enough to ask him, Are you okay?

23 I assume that's still referring to teammates?

24 A. Yes.

25 Q. Do you know where that comment originated?



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

MATTHEW 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.

Case No.: 12-2-03162-1

PLAINTIFFS' **THIRD**
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO HIGHLAND
SCHOOL DISTRICT NO. 203

TO: Highland School District;

AND TO: Mark Northcraft - Northcraft, Bigby & Biggs, PLLC - its attorney

These interrogatories are being served on you in accordance with Rules 26, 33, 34 and 37 of the Civil Rules for Superior Courts for the State of Washington and applicable Local Rules for the Superior Court of Yakima County, you will please answer the following interrogatories separately and fully under oath within thirty (30) days of the date of service of these interrogatories upon you. Failure to completely answer these interrogatories within 30 days may subject you to penalties under the applicable Court Rules. Answers should be returned to the offices of Nelson Langer Engle, PLLC, at their address appearing on each page of these interrogatories.

These interrogatories are to be treated as continuing. If information is not available within the 30-day time limit, you must answer each interrogatory as fully as possible within the time limit and furnish additional information when it becomes available. If there are any additions, deletions, or changes in the answers or information provided at any time prior to trial, you are specifically requested to so immediately inform this Plaintiffs' counsel. If additional information is discovered between the time of making these answers and the time of

1 trial, these interrogatories are directed to that information, and answers should be timely
2 supplemented. If such information is not timely furnished, the undersigned will move at the
time of trial to exclude from evidence any information requested and not furnished.

3 These interrogatories are directed to the above-named party and to its attorneys, and the
4 answers shall include all information known to said party or parties and their attorneys and the
Washington Schools Risk Management Pool.

5
6 **REQUESTS FOR PRODUCTION**

7 In accordance with CR 34, Rules for Superior Court, Plaintiffs further requests that
8 Defendant produce the documents designated herein for inspection and copying at the offices
of Nelson Langer Engle, PLLC, 1015 NE 113th Street, Seattle, Washington, at a mutually
agreed upon time within thirty (30) days of the date of service of these requests.

9
10 **PRIVILEGE**

11 If in responding to, or failing to respond to, these interrogatories and these requests for
12 production, you invoke or rely upon any privilege of any kind (including the work product
13 doctrine), state specifically the nature of the privilege; the basis upon which you invoke, rely
upon or claim it, including any statutory or decisional reference; and identify all documents or
other information, including contacts, and communications which you believe to be embraced
by the privilege invoked.

14
15 **DEFINITIONS AND INSTRUCTIONS**

16 1. You: "You" means either or all of the parties to whom these interrogatories are
17 addressed, and your attorneys, agents, employees, officers, representatives, adjusters,
investigators, the Washington Schools Risk Management Pool, and any other person who is in
possession of, or who has obtained information on your behalf.

18 2. Document or documentation: The term "document" means information stored
19 in any form; any written, recorded or graphic matter, however produced or reproduced; and
copies and drafts thereof. Without limiting the foregoing, "document" means information
20 stored in any form; any written, recorded or graphic matter, however produced or reproduced;
and copies and drafts thereof. Without limiting the foregoing, "document" includes
21 correspondence; telegrams; memoranda; reports; notes; drafts; minutes; contracts; agreements;
books; records; vouchers; invoices; diaries; logs; calendar notes; computer printouts; memory
22 programs; information stored in any data processing or word processing system, in whatever
form; back-up materials of any kind; card files; press clippings; newspapers or newsletters;
sworn or unsworn statements of employees; lists; audits; tables of organization; deposit slips;
23 monthly or other periodic statements; ledgers; journals; notices; affidavits; court papers;
appointment books; minutes or records of conferences or telephone calls; brochures; receipts;

1 written reports or opinions of investigators or experts; status reports; drawings; charts;
2 photographs; negatives; X-rays/radiological studies/contrast and other imaging studies; and
3 tape recordings and video recordings within your possession, or subject to your control, or of
4 which you have knowledge, or to which you now have or have had access, or of which any of
5 your agents, attorneys, accountants, or consultants have knowledge. A comment or notation
6 appearing on any document, not a part of the original test, is to be considered as a separate
7 "document."

8
9 3. Contact: The term "contact," in either the present or past tense, means
10 conversations; telephone calls; conferences; physical presence; and correspondence.

11 4. Communication: "Communication" means any correspondence, contact,
12 discussion or exchange between any two or more persons. Without limiting the foregoing,
13 "communication" includes all documents, telephone conversations, any means of transmitting a
14 message, face-to-face conversations, meetings, and conferences.

15 5. Person: "Person" means, without limitation, any natural person, partnership,
16 corporation, unincorporated association, joint venture, trust, labor union or any other form of
17 business, social or legal entity.

18 6. State in detail, or describe in detail: "State in detail" or "describe in detail"
19 means provide a narrative statement of description, phrased in specifics, of the facts or matters
20 to which the interrogatories have a reference, including, but not limited to: identification of all
21 persons conversations; transactions; events; agreements; recommendations and documents
22 necessary or desirable to make such statement or description complete; and specification of the
23 dates and times of all occurrences.

7. Identify, identification, or identity: "Identify," "identification," or "identity,"
means:

A. When referring to a natural person, state his full name; his present or
last-known address and phone number; his present or last-known business position; and, if
different, his business position at the time to which the interrogatory or your response to the
interrogatory has reference; and, a brief description of the responsibilities of such position.

B. When referring to a document, state its title and date; identify the author
or person who prepared it and any signatories to it; give the type of document (e.g., letter,
memorandum, invoice); its present location and custodian; a summary of its contents, or
principal terms and provisions; the identity of its addresses and all other persons receiving it or
copies of it. If the document so identified was, but is no longer, in your possession, custody or
control, state what disposition has been made of it. Attach a copy of it to your response to
these interrogatories.

C. When referring to a person other than a natural person, set forth:

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1. Full and lawful name, and all other names or styles used, at any time, and for any purpose whether or not registered.
2. Type of entity (i.e., partnership, division, corporation.)
3. Present business address and telephone, or last known business address and telephone.
4. Registered office and name and address of registered agent.
5. States and foreign countries where qualified to do business.
6. All business addresses and telephones in this state.
7. State and date of incorporation.
8. Name and address of Washington agent for service of process.
9. Name, principal office, state and date of incorporation, and name of chief executive officer of:
 1. Any controlling corporation;
 2. Any subsidiary corporation.
10. Name and address of all persons owning a controlling interest, and a description of the extent of such interest.
11. Identify its present partners, principals, officers, directors, and managing agents, and, if different, its partners, principals, officers, directors and managing agents at the time to which the interrogatory of your response to the interrogatory has reference.

D. When referring to an act, event, transaction, occasion or instance, including an oral agreement, communication, statement, recommendation or representation:

1. State its date and place of occurrence (or if a telephone call is involved, so state and provide the location of all parties to such telephone call and identify the person who initiated it);
2. Identify each person participating therein;
3. For each such person participating therein identify all persons that s/he represented or purported to represent;

- 1 4. Describe in detail all circumstances leading up to or surrounding
2 it;
3 5. Describe in detail what transpired or was said; and,
4 6. Identify all documents summarizing, recording, reflecting,
 reporting, or containing a reference to it.

5 8. "Each" includes the word "every" and "every" includes the word "each." "Any"
6 includes the word "all" and "all" includes the word "any." "And" includes the word "or" and
"or" includes the word "and."

7 9. Terms in the plural include the singular and terms in the singular include the
8 plural.

9 10. The masculine form of any noun or pronoun includes the feminine and neuter
10 form.

11 11. Each paragraph and subparagraph of the following interrogatories should be
12 construed independently, and no other paragraph or sub-paragraph shall be referred to or relied
13 on for the purpose of limiting its scope.

14 12. If your answer to any interrogatory is "N/A" or "Not Applicable," describe in
15 detail your reasons for making such reply.

16 13. In reply to any interrogatory, do not merely state "See attached records" unless
17 you have no additional memory of the matters referred to in the interrogatory. If you have any
18 additional memory of the relevant events, describe it in detail.

19 14. Separately for each interrogatory, identify:

20 A. All sources of information and all documents and communications
21 maintained by you, or by any other person, upon which you relied in making such response, or
22 which records or refers to any of the matters referred to in such response, and

23 B. The person or persons most familiar with the facts requested as well as
those whom you consulted in preparing your response to such interrogatories.

 15. Documents produced in response to Plaintiff's requests pursuant to CR 34
should be expressly identified by reference to the interrogatory to which they pertain.

 16. Health Care Provider: "Health Care Provider" is to be given its statutory
definition (RCW 7.70.020).

 17. Copy: "Copy" means an "original" or a "duplicate," where "original" and
"duplicate" are given the definitions in Rule 1001 of the Rules of Evidence.

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INTERROGATORIES

INTERROGATORY NO. 1: During the time period when unrepresented by counsel, with regard to any communications between **Josh Borlund** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang, please indicate:

- a. The date of said communication;
- b. The persons involved in the conversation;
- c. The details of the conversation.

ANSWER:

REQUEST FOR PRODUCTION NO. A: During the time period when unrepresented by counsel, please produce copies of all communications, in any form, between **Josh Borlund** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang. Also produce all documents or other materials shared with **Josh Borlund** for his review relating to this lawsuit and/or Matthew Newman.

RESPONSE:

REQUEST FOR PRODUCTION NO. B: During the time period when unrepresented by counsel, please produce any statements or declarations, written, recorded or in any other format, from **Josh Borlund** relating to Matthew Newman and/or this lawsuit.

RESPONSE:

INTERROGATORY NO. 2: During the time period when unrepresented by counsel, with regard to any communications between **Matt Bunday** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang, please indicate:

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- a. The date of said communication;
- b. The persons involved in the conversation;
- c. The details of the conversation.

ANSWER:

REQUEST FOR PRODUCTION NO. C: During the time period when unrepresented by counsel, please produce copies of all communications, in any form, between **Matt Bunday** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang. Also produce all documents or other materials shared with **Matt Bunday** for his review relating to this lawsuit and/or Matthew Newman.

RESPONSE:

REQUEST FOR PRODUCTION NO. D: During the time period when unrepresented by counsel, please produce any statements or declarations, written, recorded or in any other format, from **Matt Bunday** relating to Matthew Newman and/or this lawsuit.

RESPONSE:

INTERROGATORY NO. 3: During the time period when unrepresented by counsel, with regard to any communications between **Justin Burton** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang, please indicate:

- a. The date of said communication;
- b. The persons involved in the conversation;
- c. The details of the conversation.

ANSWER:

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REQUEST FOR PRODUCTION NO. E: During the time period when unrepresented by counsel, please produce copies of all communications, in any form, between **Justin Burton** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang. Also produce all documents or other materials shared with **Justin Burton** for his review relating to this lawsuit and/or Matthew Newman.

RESPONSE:

REQUEST FOR PRODUCTION NO. F: During the time period when unrepresented by counsel, please produce any statements or declarations, written, recorded or in any other format, from **Justin Burton** relating to Matthew Newman and/or this lawsuit.

RESPONSE:

INTERROGATORY NO. 4: During the time period when unrepresented by counsel, with regard to any communications between **Eric Diener** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang, please indicate:

- a. The date of said communication;
- b. The persons involved in the conversation;
- c. The details of the conversation.

ANSWER:

REQUEST FOR PRODUCTION NO. G: During the time period when unrepresented by counsel, please produce copies of all communications, in any form, between **Eric Diener** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to*

1 Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang. Also
2 produce all documents or other materials shared with **Eric Diener** for his review relating to this
lawsuit and/or Matthew Newman.

3 **RESPONSE:**

4
5 **REQUEST FOR PRODUCTION NO. H:** During the time period when
6 unrepresented by counsel, please produce any statements or declarations, written, recorded or
7 in any other format, from **Eric Diener** relating to Matthew Newman and/or this lawsuit.

8 **RESPONSE:**

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10 **INTERROGATORY NO. 5:** During the time period when unrepresented by counsel, with
11 regard to any communications between **Thomas Hale** and anyone employed by or on behalf of
12 the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant
lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle
Tomczak and Lilly Tang, please indicate:

- 13 a. The date of said communication;
- 14 b. The persons involved in the conversation;
- 15 c. The details of the conversation.

16 **ANSWER:**

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18 **REQUEST FOR PRODUCTION NO. I:** During the time period when
19 unrepresented by counsel, please produce copies of all communications, in any form, between
20 **Thomas Hale** and anyone employed by or on behalf of the law firm of Northcraft, Bigby &
21 **Biggs** relating to Matthew Newman and/or the instant lawsuit, including *but not limited to*
Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang. Also
produce all documents or other materials shared with **Thomas Hale** for his review relating to
this lawsuit and/or Matthew Newman.

22 **RESPONSE:**

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REQUEST FOR PRODUCTION NO. J: During the time period when unrepresented by counsel, please produce any statements or declarations, written, recorded or in any other format, from **Thomas Hale** relating to Matthew Newman and/or this lawsuit.

RESPONSE:

INTERROGATORY NO. 6: During the time period when unrepresented by counsel, with regard to any communications between **Shane Roy** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang, please indicate:

- a. The date of said communication;
- b. The persons involved in the conversation;
- c. The details of the conversation.

ANSWER:

REQUEST FOR PRODUCTION NO. K: During the time period when unrepresented by counsel, please produce copies of all communications, in any form, between **Shane Roy** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang. Also produce all documents or other materials shared with **Shane Roy** for his review relating to this lawsuit and/or Matthew Newman.

RESPONSE:

REQUEST FOR PRODUCTION NO. L: During the time period when unrepresented by counsel, please produce any statements or declarations, written, recorded or in any other format, from **Shane Roy** relating to Matthew Newman and/or this lawsuit.

RESPONSE:

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INTERROGATORY NO. 7: During the time period when unrepresented by counsel, with regard to any communications between **Dustin Shafer** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang, please indicate:

- a. The date of said communication;
- b. The persons involved in the conversation;
- c. The details of the conversation.

ANSWER:

REQUEST FOR PRODUCTION NO. M: During the time period when unrepresented by counsel, please produce copies of all communications, in any form, between **Dustin Shafer** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang. Also produce all documents or other materials shared with **Dustin Shafer** for his review relating to this lawsuit and/or Matthew Newman.

RESPONSE:

REQUEST FOR PRODUCTION NO. N: During the time period when unrepresented by counsel, please produce any statements or declarations, written, recorded or in any other format, from **Dustin Shafer** relating to Matthew Newman and/or this lawsuit.

RESPONSE:

INTERROGATORY NO. 8: During the time period when unrepresented by counsel, with regard to any communications between **all former Highland School District coaches, former assistant coaches, or former football personnel other than those named above** and anyone employed by or on behalf of the law firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit, including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak and Lilly Tang, please indicate:

- 1 a. The date of said communication;
2 b. The persons involved in the conversation;
3 c. The details of the conversation.

4 **ANSWER:**

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6 **REQUEST FOR PRODUCTION NO. O:** During the time period when
7 unrepresented by counsel, please produce copies of all communications, in any form, between
8 all former Highland School District coaches, former assistant coaches, or former football
9 personnel other than those named above and anyone employed by or on behalf of the law
10 firm of Northcraft, Bigby & Biggs relating to Matthew Newman and/or the instant lawsuit,
11 including *but not limited to* Mark Northcraft, Aaron Bigby, Andrew Biggs, Michelle Tomczak
12 and Lilly Tang. Also produce all documents or other materials shared with all former
13 Highland School District coaches, former assistant coaches, or former football personnel
14 other than those named above for their review relating to this lawsuit and/or Matthew
15 Newman.

16 **RESPONSE:**

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18 **REQUEST FOR PRODUCTION NO. P:** During the time period when
19 unrepresented by counsel, please produce any statements or declarations, written, recorded or
20 in any other format, from all former Highland School District coaches, former assistant
21 coaches, or former football personnel other than those named above relating to Matthew
22 Newman and/or this lawsuit.

23 **RESPONSE:**

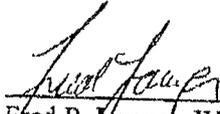
REQUEST FOR PRODUCTION NO. Q: With regard to Defendant's response to
Plaintiffs' Second Request for Admission dated June 27, 2013 *to wit:* Objection is made to this
Request on the basis that the term "Coaches' Handbook" is not defined, and the term is subject
to multiple reasonable interpretations. It is admitted that, at the time of the subject incident, the
Highland School District did not use a document titled "Coaches' Handbook", please produce

1 all documentation used by or referred to by Highland School District coaches, assistant coaches
2 and athletic directors in lieu of a Coaches' Handbook containing any information regarding
3 player safety, injury and concussion management.

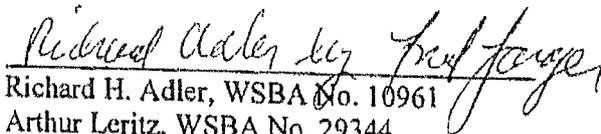
4 **RESPONSE:**

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6
7 DATED this 19th day of December, 2013.

8 NELSON BLAIR LANGER ENGLE, PLLC

9 
10 _____
11 Fred P. Langer, WSBA #25932
12 Michael E. Nelson, WSBA #6027

13 ADLER GIERSCH, PS

14 
15 _____
16 Richard H. Adler, WSBA No. 10961
17 Arthur Leritz, WSBA No. 29344
18 Melissa D. Carter, WSBA No. 36400

19 Attorneys for Plaintiffs
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VERIFICATION

I, _____, declare:

That I am the _____ for Defendant Highland School District No. 203, the Defendant in the above-entitled matter to whom these **THIRD** interrogatories and requests for production are addressed; that I have read the foregoing answers to interrogatories and responses to requests for production, know the contents thereof, and believe the same to be true.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed on _____, 2014, at _____, Washington.

Title: _____
Defendant

CERTIFICATION

The undersigned attorney for Highland School District No. 203, Defendant, has read the foregoing **THIRD** Interrogatories and Requests for Production to Highland School District and Answers/Responses thereto, and they are in compliance with CR 26(g).

Date Mark S. Northcraft, WSBA No. 7888
Attorney for Defendant

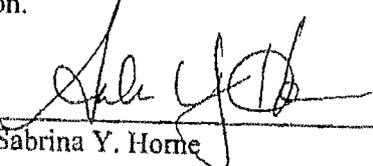
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CERTIFICATE OF SERVICE

I, Sabrina Y. Home, hereby certify that on or before the date set forth below, I served the above-referenced document on the interested parties in this action in the manner described below and addressed as:

Mark S. Northcraft, Esq. Andrew Biggs, Esq. Northcraft, Bigby & Biggs, PLLC 819 Virginia Street, Suite C-2 Seattle, WA 98101-4421 mark_northcraft@northcraft.com marks_northcraft@northcraft.com andrew_biggs@northcraft.com	
<input type="checkbox"/> ABC Messenger	
<input type="checkbox"/> First Class mail postage prepaid	
<input checked="" type="checkbox"/> Email	

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



Sabrina Y. Home

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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.

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

Defendant.

NO. 12-2-03162-1

Court's Decision on Issue of Possible
Attorney-Client Privilege with Former
Employees of Defendant, and Other
Discovery Matters

In discovery, plaintiffs sought disclosure of communications between
defense counsel and former employees made after the employment ended
and not during the time defense counsel claims to have represented the
former employees for purposes of their depositions. The defense claims all
such communications are protected by the attorney-client privilege, relying
on *Admiral Ins. Co. v. U.S. Dist. Court for Dist. of Arizona*, 881 F.2d 1486
(1989). That case is distinguishable from the present case in that the
employees in *Admiral Ins.* were interviewed by counsel for the employer

1 while they were still employed. They were then terminated after the
2 interviews. In the present case, the communications at issue all occurred
3 long after the employees had left the employer.

4 There is language in *Admiral Ins.* that may make it appear as though
5 the privilege always extends to former employees. For example, the
6 *Admiral Ins.* opinion quotes as follows from *In re Coordinated Pretrial*
7 *Proceedings*, 658 F.2d 1355 (9th Cir.1981) cert. denied, 455 U.S. 990, 102
8 S.Ct. 1615, 71 L.Ed.2d 850 (1982):

9 Former employees, as well as current employees, may possess the
10 relevant information needed by corporate counsel to advise the client
11 with respect to actual or potential difficulties.

12 *Id.* at 1361 n. 7. However, the very next sentence makes it clear that the
13 *Coordinated Pretrial Proceedings* court is referring to communications that
14 occurred before the employment of the witnesses was terminated:

15 Again, the attorney-client privilege is served by the certainty that
16 conversations between the attorney and client will remain privileged
17 after the employee leaves.

18 *Id.* (Emphasis added).

19 The *Coordinated Pretrial Proceedings* opinion does not directly
20 address the issue at hand. Neither does *Admiral Ins.* Defendant also relies
21 on *Upjohn Co. v. United States*, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d
22 584 (1981), but that opinion is expressly limited to communications that
23 occurred while the witness was still employed. *Id.* at Fn 3. Furthermore,
24 Washington does not follow *Upjohn. Wright by Wright v. Group Health*
25 *Hosp.*, 103 Wn.2d 192, 691 P.2d 564 (1984).

1 The defense has not cited any authority supporting the claim of an
2 attorney-client privilege protecting post-employment communications
3 between defense counsel and former employees of the defendant.
4 Therefore, the defendant must answer the discovery requests about those
5 communications that were made when defense counsel did not represent
6 the former employees for purposes of their depositions. Defense counsel
7 may not object to deposition questions about those communications based
8 upon a claim of attorney-client privilege. Defense counsel must also
9 disclose exactly when defense counsel represented each former employee.

10 This ruling does not change the prior ruling regarding discoverability
11 of attorney work product, such as statements taken from witnesses.

12 Apparently, at least some of the former employees will be deposed
13 again, and they will not be represented by defense counsel. If defense
14 counsel wishes to interpose any objections, other than routine objections
15 that would be waived if not made, such as form of the question, defense
16 counsel must explain the objection fully, and it must relate to the rights of
17 the school district, not the witness. Defense counsel shall not provide legal
18 advice to such witnesses, either before or during the depositions.

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Dated this 28th day of January, 2014.

/s/ _____
BLAINE G. GIBSON
Superior Court Judge

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

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

Deposition of FORREST TYLER KOPTA
Friday, November 22, 2013

Reported by: Vicki A. Saber
CSR No. 6212, RPR, CRR, CCRR, CLR

1 earlier. I should have realized what with all the
2 things that were happening that he was a lawyer, but
3 after I had this meeting with him, I didn't really think
4 about it after that until, you know, a year later.

5 Q. Since that e-mail exchange until today have
6 you talked to any of the Newman lawyers?

7 A. No.

8 Q. Have you talked to me before today?

9 A. Once.

10 Q. And how did that conversation take place?

11 A. Over a phone call. My mom told me that you
12 wanted to speak to me before, and it was earlier this
13 week.

14 Q. Okay. Did you call?

15 A. Yes.

16 Q. You initiated the call, right?

17 A. Yes.

18 Q. Does this statement, Exhibit 8, appear to be
19 rearranged to you in any way?

20 A. I can't remember.

21 Q. Do you think things that you said were cut out
22 of this transcript?

23 A. I don't remember.

24 Q. You have the right under our Washington civil
25 rules to get a copy of the original audiotape of this

1 recording, and you can get it by simply asking these
2 lawyers to give it to you.

3 A. Okay.

4 Q. Would you do that?

5 A. For what purpose?

6 Q. Just to get it so you know whether or not this
7 statement is accurate or not.

8 A. Okay.

9 Q. Go ahead and ask her.

10 THE WITNESS: Do you mind if I get a copy of
11 the tape?

12 MS. CARTER: I don't know if a copy of the
13 tape still exists.

14 THE WITNESS: Okay.

15 MS. CARTER: But I will agree to follow up
16 with you in that regard.

17 THE WITNESS: Thank you.

18 BY MR. NORTHCROFT:

19 Q. Was your mother upset about what happened?

20 MS. CARTER: Object to the form.

21 THE WITNESS: In what way?

22 BY MR. NORTHCROFT:

23 Q. After you called her and told her that you now
24 put two and two together --

25 A. Yes.

Supreme Court No. 90194-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Appeal from the Court of Appeals – Division III

No. 32223-8 III

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

Respondent,

v.

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

Petitioner.

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
MOTION FOR EMERGENCY PARTIAL STAY
OF DISCOVERY**

NORTHCRAFT, BIGBY & BIGGS, P.C.
Mark S. Northcraft, WSBA #7888
Andrew T. Biggs, WSBA #11746
819 Virginia Street, Suite C-2
Seattle, WA 98101
Telephone: (206) 623-0229
Facsimile: (206) 623-0234
Attorneys for Petitioner
mark_northcraft@northcraft.com
andrew_biggs@northcraft.com

1. I am an attorney licensed to practice law in the State of Washington, where I have actively practiced since 1981. I am one of the attorneys representing the Defendant Highland School District in this matter. This Affidavit is based on my personal knowledge, as well as my office records and files for the litigation, which were kept in the ordinary course of business. I am of legal age, and I am competent to be a witness herein.

2. This review arises from the District's motion for a protective order which was heard by the Yakima County Superior Court Judge Blaine Gibson on January 24, 2014. The issue before the Court was the application of the attorney-client privilege as it relates to discovery of communications with former school district employees (coaches).

3. The judge provided partial oral rulings on the day the motion was heard, but he reserved the main issue for later determination. On January 28, 2014, the judge issued a written order reflecting his ruling. The Court held that the attorney-client privilege did not attach to communications between the District's counsel and its former employees. That ruling directly affected the two scheduled depositions, and other pending discovery.

4. Within one day of receiving the Superior Court's order, the District filed its Motion for a Partial Stay of Discovery with the trial court.

The trial court entered a two-week stay, to allow the District time to file an emergency motion for a partial stay at the Court of Appeals. The District promptly filed its motion for stay at the Court of Appeals.

5. Rather than dealing with the stay on shortened time, however, the Court of Appeals Commissioner instead heard the motion for discretionary review on shortened time (while the trial court stay was still in effect). The Commissioner denied the motion for discretionary review on February 13, 2014.

6. The District promptly filed its motion for de-novo review of the Commissioner's ruling. The District also sought and obtained an additional temporary partial stay of discovery from the trial court. That stay was of sufficient length for the Court of Appeals to consider the District's motion, so the District did not need to seek an additional stay from the Court of Appeals. The trial court's stay expired on February 13, 2014.

7. On April 9, 2014, the Court of Appeals issued its ruling denying revision of the Commissioner's ruling, and the District promptly prepared its Motion for Discretionary Review before this Court. The motion was filed on April 30, 2014.

8. Despite the trial court's previous willingness to stay a minimal portion of the discovery while the matter was considered on

appeal, the trial court declined to do so now, while the case is before the Supreme Court. The District was instead left to file its motion for a partial stay before this Court. It is unclear why the trial court agreed to the narrow stay while the matter was being considered by the Court of Appeals, but declined to do so at the Supreme Court level.

9. The record reflects that all of the appellate pleadings in this case were filed promptly; well in advance of the court deadlines. The District has been very diligent with keeping this matter moving through the review process, and there has been no delay, either intentional or unintentional.

10. This request for a stay should be heard on an emergency basis because there is not sufficient time for the District to follow the normal motions practice. RAP 17.4(a) requires the moving party to contact the Clerk of the Court for an available hearing date, and then notice must then be served on all parties not less than 15 days prior to the date the court sets for the motion. It is apparent that many weeks could pass before the motion for a stay is heard if the normal procedure is followed.

11. The Court will note that the District was ordered to disclose the dates of joint representation of the District and the coaches individually, as well as the dates of such communications, and it has been

ordered to allow discovery and deposition questions in the area of privileged communications. Those narrow, specific areas of discovery should be stayed pending the outcome of the District's request for Supreme Court review. To do otherwise, will cause irreparable harm to the District in its efforts to defend itself against the plaintiffs' negligence claims.

12. If a stay is not promptly granted, the plaintiffs will be permitted to pursue the same written discovery and deposition testimony that is the subject of this appeal. In fact, within eight days of the date on which the trial court declined to issue a stay, the plaintiffs began requesting deposition dates for the second and third depositions of two coaches. See, Exhibit 1. The plaintiffs' attorneys also have already threatened to bring a motion for contempt. Although the District notified the plaintiffs that the present motion would be raised before the Supreme Court (See, Exhibit 2), there is no reason to believe that the plaintiffs will voluntarily agree to wait until this court has considered the District's motion for discretionary review. Therefore, is it necessary for this motion for a stay to be heard on an emergency basis as contemplated by RAP 17.4(b).

13. It is important for the attorney-client privilege issue to be resolved before the depositions and written discovery are allowed to

continue. Until this court has an opportunity to accept review of the attorney-client privilege issues, it is appropriate and necessary to stay the discovery related to those issues. Otherwise, the plaintiffs will be allowed to obtain communications that this Court will likely find to be covered by the attorney-client privilege.

14. Naturally, once the plaintiffs are allowed to receive attorney-client privileged communications, there is no realistic way to repair the damage done by allowing the plaintiffs access to that information. Therefore, it is imperative that this Court allow the Motion for Partial Stay to be heard on shortened time, in order to stem the plaintiffs' aggressive discovery efforts.

15. Through discovery, the plaintiffs have had access to all of the relevant knowledge held by both the current and former coaches, with the one exception being former head coach Shane Roy, who already has been deposed for approximately five hours, which resulted in a 235-page transcript. Mr. Roy's deposition was continued, but has not yet been completed, in order to accommodate the plaintiffs' attorneys' need for additional time to review numerous personal documents Mr. Roy produced at his deposition, pursuant to a subpoena duces tecum. The former coaches provided deposition testimony and responded to every question other than those specifically designed to invade the attorney-

client privilege. Reaching the facts, however, is not what the plaintiffs' attorneys are after: they appear to want the privileged communications and mental impressions of the District's attorneys.

16. As a result of the trial court declining to issue a partial stay of discovery, the District is in the untenable position of being required to disclose information that it firmly believes is privileged. The District is faced with the choice of either: (1) declining to provide the communications, thereby making itself potentially subject to contempt or other sanctions; or (2) providing information that is later determined to be privileged, and suffering the prejudice attendant to having an opponent obtain possession of privileged communications and the mental impressions of the District's attorneys.

17. It is notable that most of the football players' and all of the coaches' depositions have already been taken, and the majority of the remaining depositions concern damages and expert witnesses. Further, even with the trial court's original stay in place, the plaintiffs' attorneys filed a motion for partial summary judgment on March 26, 2014. The Court will note that the expert witness depositions and the depositions of the plaintiffs' medical providers, family, and other damages witnesses can go forward even with the stay, because those topics do not fall within the area covered by the stay.

18. In addition, the trial date has not yet been set, but it will be set approximately 17 months from now. In a recent hearing, the Court asked the plaintiffs to inquire with the court clerk whether October 5, 2015, is available for trial. The parties both understand that the trial date will be in that general time frame.

19. Throughout this litigation, the plaintiffs' attorneys have claimed that Matthew's injury was the result of a "secondary impact syndrome," but the District intends to disprove that theory at trial. The District believes that the evidence the plaintiffs contend supports their claims is fabricated, manipulated, and untrue.

20. The District's evidence will reveal that the events did not happen in the way the plaintiffs claim, and any evidence to the contrary has been fabricated or suggested by the plaintiffs' lawyers to Matthew's former teammates, who obviously would like to help Matthew as a result of his catastrophic injury.

21. The District intends to prove that: Matthew did not suffer a concussion during practice; he did not exhibit any symptoms of a concussion – such as a headache – during practice, and that none of the coaches had any reason to suspect that Matthew suffered a concussion during practice. There was no reason to remove Matthew from play in accordance with the Lystedt Act, about which the coaches and players

were well aware. Because there was no head injury during practice, the District's coaches had no reason to know about or to inform Matthew's parents of an injury that occurred later.

22. The District's evidence will further show that the parents and Matthew himself stand liable for his injury. Matthew failed to report to the coaches that he had a headache as a result of a collision after practice, and the parents failed to report to the coaches their observations at home that Matthew was out of character, highly reactive, very upset, and extremely agitated the evening after the practice before the big game the next night. In addition, neither Matthew nor the parents sought medical advice concerning these concussion symptoms, about which the District had advised – both orally and by way of concussion information sheets – which the parents and Matthew went over together, and which were signed by them and returned to the District.

23. For the reasons set forth in the Motion for Emergency Partial Stay of Discovery, the District firmly believes that the legal issue before this Court is likely to be accepted for discretionary review and that the attorney-client issue will be resolved favorably for the District.

24. Notice of the Motion for Emergency Partial Stay of Discovery was given to the attorneys of record via e-mail, as is verified by the Certificate of Service. In this case, the parties routinely exchange

EXHIBIT 1

EXHIBIT 1

Andrew Biggs

From: Jamie E. Najera <Jamien@nblelaw.com>
Sent: Tuesday, April 22, 2014 5:05 PM
To: Marks Northcraft; mark northcraft; Andrew Biggs; lily_tang@northcraft.com; Michelle Tomczak
Cc: kehlis@mjbe.com; janet@mjbe.com
Subject: Newman v. Highland School District: Shafer and Roy Depositions

Good afternoon: In light of the Court's ruling on April 14th, we are moving forward with re-scheduling the video depositions of Dustin Shafer (in California) and Shane Roy (in Colville, WA). Please provide us with your available dates in May for these two depositions.

Thank you.



Jamie Najera
Legal Assistant
Nelson Blair Langer Engle, PLLC
1015 NE 113th St
Seattle, WA 98125
(206) 623-7520
(206) 622-7068 (fax)
www.NBLElaw.com

EXHIBIT 2

EXHIBIT 2

Andrew Biggs

From: Marks Northcraft
Sent: Tuesday, April 22, 2014 7:09 PM
To: Jamie E. Najera; mark northcraft; Andrew Biggs; lily_tang@northcraft.com; Michelle Tomczak
Cc: kehlis@mjbe.com; janet@mjbe.com
Subject: RE: Newman v. Highland School District: Shafer and Roy Depositions

The District will be seeking discretionary review by the Supreme Court of the Court of Appeals' ruling and filing a motion for stay of the trial court's ruling. These pleadings will be filed this week. There is no reason why these depositions need to go forward until after the conclusion of the appellate process, given that your primary motivation for taking them is to obtain our privileged attorney client communications. Once the appellate process is completed, we will be glad to cooperate with you in scheduling these depositions should you still desire to take them.

From: Jamie E. Najera [<mailto:Jamien@nblelaw.com>]
Sent: Tuesday, April 22, 2014 5:05 PM
To: Marks Northcraft; mark northcraft; Andrew Biggs; lily_tang@northcraft.com; Michelle Tomczak
Cc: kehlis@mjbe.com; janet@mjbe.com
Subject: Newman v. Highland School District: Shafer and Roy Depositions

Good afternoon: In light of the Court's ruling on April 14th, we are moving forward with re-scheduling the video depositions of Dustin Shafer (in California) and Shane Roy (in Colville, WA). Please provide us with your available dates in May for these two depositions.

Thank you.



Jamie Najera
Legal Assistant
Nelson Blair Langer Engle, PLLC
1015 NE 113th St
Seattle, WA 98125
(206) 623-7520
(206) 622-7068 (fax)
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EXHIBIT 3

EXHIBIT 3

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

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

VIA EMAIL ONLY

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

March 27, 2014

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

Dear Mr. Northcraft and Mr. Biggs:

As you may recall, the Court has ruled that the recordings, notes and mental impressions of plaintiffs' attorneys concerning the recorded interviews of former Highland High School football players are privileged under the work product doctrine. Mr. Adler previously provided those statements to the witnesses, which they adopted. We have shared those statements since the very beginning with both the students and the District's attorneys. This satisfies CR 26.

These recordings were transcribed and once approved by the witnesses were not saved. These recordings occurred over two years before the Plaintiffs were forced to file a lawsuit, and there was no obligation whatsoever for counsel to preserve the work product original digital recordings. It is not our practice to save a tape recording once transcribed and approved by the witness.

Sincerely,
ADLER GIERSCHE PS

Melissa D. Carter
Attorney at Law

cc: Randy and Marla Newman
Fred Langer
Michael Nelson

Seattle
333 Taylor Avenue North
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F: 206.224.0102

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Kent, WA 98032
P: 253.854.4500
F: 253.854.4874

Supreme Court No. 90194-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Appeal from the Court of Appeals – Division III

No. 32223-8 III

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

Respondent,

v.

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

Petitioner.

**SUPPLEMENTAL DECLARATION OF COUNSEL RE:
MOTION FOR EMERGENCY PARTIAL STAY OF DISCOVERY**

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Under penalty of perjury under the laws of the State of Washington, the undersigned DECLARES:

I am one of the attorneys representing the Highland School District in this case. I have been licensed to practice law in the State of Washington for over 30 years, and I am competent to be a witness herein. This Declaration is based on my personal knowledge.

On April 29, 2014, the School District filed its Motion for Discretionary review in this Court. The issue on appeal involves the scope and application of the attorney-client privilege as it relates to former employees. In order to protect the arguably-privileged matters while being considered by this court, the School District filed a Motion for Emergency Partial Stay of Discovery on May 1, 2014. The basis for the stay is that the prejudice created by allowing the plaintiffs access to those communications cannot be undone should this court rule in the School District's favor.

The trial court previously issued a partial stay of discovery protecting the communications while the matter was before the Court of Appeals. In its motion for a stay, the School District expressly sought an order staying the specific portion of discovery involved at the appellate level. The issues at the Court of Appeals included (1) all dates of communication between counsel and the District's former coaches; (2) all

people involved in those communications; and (3) all dates the District's counsel represented the District's former coaches.

The trial court stay protected the disputed communications while the Court of Appeals considered the matter. Following the decision by the Court of Appeals, however, the trial court declined to issue an additional stay while the Supreme Court considers the same issues.

The previous stay expired on April 14, 2014. Within approximately two weeks of the stay expiring, the plaintiffs aggressively sought contempt sanctions against both the School District and its counsel, saying that it was "two weeks after the Court denied" the School District's motion for a stay, and the District "is now in violation of the Court order of January 30, 2014, and should be held in contempt." The trial court was advised of the Supreme Court holdings in *Dike v. Dike*, 75 Wn.2d 1, 5, 448 P.2d 490 (1968) and *Seventh Elect Church in Israel v. Rogers*, 102 Wn.2d 527, 688 P.2d 506 (1988), which tell us that parties should not be held in contempt when an attorney makes a claim for privilege in good faith; the proper course is for the trial court to stay all sanctions for contempt pending appellate review of the issue.

Surprisingly, the trial court did not follow *Dike* and *Seventh Elect Church*, and instead found the School District in contempt for not providing the communications to the plaintiffs – despite the fact that the

matter remains on appeal before this Court, and despite the fact that an emergency motion for stay is pending in this Court. Not only did the trial court hold that the School District is in contempt on May 9, 2014, but it also ordered the District to pay the substantial amount of \$2,500 *per day* until the discovery is provided. A formal order has not yet been entered, but the School District has ordered a copy of the lengthy recording of the hearing. The recording will be transcribed upon receipt, and a copy will be provided to this Court for reference.

In response to the trial court's action, the School District did provide the plaintiffs with the dates of representation for the former coaches, because that information is less likely to result in irreparable harm in the litigation. The remaining communications, however, are at the very center of the issues before this Court and disclosing them could result in significant prejudice to the School District. Even though the School District provided the dates of representation (over objection), the District should not be sanctioned for not providing that information while the matter is on appeal, nor should it be sanctioned for withholding the remaining communications until the matter is resolved on appeal.

In its motion for a partial stay of discovery pending in this Court, the School District raised the concern that the plaintiffs would aggressively seek the arguably protected communications, and they are

now doing just that, as well as demanding contempt sanctions. This Court is urged to immediately issue a stay so that the School District is not further harmed.

RESPECTFULLY SUMITTED this 13th day of May, 2014, in
Seattle, Washington.



Andrew T. Biggs, WSBA #11746
Attorney for Petitioner School District