

Supreme Court No. 90194-5

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Washington State Supreme Court

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Appeal from the Court of Appeals – Division III

MAY - 9 2014 *RJC*

No.32223-8 III

Ronald R. Carpenter
Clerk

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

Plaintiffs/Respondents,

v.

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

Defendant/Petitioner.

BRIEF OF RESPONDENTS IN OPPOSITION TO MOTION FOR
DISCRETIONARY REVIEW

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I. STATEMENT OF THE CASE

Plaintiffs/Respondents incorporate Section 1 of their Opposition to Motion for Emergency Partial Stay of Discovery. The Court should be aware that this is the District's third motion to obstruct pre-trial discovery by seeking review of an interlocutory decision.

In order to understand the nature of this issue and why Plaintiffs/Respondents are seeking discovery of this information, it is important for the Court to have additional background facts. On September 17, 2009 while Plaintiff Matthew Newman ("Matthew") was participating on the Highland High School's football team, he was tackled out of bounds, hit his head, and immediately reported symptoms consistent with a concussion. He was taken out of practice. His parents were not notified of this incident during practice. Matthew was not cleared to return to play by a licensed healthcare professional, which is required under the Lystedt Law. The next day, Friday September 18, 2009 during the game against Naches High School, Matthew sustained a near-fatal brain injury.

Nearly every player on the Highland High School football team that has been deposed recalls the triggering event at the practice on September 17, 2009: Matthew was running a kick-off

return drill when fellow player Joe Scott tackled him at or near the out-of-bounds line, which is less than two yards away from the asphalt-rubberized pole-vault landing pit. Matthew and Joe both went to the ground as a result of the tackle. Matthew struck the pole vault pit with his head. Joe popped up; Matthew did not. Some players say Matthew was "dazed;" others say he "had his bell rung;" some say he slowly paced after he got a hand up and seemed to "have the wind knocked out of him." Many players heard Matthew immediately say he had a headache.

Highland assistant football Coach Dustin Shafer, who was five yards away from the tackle when it occurred, walked Matthew to the sidelines. Matthew sat out of practice for some period of time after this, due to his head injury according to several players. Despite having knowledge of Matthew's injury, Assistant Coach Dustin Shafer and Head Coach Shane Roy allowed Matthew to play in the team's football game against Naches High School the next day, September 18, 2009. By allowing Matthew to return to play in this game the day after his first injury, the District failed to comport with its duty to require medical clearance following Matthew's initial "concussion" or "suspicion of concussion." Predictably and tragically, Matthew sustained an entirely

preventable life-threatening brain injury. If not for the skilled response of the surgical team who performed life saving brain surgery on September 18, 2009, Matthew would be dead.

The truly egregious facts also demonstrate that the District consciously facilitated Matthew's return to play, knowingly circumventing rules in place to protect injured student athletes. Those safety rules require medical personnel with specific qualifications to evaluate and clear injured players to return to play following "suspicion of a concussion." The District failed in their duty of "safety first" by letting the long-time rivalry game with Naches High School trump mandatory safety considerations and allowing Matthew, a star player and the team's quarterback, to play following his head injury the previous day during practice.

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

On February 26, 2013, Mr. Northcraft conducted a recorded interview of the young man involved in the pre-game tackle with Matthew Newman, Joe Scott, and his parents, Zach and Feleighsha Beach. Also present was Highland's insurance

representative, John Young, who is assisting Mr. Northcraft in the defense of this lawsuit. The Beaches and Mr. Scott had not yet talked to the Plaintiffs' attorneys in this matter.

At the outset of the February 26, 2013 interview, Mr. Northcraft introduced himself as general counsel for the Highland School District.¹ During this interview between Joe Scott, his parents and the defense attorneys for the School District, Joe told Mr. Northcraft that some of the players on the team had given Joe a hard time at school, around the end of football season in 2009, suggesting that Joe gave Matthew a concussion when he tackled him at practice and that was why Matthew collapsed at the game the next night.² According to Joe's mother, the players were blaming Joe for the pre-game concussion as the cause of Matthew's brain injury within a week of the injury.³ Despite Mr. Scott's admission that several kids suggested that Joe "gave Matthew a concussion" during practice in the fall of 2009, Mr. Northcraft still told Joe and his parents during this meeting that Mr. and Ms. Newman, multiple-generation orchard farmers in the Yakima area, had held a meeting at their house in the summer of

¹ A013 - A016.

² A015 - A106.

³ A019, lines 17 - 20.

2010 and concocted a story to get the players to lie about a concussive event during that pre-game practice.⁴

At this point, Mr. Northcraft had already attended six player depositions, none of whom testified that any such collusion occurred. In fact, each player that met with the Newman's attorney at the Newman house has denied that *anyone* told them what to say, or how to say it.⁵ These players also have denied that Richard Adler misled them about being an attorney.⁶ The fact that several players were giving Joe Scott a hard time in the fall of 2009, months before the Newmans ever even considered hiring an attorney, indeed, while their son was still hospitalized at Children's Hospital in Seattle - clouds the credibility of the defense theory significantly.

In addition, District insurance representative John Young contacted several student players, including Kyle Belton. Mr. Young suggested with leading questions to Mr. Belton, who did attend a meeting with the Newmans and their attorney in the summer of 2010, that the Newmans lead him to recall the concussive event on the field during the practice. This angered Mr.

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

⁵ A110 - A191.

⁶ Ibid.

Belton, as neither the Newmans, nor their attorneys, ever tried to taint his testimony and tell him what to say.⁷

At the end of the February 26, 2013 interview with the Beaches and Joe Scott and after the tape recorder was shut off, Mr. Northcraft, and/or Mr. Young in his presence, suggested to the Beaches that school programs, such as afterschool activities and band at Highland, would suffer if the Newmans prevailed at trial.⁸ Mr. Beach took this to mean that the school football program could shut down, or that parents would have to pay for their kids to play football, because of the Newmans' lawsuit.⁹ After hearing this, Mr. Beach felt motivated to help Mr. Northcraft and the School District prevail in this lawsuit.¹⁰

Also after Mr. Northcraft and/or Mr. Young shut off the tape recorder during the February 26, 2013 meeting with the Beaches and Joe Scott, Mr. Northcraft learned from Ms. Beach that she had a meeting scheduled over the next few weeks with the Newmans' attorneys. Mr. Northcraft asked the Beaches if they would be willing to record the conversation as their agents with the Plaintiffs'

⁷ A008, beginning at line 18 to A009, line 19.

⁸ A020, lines 8-23.

⁹ A046, beginning at line 23 to A047, line 25.

¹⁰ A049, lines 7-13.

attorneys, but not to disclose that the recording was for Mr. Northcraft and the insurer. Mr. Northcraft's agent, Mr. Young, even offered to get a recorder for the Beaches.¹¹ When Ms. Beach asked Mr. Northcraft how to respond to the Newmans' attorneys if they asked her why she was tape recording the meeting, Mr. Northcraft instructed Ms. Beach to lie to Plaintiffs' counsel, and to simply state that the recording was for her own benefit alone.¹² Mr. Young then drove to the Beaches home shortly thereafter from Ephrata to Kennewick, and gave a tape recorder to Mr. Beach and instructed him on how to use it.¹³ Mr. Young asked Ms. Beach to then mail the tape recorder back to him once she recorded the meeting with Plaintiffs' counsel under false pretenses.¹⁴

After meeting with Mr. Newman and his attorneys, Ms. Beach realized that Mr. Northcraft was trying to trick her during the February 26, 2013 meeting.¹⁵ She sees the act of Mr. Northcraft giving her a tape recorder, asking her to record the meeting with the Newmans and their attorneys, and instructing her not to

¹¹ A022, beginning at line 9 to A023, line 2.

¹² A022, beginning at line 9 to A023, line 2.

¹³ A028, lines 2-9.

¹⁴ A024, lines 9-12.

¹⁵ A031, beginning at line 23 to A032, line 22.

disclose that the recording was meant for Mr. Northcraft as "completely dishonest."¹⁶

Mr. Northcraft is counsel of record for the Defendant, Highland School District No. 203. He has identified himself as the general counsel to the School District as well, which is another misrepresentation. In addition, Mr. Northcraft at the depositions of **former** Highland coaches and **former** School District employees Dustin Shafer, Shane Roy, Matt Bunday, and Thomas Hale, and of *current* School District employees Kelly Thorson and Josh Borlund, Mr. Northcraft obstructed proper and legitimate discovery by representing, during the depositions, that he was counsel for the Highland School District, and "for purposes of the deposition," I for these individual deponents.¹⁷ Plaintiffs were not permitted, based on Mr. Northcraft's instruction to the non-party former employee witness, to inquire of the former employees the full extent of the scope of the representation with the District's attorneys and communications between Mr Northcraft and these witnesses.

On September 27, 2013, Plaintiffs/Respondents filed a motion to disqualify Mr. Northcraft and his law firm from

¹⁶ A032, beginning at line 25 to A033, line 5.

¹⁷ A051 - A068.

representing the Highland School District due to his misconduct, including the conflict of interest posed by his concurrent representation of Highland and of its former employees. The trial court, after a lengthy hearing and admonishments to Mr. Northcraft, declined to disqualify him and his firm, but did rule that Mr. Northcraft could not represent any former Highland School District employees at their depositions, because of the apparent conflict of interest.

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

Despite the Court's very clear directive on this point, just a few weeks after the September 27, 2013 hearing, Mr. Northcraft again attempted to improperly influence and/or intimidate a potentially adverse witness. The Plaintiffs noted the deposition of former Highland School District employee Eric Diener for October

21, 2013. Mr. Diener was a teacher, the head football coach and the athletic director for Highland High School prior to the year of Matthew Newman's injury. Currently, Mr. Diener is the principal at Wapato High School. In the days leading up to his deposition, Mr. Northcraft visited Mr. Diener at his current school and attempted to intimidate him by threatening him with his personnel file from Highland High School. As Mr. Diener stated in his declaration:

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

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

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

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

...

I am a principal of a high school and I have to handle many different kinds of situations, including talking with gang members. There is no doubt as to what he was trying to do. And this does not sit well with me, even to this day.¹⁸

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

Also during the meeting, Mr. Northcraft mentioned that there are two sides to every story and then told me his version of things. He also insisted that the other side was "trying to screw" the Highland School District. That was an unnecessary and unprofessional thing for him to tell me. I was quite surprised by his comment and language in trying to manipulate my opinions.¹⁹

II. PETITIONER/DEFENDANT HAS FAILED TO DEMONSTRATE SUFFICIENT GROUNDS FOR INTERLOCUTORY REVIEW PER RAP 13.5

Pursuant to RAP 13.5, the Supreme Court will only accept review of an interlocutory decision of the Court of Appeals:

¹⁸ A017 - A109.

¹⁹ Ibid.

- (1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or
- (2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or
- (3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

RAP 13.5(b). The District's Motion for Discretionary Review has failed to provide any basis or demonstrate how or why the decisions of the Court of Appeals or of the trial Court were "erroneous" and constituted obvious error under RAP 13.5(b)(1). Obvious error, for example, occurs when the Court misinterprets an applicable statute. *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982). The decision of the Court of Appeals affirming the trial court's decision is not contrary to Washington law. It was not a misinterpretation or misapplication of existing law. In fact, Washington has never recognized that the attorney-client privilege extends to communications with former employees of a corporate entity Defendant. The District's counsel should have known this when it met with former District employees and yet chose to go beyond what has been generally recognized and accepted behavior regarding the interview of fact witnesses – witnesses not covered

by any attorney-client privilege. The “Hobson’s choice,” if any, was created by the District counsel’s behavior and not by any actions of Plaintiffs/Respondents, nor any decision of the trial court or Court of Appeals.

Further, the District has failed to demonstrate the Court of Appeals Decision was probable error – and even if it met that burden, there is a second element. The District must also prove that decision “alters the status quo or substantially limits the freedom of a party to act.” RAP 13.5(b)(2). The District has no evidence the Court of Appeals Decision was probable error - and even if it could produce such evidence, there is no evidence that the Decision will limit the District in their ability to act moving forward.

The communications have occurred. They will not affect the ability of the District to defend the claims asserted by Plaintiffs/Respondents. There is nothing to support the claim that their ability to prepare for and investigate the alleged wrongdoing limits their freedom to act. The District can and will continue to defend this case and the Court of Appeals decision does not alter any “status quo” and certainly does not limit the freedom of the District to conduct its defense as it deems necessary.

Finally, there is no evidence the decision of the Court of Appeals so far departed from the usual course of judicial proceedings or that there is a need for the Supreme Court to exercise revisory jurisdiction because the Court of Appeals sanctioned such a departure from the trial court from the usual course of judicial proceedings. RAP 13.5(b)(3). Again, the trial court decision and that of the Court of Appeals is not contrary to existing Washington law. Plaintiffs/Respondents also incorporate by reference herein their legal analysis in Sections II and III of their Response to Motion for Emergency Partial Stay of Discovery.

The District's Motion for Discretionary Review also fails to set forth any new facts or legal arguments to support review of the Court of Appeals Decision and again misses the critical distinction that sets the present case apart: the communications between counsel for the Defendant/Petitioner and the non-party witnesses in this case took place after the non-party witness employees left the employment of the Highland School District. There is simply no controlling legal authority to support Defendant/Petitioner's position that (1) it was proper for counsel to "represent" such non-party witnesses "for the purposes of their depositions," or that (2) any such communications between counsel and the non-party

witnesses are privileged. Moreover, the controlling legal authority is contrary to their position. If the District is certain the trial court erred in its ruling, the proper remedy for the District is to file an Appeal pursuant to RAP 2.4 at the conclusion of the case, and certainly not the extraordinary remedy of seeking relief during discovery that would halt the continuation and resolution of this case in the trial court.

III. NONE OF THE LEGAL AUTHORITY CITED BY THE DISTRICT SUPPORTS THEIR POSITION.

The *Upjohn* case has no bearing on the Court of Appeals ruling concerning the District's motion and the focus on it as obvious error is misplaced. The Trial Court's statement that Washington does not follow *Upjohn* is not a basis for discretionary review and there is no need for an emergency stay of discovery. In fact, the Trial Court was correct that Washington does not follow the *Upjohn* case - as it technically has no binding precedent on the issue presented.

In *Upjohn Co. v. US*, 449 U.S. 383, 397 (1981), the central issue was whether or not the attorney-client privilege extended to communications with certain employees who were interviewed by counsel for the corporate employer/defendant. Ultimately, *Upjohn* expanded the definition of "client" so that the attorney-client

privilege would extend to a greater number of corporate employees. It is clear from footnote 3 of that decision that the Court did not address the specific issue in this case – namely whether the attorney-client privilege would extend to communications with *former* employees that took place *after* they left employment of the corporate defendant:

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

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

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

Upjohn reversed the Third Circuit's "control group" test for

the scope of the attorney-client privilege in the corporate context. It held that information concerning potential violations transmitted by Upjohn's current employees to corporate counsel was privileged.

Although Upjohn was specifically limited to current employees, 101 S.Ct. at 685, n.3, the same rationale applies to the ex-employees (and current employees) involved in this case. Former employees, as well as current employees, may possess the relevant information needed by corporate counsel to advise the client with respect to actual or potential difficulties. See id., at 683. **Again, the attorney-client privilege is served by the certainty that conversations between the attorney and client will remain privileged after the employee leaves.** Although no findings were made, it is clear that at least some of the conversations referred to by the district court were made to counsel for the companies in order to secure legal advice for the company. The orientation sessions undoubtedly provided information which will be used by corporate counsel in advising the companies how to handle the pending lawsuit.

Id. at page 1362. (Emphasis added.) Petitioner/Defendant's assertion that "The Ninth Circuit has applied Upjohn's reasoning to communications between corporate counsel and both current and former employees."²⁰ is misleading. The privilege extends to communications made *during* employment, and not to communications made after employment ended. Neither *Upjohn* nor *In re Coordinated Pretrial Proceedings* addresses the issue presented here, namely, whether an attorney can interview and

²⁰ Page 15 of Petitioner/Defendant's Motion for Emergency Partial Stay of Discovery.

“prepare” a witness, a former employee of the defendant entity, and claim that all communications that occurred, well after that witness ceased to work for the defendant, are somehow privileged. To allow Petitioner such leeway would be tantamount to a race to each non-party witness, which the attorney will simply proclaim as his or her own client, “for purposes of the deposition,” and to hide under the shield of a non-existent attorney-client privilege. This is hardly what *Upjohn* stands for.

The District also misinterprets the impact and importance of *Wright v. Group Health*, 103 Wn.2d 192, 691 P.2d 564 (1984) on this issue. In *Wright*, counsel sought to prevent ex parte contact by Plaintiff’s counsel with current and former employees. *Id.* at 194. The Court ultimately held that the attorney-client privilege only applies to employees who have speaking authority to bind the corporation in a legal evidentiary sense. *Id.* at 200. The Court further held that “Since former employees cannot possibly speak for the corporation, we hold that CPR DR 7-104(A)(1)²¹ does not apply

²¹ CPR DR 7-104(A) provides:

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

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

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

to them.” *Id.* at 201. The District’s assertion that the attorney-client privilege should apply to these former employees has no support in *Wright* or in any other existing case law.

Next, the District relies on the recently decided case of *Youngs v. Peacehealth*, 197 Wn.2d 645, 316 P.3d 1035 (2014). However, *Youngs* dealt with a different issue – namely the inherent conflict with the prohibition on ex parte contact with a plaintiff’s healthcare providers in a medical malpractice case as set forth in *Loudon v. Mhyre*, 110 Wn.2d 675, 756 P.2d 138 (1988), and the corporate defendant’s right to assert the attorney-client privilege over non-managerial employees. In *Youngs*, the Court held that “To protect the values underlying both the physician-patient and the attorney client privileges, we adopt a modified version of the *Upjohn* test in this context.” *Id.* at page 5. The Court in *Youngs* further stated:

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

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

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

Id. at page 17. (Emphasis added).

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

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

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

IV. AN INTERLOCUTORY APPEAL AT THIS STAGE IN LITIGATION IS AGAINST JUDICIAL POLICY AS SUCH APPEALS LEAD TO PIECEMEAL, MULTIPLE PROCEEDINGS.

Although RAP 13.5 allows discretionary review of interlocutory decisions, judicial policy generally disfavors interlocutory review. *Hartley v. State*, 103 Wn.2d 768, 698 p.2d 77 (1985), citing *Maybury v. Seattle*, 53 Wn.2d 716, 336 P.2d 878 (1959). In *Maybury*, the Court stated:

It is not the function of this court to interfere in the ordinary process of litigation in the superior courts prior to final judgment, but our power, under the constitution, is appellate only and limited to a review of such matters by appeal from the final judgment.
Id. at 720.

The court in *Maybury* further stated:

In the orderly process for the administration of justice appellate courts should cautiously avoid intrusion and encroachment upon the trial jurisdiction of the circuit court. It is not the function of an appellate court to inject itself into the middle of a lawsuit and undertake to direct the trial judge in the conduct of the case. * * * [however], If after the cause is tried and a final judgment is entered the petitioner-appellant then deems itself aggrieved by some irregularity * * * the time will be ripe to review the matter on appeal * * *. Until that time arrives, however, this Court is not in a position to evaluate properly the correctness of the various interlocutory rulings of the trial judge.

Id. at 720-721, citing *Pullman Co. v. Fleishel*, 101 So.2d 188, 190 (Fla.App 1958). If the Supreme Court grants review of this interlocutory decision, it will further delay the litigation of this matter and could likely lead to piecemeal, multiple appeals in this case. Discretionary review is not favored for this reason. *Right-Price Recreation, LLC v. Connells Prairie Community Council*, 105 Wn.App. 813, 21 P.3d 1157 (2001).

The Supreme Court should decline to accept review of this matter. The District still has the right to appeal a final judgment and include for review the trial court's interim rulings and orders - even appealable orders. RAP 2.4(b).

III. PLAINTIFF/RESPONDENT IS ENTITLED TO ATTORNEYS FEES PURSUANT TO RAP 18.1.

Pursuant to RAP 18.1, Plaintiffs/Respondents are entitled to their attorneys fees for having to respond to this motion and move the Court for an Order granting attorneys fees if the Motion to Modify is denied. Defendant/Petitioner has failed to raise any new facts or case law to support their position and have failed to meet their burden under RAP 13.5(b). This issue has been argued and denied by Judge Gibson, the trial court Judge. This issue has been argued and denied by Court of Appeals Commissioner Wasson. This issue was then denied again by Division III of the Court of

Appeals. This is the fourth time Plaintiffs/Respondents have had to respond to a position that has no support in law, yet has been forced to expend time and resources on opposition to the District's position.

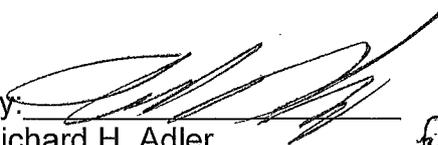
IV. CONCLUSION

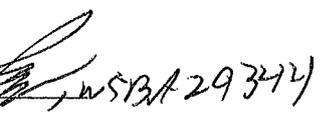
The District has failed to satisfy any of the conditions of RAP 13.5(b) that would constitute a sufficient basis to allow the Supreme Court to grant Discretionary Review. Plaintiffs/Respondents respectfully request the Supreme Court deny the Motion for Discretionary Review. Plaintiffs/Respondents also respectfully request an award of attorneys fees pursuant to RAP 18.1 for having to respond to this motion.

Dated this 8th day of May, 2014.

ADLER GIERSCH PS

NELSON BLAIR LANGER
ENGLE, PLLC

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

By:  for 
Fred P. Langer
WSBA No. 25932
Michael E. Nelson
WSBA No. 6027

Attorneys for Plaintiffs/Respondents

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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
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

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

Defendant.

No. 12-2-03162-1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

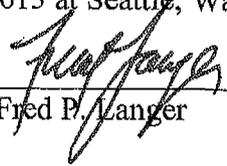
11 20. Attached hereto as **Exhibit 14** is a letter from me to Mark Northcraft and
12 Andrew Biggs dated August 28, 2013.

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

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

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

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

20 
Fred P. Langer

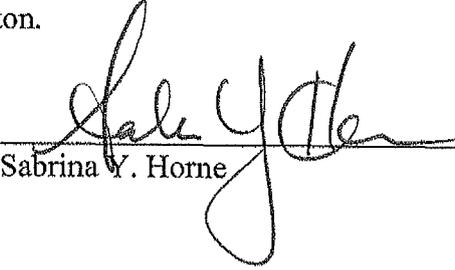
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CERTIFICATE OF SERVICE

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

<p>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</p> <p><input type="checkbox"/> ABC Messenger <input type="checkbox"/> First Class mail postage prepaid <input checked="" type="checkbox"/> Email</p>	
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I declare under penalty of perjury under the laws of the State of Washington this 19th day of September, 2013, at Seattle, Washington.



 Sabrina Y. Horne

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

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

EXHIBIT 1

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

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

NO. 12-2-03162-1

vs.)
)

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

DEPOSITION UPON ORAL EXAMINATION OF KYLE BELTON

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

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

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

5 Q. And where did Joe Scott land?

6 A. Right next to him.

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

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

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

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

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

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

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

24 MR. NORTHCRAFT: Object to the form.

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

1 A. Yes.

2 Q. When were you contacted?

3 A. A month or two ago.

4 Q. Who contacted you?

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

6 Q. Does John Young sound familiar?

7 A. Yeah.

8 Q. How did he contact you?

9 A. He called me.

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

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

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

15 A. Yes.

16 Q. And did he to your knowledge?

17 A. Yes.

18 Q. What questions did he ask you?

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

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

23 A. Yes.

24 Q. Was there any question to you about whether the
25 Newmans or their attorneys were attempting to lead you

1 in a certain direction?

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

8 Q. And did they?

9 A. Not at all.

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

12 A. It made me mad, very mad.

13 Q. Why did it make you mad?

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

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

19 A. No.

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

22 A. I have not.

23 Q. Did you request a copy?

24 A. I did not.

25 Q. Would you like to see a copy?

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

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

EXHIBIT 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

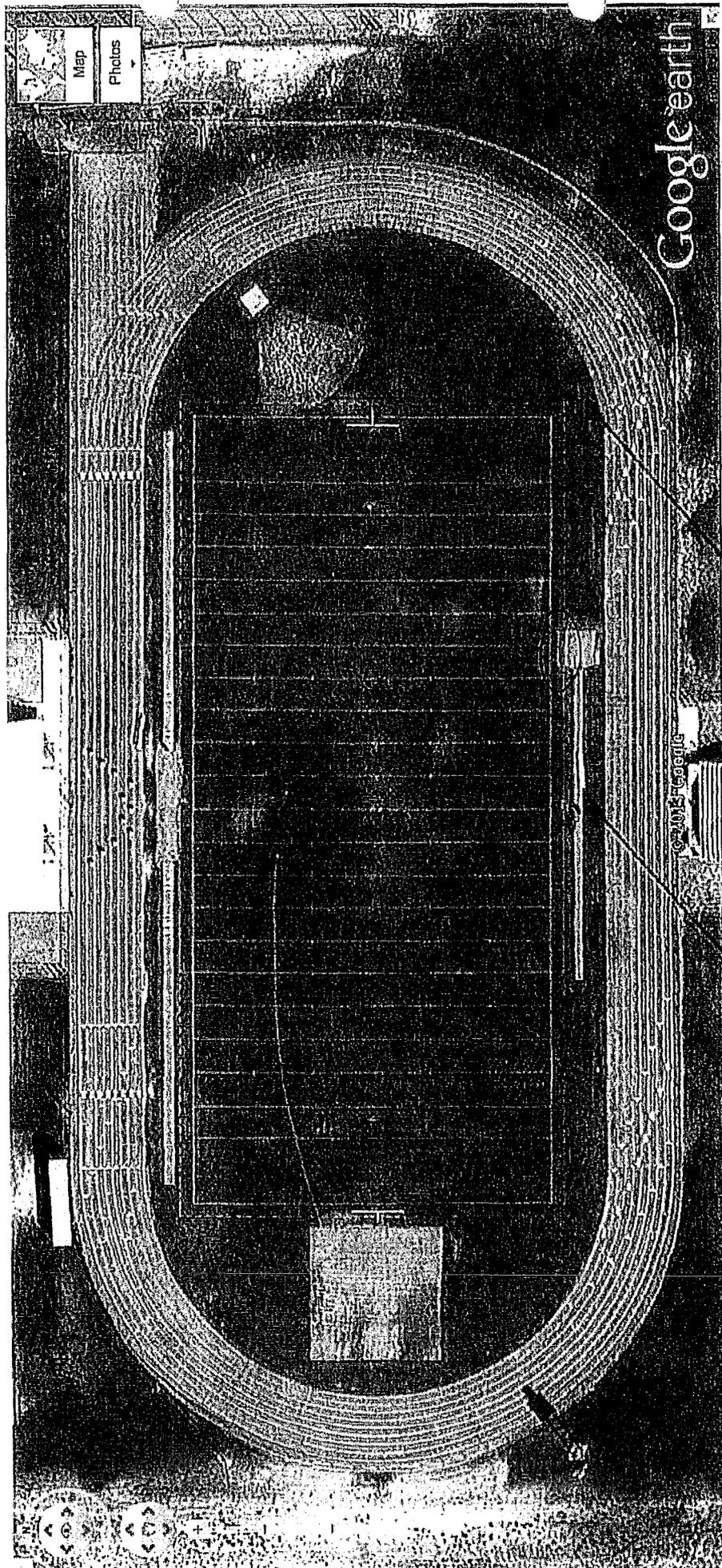
MATTHEW A. NEWMAN, an incapacitated)	
adult; and RANDY NEWMAN AND MARLA)	
NEWMAN, parents and guardians of)	NO. 12-2-03162-1
said incapacitated adult,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT NO. 203, a)	
Washington State governmental)	
agency,)	
)	
Defendant.)	
)	

VIDEO DEPOSITION UPON ORAL EXAMINATION OF JOSHUA BORLAND

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

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



PENGAD 800-531-8989
EXHIBIT
3
Portland
8-20-13

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

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

EXHIBIT 3

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

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

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

SCOTT Yes, I do.

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

ZACH Zach Beach. Yes.

FELICIA Felicia Beach. Yes, I do.

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

SCOTT Yes.

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

SCOTT Like 130 maybe.

YOUNG 130

SCOTT About that.

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

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

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

SCOTT Yeah. Billy.

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

SCOTT He said that I gave him a concussion.

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

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

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

SCOTT Billy, Tyler, Forest, their whole group.

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

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

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

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

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

SCOTT I just shrug it off and walk away.

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

SCOTT Nope.

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

SCOTT Nope.

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

SCOTT Around the end of football season.

MARK The end of the football season?

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

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

SCOTT We were out of bounds after the tackle.

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

SCOTT Nope.

MARK Either way?

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

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

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

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

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

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

SCOTT I think they have...

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

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

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

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

EXHIBIT 4

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

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

vs.)

No. 12-2-03162-1

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

DEPOSITION UPON ORAL EXAMINATION OF
FELEIGHSHA GRIFFIN-BEACH

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

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

1 practice.

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

5 A Yes.

6 MR. NORTHCRAFT: Object to the form.

7 BY MS. CARTER:

8 Q What did he tell you about the tackle?

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

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

16 A After the tackle.

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

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

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

22 A Yes.

23 Q And that's Tamara?

24 A Yes.

25 Q And what did you tell Tamara about it?

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

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

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

10 MR. NORTHCRAFT: Object to the form.

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

13 BY MS. CARTER:

14 Q Who suggested that to you?

15 MR. NORTHCRAFT: Object to the form.

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

17 BY MS. CARTER:

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

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

22 Q From the lawsuit by the Newmans?

23 A Yes.

24 MR. NORTHCRAFT: Object to the form.

25 ///

1 BY MS. CARTER:

2 Q How did that make you feel?

3 MR. NORTHCRAFT: Object to the form.

4 THE WITNESS: I was very upset at that point.

5 Again, that's when I was very concerned how the Newman

6 family could do that to the school.

7 BY MS. CARTER:

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

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

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

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

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

1 question?

2 A I --

3 MR. NORTHCRAFT: Object to the form.

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

8 BY MS. CARTER:

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

12 A Yes.

13 Q Tell me what was also discussed.

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

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

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

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

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

6 A Yes.

7 MR. NORTHCRAFT: Object to the form.

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

9 MR. NORTHCRAFT: It's leading.

10 BY MS. CARTER:

11 Q Is that your testimony?

12 MR. NORTHCRAFT: Object to the form.

13 THE WITNESS: Yes.

14 BY MS. CARTER:

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

18 A Yes.

19 MR. NORTHCRAFT: Object to the form.

20 BY MS. CARTER:

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

24 MR. NORTHCRAFT: Object to the form.

25 THE WITNESS: No.

1 BY MS. CARTER:

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

4 MR. NORTHCRAFT: Object to the form.

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

8 BY MS. CARTER:

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

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

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

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

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

23 A Yes. Joe brought it up.

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

25 A Did Joe say?

1 MR. NORTHCRAFT: Object to the form.

2 BY MS. CARTER:

3 Q Right.

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

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

10 A Yes.

11 MR. NORTHCRAFT: Object to the form.

12 BY MS. CARTER:

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

17 A Yes.

18 MR. NORTHCRAFT: Object to the form.

19 BY MS. CARTER:

20 Q How was that suggested to you?

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

1 Q With what story?

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

3 Q And what was the story?

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

7 Q What was your reaction to that?

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

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

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

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

20 (Record read)

21 BY MS. CARTER:

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

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

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

5 A I doubt it.

6 MR. NORTHCRAFT: Object to the form.

7 THE WITNESS: Matthew was in the hospital.

8 BY MS. CARTER:

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

12 A Yes.

13 Q When was that meeting?

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

16 Q Okay. Who was present at that meeting?

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

19 Q Where did that meeting take place?

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

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

24 A Yes.

25 MR. NORTHCRAFT: Object to the form.

1 BY MS. CARTER:

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

3 MR. NORTHCRAFT: Object to the form.

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

5 BY MS. CARTER:

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

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

10 Q When was that?

11 A A few days before our meeting with you.

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

14 A I believe it's in Ephrata.

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

18 A Yes.

19 MR. NORTHCRAFT: Object to the form.

20 BY MS. CARTER:

21 Q Were you home when that happened?

22 A No.

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

25 A Yes.

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

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

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

11 A No.

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

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

17 Q Contacted who?

18 A Mr. Young. I'm sorry.

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

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

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

1 A Yes.

2 Q What did you do with it?

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

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

7 A No.

8 Q Why not?

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

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

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

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

17 A Yes.

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

20 A I took it home.

21 Q Is it still in your home?

22 A Yep.

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

24 A No. I contacted him.

25 Q And tell me about that discussion.

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

3 A No.

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

6 A No.

7 MR. NORTHCRAFT: Object to the form.

8 BY MS. CARTER:

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

12 A Very --

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

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

17 Q Why is that?

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

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

25 A I do now, yes.

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

3 MR. NORTHCRAFT: Object to the form.

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

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

15 BY MS. CARTER:

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

18 MR. NORTHCRAFT: Object to the form.

19 THE WITNESS: Mr. Northcraft.

20 BY MS. CARTER:

21 Q During that February 2013 meeting?

22 A Yes.

23 Q Any other time?

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

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

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

4 MR. NORTHCRAFT: Object to the form.

5 THE WITNESS: Completely dishonest.

6 BY MS. CARTER:

7 Q What does dishonesty mean to you?

8 MR. NORTHCRAFT: Object to the form.

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

12 BY MS. CARTER:

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

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

18 Q And what did he say about that?

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

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

25 A To Joseph.

1 A No. I deleted it.

2 Q Oh, you deleted the recording?

3 A Yes, I did.

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

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

7 Q So you lied to Mr. Young?

8 A Yep.

9 Q Why? Why did you lie?

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

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

15 A It wasn't for my personal benefit.

16 Q How do you know that?

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

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

20 A Yes.

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

23 A Yes, I am under oath.

24 Q All right.

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

1 You're not here to harass her.

2 MR. NORTHCRAFT: Is that an objection?

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

5 BY MR. NORTHCRAFT:

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

8 (Record read)

9 BY MR. NORTHCRAFT:

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

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

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

16 A Yes.

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

19 A Yes.

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

25 MS. CARTER: Object to the form.

1 BY MR. NORTHCRAFT:

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

4 MS. CARTER: Object to the form.

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

7 BY MR. NORTHCRAFT:

8 Q We did.

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

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

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

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

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

1 question.

2 MR. NORTHCRAFT: That's okay.

3 MS. CARTER: Ask a question.

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

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

7 MR. NORTHCRAFT: Good for you.

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

10 BY MR. NORTHCRAFT:

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

14 MS. CARTER: Objection. Move to strike.

15 BY MR. NORTHCRAFT:

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

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

20 Q We certainly do.

21 MS. CARTER: Objection. Move to strike.

22 BY MR. NORTHCRAFT:

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

1 you would.

2 MS. CARTER: Is there a question?

3 BY MR. NORTHCRAFT:

4 Q Do you have any reason to dispute that?

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

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

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

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

15 A Okay.

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

19 A Uh-huh.

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

24 A His interview.

25 Q His interview.

1 BY MR. NORTHCRAFT:

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

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

9 A I need to take a break.

10 MR. NORTHCRAFT: Okay.

11 (Recess)

12 BY MR. NORTHCRAFT:

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

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

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

23 A No.

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

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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.)

DEPOSITION UPON ORAL EXAMINATION OF
JOSEPH SCOTT

4:31 P.M.

APRIL 15, 2013

1030 NORTH CENTER PARKWAY

KENNEWICK, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578

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

3 A. Excuse me?

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

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

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

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

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

23 A. Not that I remember.

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

1 about a tackle on September 17th?

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

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

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

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

17 A. Which?

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

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

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

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

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

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

9 A. Yes.

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

13 A. No.

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

15 MR. NORTHCRAFT: Object to the form.

16 A. No.

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

21 MR. NORTHCRAFT: Object to the form.

22 A. No.

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

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

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

EXHIBIT 6

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

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

Plaintiffs,)

vs.)

No. 12-2-03162-1

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

Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
ZACHARY BEACH

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

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

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

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

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

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

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

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

1 A All of us.

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

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

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

8 MR. NORTHCRAFT: Object to the form.

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

11 BY MS. CARTER:

12 Q Who told you that?

13 A The attorney.

14 Q Mr. Northcraft?

15 A Yes.

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

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

22 Q Because of the lawsuit?

23 A Because of the lawsuit, yes.

24 Q How did that make you feel?

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

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

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

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

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

10 MR. NORTHCRAFT: Object to the form.

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

13 BY MS. CARTER:

14 Q How certain are you that he said that?

15 A Pretty certain.

16 Q A hundred percent?

17 MR. NORTHCRAFT: Object to the form.

18 THE WITNESS: Yeah.

19 BY MS. CARTER:

20 Q Did he say it to you directly?

21 A He said it to us all directly.

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

24 MR. NORTHCRAFT: Object to the form.

25 THE WITNESS: Yes.

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

3 A No.

4 Q -- from this lawsuit?

5 MR. NORTHCRAFT: Object to the form.

6 BY MS. CARTER:

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

9 MR. NORTHCRAFT: Object to the form.

10 THE WITNESS: Now, no.

11 BY MS. CARTER:

12 Q At the time.

13 A Yeah.

14 MR. NORTHCRAFT: Object to the form.

15 BY MS. CARTER:

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

20 A My wife had mentioned it, yes.

21 Q Were you present for that conversation?

22 A Yes.

23 Q Who did she say that to?

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

25 Q What did he say in response to that?

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

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

EXHIBIT 7a

1 there.

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

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

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

8 A. Yes, sir.

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

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

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

13 A. No.

14 Q. -- for his representation?

15 A. No.

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

17 A. No.

18 Q. -- with Mr. Northcraft?

19 A. No.

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

21 A. At my house last week.

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

24 A. Yes, sir.

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

1 agreement?

2 A. No.

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

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

7 MR. LERITZ: You're asserting privilege?

8 MR. NORTHCRAFT: Yeah.

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

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

13 MR. LERITZ: I guess we do.

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

16 A. Yes.

17 Q. For how long?

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

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

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

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

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

EXHIBIT 7b

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

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

Plaintiffs, NO. 12-2-03162-1

v.

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

Defendant.

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

Jody K. Pope, CCR/RPR

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

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

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

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

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

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

EXHIBIT 7c

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

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

VIDEO DEPOSITION UPON ORAL EXAMINATION OF MATTHEW BUNDAY

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

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

1 represent, starting with the plaintiffs, please.

2 MS. CARTER: Melissa Carter for the plaintiffs.

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

6

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

11

12 EXAMINATION

13 BY MS. CARTER:

14 Q. Good morning.

15 A. Good morning.

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

17 A. Matthew Michael Bunday.

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

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

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

22 A. Whatever floats your boat.

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

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

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

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

EXHIBIT 7d

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

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

VIDEO DEPOSITION UPON ORAL EXAMINATION OF THOMAS HALE

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

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

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

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

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

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

14
15 EXAMINATION

16 BY MR. LERITZ:

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

18 A. Thomas Jay Hale.

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

20 A. J-A-Y.

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

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

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

25 A. Currently 13 months.

Newman, et al. v. Highland School District

(Yakima County Superior Court No.: 12-2-03162-1)

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

EXHIBIT 7e

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

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

DEPOSITION UPON ORAL EXAMINATION OF KELLY THORSON

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

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

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

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

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

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

16
17 EXAMINATION

18 BY MR. LERITZ:

19 Q. Good afternoon.

20 A. Hey.

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

22 A. Kelly Thomas Thorson.

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

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

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

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

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

EXHIBIT 7f

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

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

VIDEO DEPOSITION UPON ORAL EXAMINATION OF JOSHUA BORLAND

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

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

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

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

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

11

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

16

17

EXAMINATION

18 BY MS. CARTER:

19 Q. Good morning.

20 A. Good morning.

21 Q. State your name, please.

22 A. Josh Borland.

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

25 Newman, also here is Arthur Leritz, another attorney

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

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

EXHIBIT 8

Sabrina Y. Horne

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

Agreed. Very interesting.

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

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

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

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

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

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

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

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

Sincerely,

Arthur D. Levitz

Attorney

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

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

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Please consider the environment before printing this email

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

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

EXHIBIT 9

Sabrina Y. Horne

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

Mark,

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

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

Arthur

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

Hi Arthur,

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

Mark

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

Hi Mark,

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

Arthur

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

Hi Arthur,

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

Mark

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

Hi Arthur,

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

Mark

Newman, et al. v. Highland School District

(Yakima County Superior Court No.: 12-2-03162-1)

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

EXHIBIT 10

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



SEATTLE
BELLEVUE
EVERETT
KENT

Email documents to:
mail@adlergiersch.com

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

VIA EMAIL ONLY

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

April 3, 2013

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

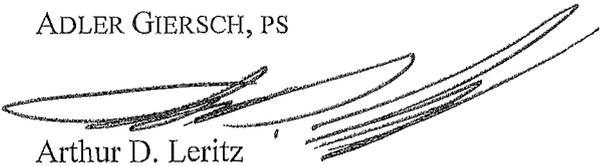
Dear Mr. Northcraft:

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

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

Sincerely,

ADLER GIERSCHE, PS



Arthur D. Leritz
Attorney at Law

Enclosure

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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
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

SUBPOENA IN A CIVIL CASE

TO: DUSTIN SHAFER

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

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

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

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

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

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

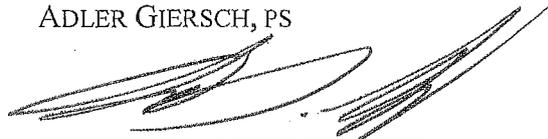
8 YOU ARE COMMANDED to permit inspection of the following premises at
9 the date and time specified below.

10 PREMISES

DATE AND TIME

11 DATED this 2nd day of April, 2013.

12 ADLER GIERSCH, PS



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

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

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

EXHIBIT 11

Email documents to:
mail@adlergiersch.com

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

VIA EMAIL AND REGULAR MAIL

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

May 31, 2013

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

Dear Mr. Northcraft:

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

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

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

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

Q. And what did the two of you discuss?

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

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

A. Yes, sir.

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

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

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

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

- Q: Okay. What is your understanding of the scope of the representation?
- Mr. Northcraft: I don't think that -- that's privileged information.
- Mr. Leritz: You're asserting privilege?
- Mr. Northcraft: Yeah.
- Mr. Leritz: I don't think it's privileged, Counsel.
- Mr. Northcraft: Well, we disagree, don't we?²

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

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

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

- Q. Okay. Whenever you would get paperwork from your work as an assistant coach at Highland, would you always kind of put it in the same notebook or the same place?
- A. Yeah, generally. A lot of stuff has been, you know, lost and moved around, you know, in the move. But, yeah, generally I'll keep it. I had a, kind of like a bag, a little messenger bag that I kind of kept with all my coaching stuff in it, books and all that stuff.
- Q. Okay. And you haven't purposely taken anything out of that bag or thrown anything away, destroyed any documents?
- A. She's sitting in a closet.
- Q. Okay.³

-
- Q. Okay. So you still have, for lack of a better term, just the book, the playbook that you had when you --
- A. I can't tell you --
- Q. -- were at Highland?
- A. Sorry.
- Q. That's okay.

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

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



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

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

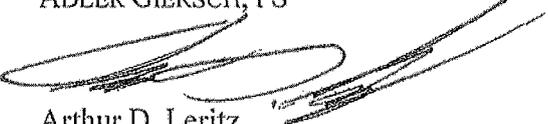
Therefore, I expect to receive all responsive documents no later than 10 days from the date of this letter. If I do not receive the requested documents, I intend to bring this matter before the court and will be seeking an instruction on spoliation for use at trial.

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

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

Sincerely,

ADLER GIERSCH, PS



Arthur D. Leritz
Attorney at Law

cc: Randy & Marla Newman
Michael Nelson
Fred Langer

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



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

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

EXHIBIT 12



NORTHCRAFT, BIGBY & BIGGS, P.C.

ANDREW T. BIGGS
andrew_biggs@northcraft.com

June 14, 2013

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

SENT VIA EMAIL

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

Dear Mr. Leritz:

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

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

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

Arthur Leritz, Esq.
June 14, 2013
Page 2

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

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

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

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

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

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

Arthur Leritz, Esq.
June 14, 2013
Page 3

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

Sincerely,

A handwritten signature in black ink, appearing to be 'Andrew T. Biggs', written over a horizontal line.

Andrew T. Biggs

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

Newman, et al. v. Highland School District

(Yakima County Superior Court No.: 12-2-03162-1)

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

EXHIBIT 13

Sabrina Y. Horne

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

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

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

Honorable Blaine G. Gibson

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

**NOTICE OF VIDEO DEPOSITION OF
DUSTIN SHAFER**

Plaintiffs,

v.

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

Defendant.

TO: Plaintiffs

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

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

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

PERSON: Dustin Shafer
14492 Hurricane Lane
Helendale, CA 92342

DATE: Monday, September 16, 2013

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

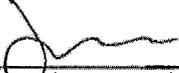
2 PLACE: Hilton Garden Inn
3 12603 Mariposa Road
4 Victorville, CA 92395
5 1-760-952-1200

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

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

11 DATED this 22nd day of August, 2013.

12 NORTHCRAFT, BIGBY & BIGGS, P.C.

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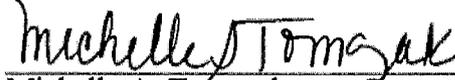
CERTIFICATE OF SERVICE

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

Richard H. Adler
Arthur Leritz
Melissa D. Carter
Adler Giersch, PS
333 Taylor Avenue N.
Seattle, WA 98109
radler@adlergiersch.com
aleritz@adlergiersch.com
mdcarter@adlergiersch.com
marye@adlergiersch.com

Fred P. Langer
Michael E. Nelson
Nelson Langer Engle, PLLC
1015 NE 113th Street
Seattle, WA 98125
nelsonm@nlelaw.com
langerf@nlelaw.com
hornes@nlelaw.com

SIGNED in Seattle, Washington on August 22, 2013.


Michelle A. Tomczak
Legal Assistant
michelle_tomczak@northcraft.com

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

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

EXHIBIT 14



NELSON LANGER ENGLE PLLC
ATTORNEYS AT LAW

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

*Licensed in Washington and Oregon

August 28, 2013

Via Email and U.S. Mail

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

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

Dear Counsel:

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

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

Seattle Office
1016 NE 113th Street
Seattle, WA 98125
T 206.623.7520
F 206.622.7088

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

www.nlelaw.com
A093

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

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

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

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

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

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

Sincerely,

NELSON LANGER ENGLE, PLLC

A handwritten signature in cursive script, appearing to read "Fred P. Langer", followed by a large, sweeping flourish that extends to the right.

Frederick P. Langer
Attorney at Law

cc: Adler Giersch, PS (via email)

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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
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

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

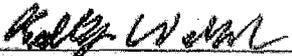
Defendant.

No. 12-2-03162-1

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

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

Dated August 23, 2013 at Benton Washington.



Kelly Welsh

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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
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

SUBPOENA IN A CIVIL CASE

TO: KELLY WELSH

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

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

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

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

PLACE: Adler Giersch, PS 14710 SE 30th St. Bellevue, WA 98006	DATE AND TIME: September 17, 2013 10:30 a.m.
--	--

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

9 (list documents or objects):
10 _____

PLACE	DATE AND TIME
-------	---------------

11 DATED this 23rd day of August, 2013.

12
13 ADLER GIERSCH, PS

14
15 /s/ Melissa D. Carter

16 Melissa D. Carter, WSBA # 36400

17 Attorneys for Plaintiffs

18 Adler Giersch PS

19 333 Taylor Avenue North

20 Seattle, WA 98109

21 Telephone: (206) 682-0300

22 Fax: (206) 224-0102

23 Email: aleritz@adlergiersch.com

mdcarter@adlergiersch.com MC

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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
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

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

Defendant.

No. 12-2-03162-1

NOTICE OF DEPOSITION UPON ORAL
EXAMINATION OF KELLY WELSH

TO: KELLY WELSH

AND TO: MARK NORTHCRAFT, counsel for Defendant

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

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

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

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

3 DATED this 23rd day of August, 2013.

4 ADLER GIERSCH, PS

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

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

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

EXHIBIT 15



NORTHCRAFT, BIGBY & BIGGS, P.C.

ANDREW T. BIGGS
andrew_biggs@northcraft.com

September 3, 2013

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

SENT VIA EMAIL

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

Dear Mr. Langer:

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

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

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

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

Fred Langer, Esq.
September 3, 2013
Page 2

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

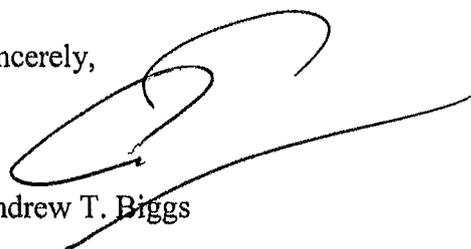
Regarding the trial date, we agree that the total case is estimated to last approximately six weeks, divided equally between the parties. We also agree that a trial date in November 2014 might work, though we have another trial set for October 14, 2014, and it is expected to end about November 10, 2014.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

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

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

Please let me know if you have any further questions.

Sincerely,



Andrew T. Biggs

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

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

EXHIBIT 16



NELSON | BLAIR | LANGER | ENGLE
TRIAL ATTORNEYS

September 5, 2013

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

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

Dear Mr. Biggs:

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

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

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

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

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

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

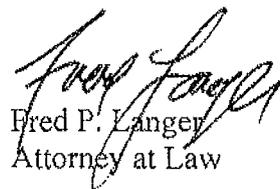
Finally, we are happy that Lilly Tang is back in the office. She has contacted us and appears to be working cooperatively with our staff. Again, we reiterate our need to identify some dates that are mutually agreeable to get more depositions accomplished.

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

Thank you for your attention to this matter.

Sincerely,

NELSON BLAIR LANGER ENGLE, PLLC



Fred P. Langer
Attorney at Law

cc: Adler Giersch (via email)

DECLARATION OF ERIC DIENER

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

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

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

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

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

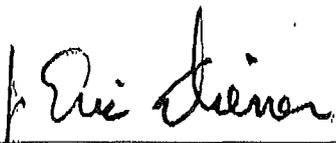
11. At the deposition I did my best to maintain a professional demeanor and believe I did so; however, I was boiling under my skin when this subject matter was brought up. I communicated my displeasure at his tactic. He then apologized during the deposition that his intent was not to intimidate me. But I know what happened. I know what I heard. I know what I saw. I am a principal of a high school and I have to handle many different kinds of situations, including talking with gang members.

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

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

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

DATED this 27th day of November 2013.



J. Eric Diener

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

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

Plaintiffs,

vs.

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

Defendant.

No. 12-2-03162-1

DECLARATION OF FRED P. LANGER IN
SUPPORT OF PLAINTIFFS' REPLY IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER

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

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

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

2. Attached herewith as *Exhibit 1* is a true and correct copy of excerpts from the deposition of Antonio Gonzalez: 21-22, 69-70, 75.

3. Attached herewith as *Exhibit 2* is a true and correct copy of excerpts from the deposition of Billy Gellerson: 63-64, 72-74, 122-124, 126-127.

1 4. Attached herewith as *Exhibit 3* is a true and correct copy of excerpts from the
2 deposition of Tyler Hakala: 12, 52.

3 5. Attached herewith as *Exhibit 4* is a true and correct copy of excerpts from the
4 deposition of Kavan Stoltenow: 10-11, 57.

5 6. Attached herewith as *Exhibit 5* is a true and correct copy of excerpts from the
6 deposition of Kyle Belton: 61-63.

7 7. Attached herewith as *Exhibit 6* is a true and correct copy of excerpts from the
8 deposition of Dustin Shafer: 141, 164-165.

9 8. Attached herewith as *Exhibit 7* is a true and correct copy of excerpts from the
10 deposition of Alex Laughery: 46-47.

11 9. Attached herewith as *Exhibit 8* is a true and correct copy of excerpts from the
12 deposition of Aaron Baughman: 13-14, 26, 35.

13 10. Attached herewith as *Exhibit 9* is a true and correct copy of excerpts from the
14 deposition of Saul Ruiz: 26, 28-29.

15 11. Attached herewith as *Exhibit 10* is a true and correct copy of excerpts from the
16 deposition of Martin Vargas: 8-10.

17 12. Attached herewith as *Exhibit 11* is a true and correct copy of excerpts from the
18 deposition of Brandon Somerville: 8, 9, 15-16, 28-29.

19 13. Attached herewith as *Exhibit 12* is a true and correct copy of excerpts from the
20 deposition of Joe Scott: 41-42, 77.

21 14. Attached herewith as *Exhibit 13* is a true and correct copy of excerpts from the
22 deposition of Trey Trepinier: 56-58.

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

DATED this 18th day of September, 2013 at Seattle, Washington.



Fred P. Langer

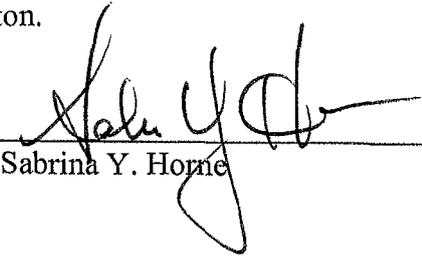
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CERTIFICATE OF SERVICE

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

<p>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</p> <p><input type="checkbox"/> ABC Messenger <input type="checkbox"/> First Class mail postage prepaid <input checked="" type="checkbox"/> Email</p>	
--	--

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



 Sabrina Y. Horne

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

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

Plaintiffs,)

vs.)

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

Defendant.)

NO. 12-2-03162-1

DEPOSITION UPON ORAL EXAMINATION OF ANTONIO GONZALEZ

February 22, 2013
1:52 p.m.
917 Triple Crown Way
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

1 A. Yeah.

2 Q. Reviewing Exhibit No. 2, does this appear to be an
3 accurate transcription of the interview you gave to
4 Mr. Adler on June 5th, 2010?

5 A. Yes.

6 Q. How was it that you were -- you came to be interviewed
7 by Mr. Adler?

8 A. What do you mean by that?

9 Q. Who arranged for the interview to take place?

10 A. Oh, well, I talked to Randy on the phone and asked if
11 I could go. And he goes, Yeah. I would talk to him.

12 Q. All right. And did Mr. Adler have a discussion with
13 you before he turned on the tape recorder to
14 interview?

15 A. No.

16 Q. Did he indicate to you what type of information he
17 would be asking you for before he turned on the tape
18 recorder?

19 A. No, we just kind of like met. Hi, how's it going, and
20 then he just started from there.

21 Q. Was this your first meeting with Mr. Adler --

22 A. Yeah.

23 Q. -- June 5th, 2010?

24 A. Yeah.

25 Q. Was there any discussion with Mr. Adler after the tape

1 recorder was turned off on that date?

2 A. Not from what I recall, no.

3 Q. Okay. How is it that you were able to review this
4 transcription and sign it on July 28th, 2010?

5 A. Can you just ask me --

6 Q. I'll ask it a different way.

7 A. Yeah, sorry.

8 Q. Did anyone show you this transcript, a copy of which
9 has been marked as Exhibit 2 on July 28th?

10 A. Yeah, on July 28th.

11 Q. Okay. Did you review it and then sign it?

12 A. Yeah.

13 Q. Did you want to make any changes before you signed it?

14 A. Nope.

15 Q. Okay. Do you still agree with everything that you
16 said in response to Mr. Adler's questions --

17 A. Yes.

18 Q. -- as we see on Exhibit 2?

19 A. Yeah.

20 Q. Ask you a few questions about some of the answers you
21 provided that we see in that exhibit.

22 On that practice the day before the game with
23 Naches, so the September 17th, 2009 practice, do you
24 recall that day?

25 A. Yeah.

1 A. Just about his injury and like what -- what I can
2 remember about it.

3 Q. Did he tell you the reason that he would -- did he ask
4 you to come out and meet with Mr. Adler, I mean, how
5 is it that you got to his house?

6 A. He just asked me if I could meet with them, he was
7 going to ask me a couple questions, I guess.

8 Q. And meet with them, "them" being who?

9 A. With Randy and Richard.

10 Q. And did you know who Richard was at the time?

11 A. No, not really. He just told me he worked kind of
12 like with the brain -- like just -- I don't know.

13 Q. Did you understand whether or not he was a lawyer at
14 that point?

15 A. Well, kind of.

16 Q. Kind of. Did you learn that later?

17 A. I know he wasn't a doctor, that's for sure.

18 Q. Okay. Did you know he was a lawyer when you met him
19 and gave him this statement?

20 A. Oh, yeah.

21 Q. How did you know that?

22 A. He told me.

23 Q. When did he tell you?

24 A. That same day, like when we first met.

25 Q. And what else did he first tell you before you started

1 giving him the statement?

2 A. Just that's pretty much it. Just we shook hands, he
3 told me where he was from. And then that's when we
4 started this.

5 Q. And so how long did you talk to him from the time you
6 got to the house before you tape recorded this
7 interview?

8 A. Probably a minute.

9 Q. A minute?

10 A. A minute or two.

11 Q. Was there anybody else there besides Mr. Adler and
12 Mr. Newman?

13 A. No. I remember his son Patrick walking in, but that
14 was probably about it.

15 Q. Were there any other football players there that day?

16 A. No.

17 Q. Did you ever go to any other meetings involving
18 Mr. Adler?

19 A. No.

20 Q. Do you know if any other players went to the Newman
21 house to talk to Mr. Adler besides yourself?

22 A. Yeah.

23 Q. Who?

24 A. I know Kavan went. And from what I recall Forrest.
25 And that's all I remember.

1 people.

2 Q. Uh-huh.

3 A. And that they were trying to figure out what went

4 wrong.

5 Q. And did he tell you what he thought was -- had gone

6 wrong?

7 A. No.

8 Q. Did anybody tell you what they think went wrong?

9 A. No.

10 Q. Do you have any idea why Matthew suffered the injury

11 that he did?

12 MS. CARTER: Object to form.

13 A. No.

14 Q. (By Mr. Northcraft) Did anybody ever tell you why they

15 think Matthew suffered this injury?

16 A. No.

17 Q. Have you ever heard of secondary impact?

18 A. No.

19 Q. You said that you and Trey were pretty good friends?

20 A. Uh-huh.

21 Q. Did you live close to each other?

22 A. He actually live right in front of the school.

23 Q. And where did you live relative to the school?

24 A. I live like four or five minutes away. I live close

25 to the elementary school.

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

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

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 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.

1 A. I have not.

2 Q. Have you ever asked to see it?

3 A. No.

4 Q. Did you ever ask for a copy of this interview prior
5 to today?

6 A. I did not.

7 Q. How long of a discussion was -- well, was there a
8 discussion amongst the group prior to you personally
9 being interviewed and taped?

10 A. Yes.

11 Q. Were you the first person to be interviewed and taped
12 or --

13 A. I have no idea what order it was. He introduced
14 himself, he asked us, he wanted to know what
15 happened, we kind of as a group like went through
16 because we all saw the same thing, we kind of just
17 went through what we saw. And then he was like, All
18 right, I would like to interview you guys. And
19 that's when he started the interviews separately, not
20 as a group.

21 Q. Did he ever tell you anything about what Matthew
22 related about what happened in practice on
23 September 17th?

24 A. Can you repeat that?

25 Q. Yeah. Did he ever tell you anything that Matthew

1 said about either the game or the practice?

2 A. Did he tell us?

3 Q. Yeah.

4 A. No.

5 Q. Did he ever repeat anything that Matthew told me this
6 or Matthew said this or anything like that?

7 A. Not that I remember.

8 Q. Okay. Did this researcher explain to you about what
9 they call the secondary impact syndrome? Have you
10 ever heard that phrase before?

11 A. I don't believe so.

12 Q. Okay. Did he ever try and suggest to you that
13 somehow the coaches were at fault for Matthew's
14 injury?

15 A. No.

16 Q. Did he ever say, I'm looking to try and figure out
17 what happened, you know, why this, why Matthew got
18 hurt?

19 A. Yes.

20 Q. And did he say, And I think the coaches were somehow
21 at fault?

22 MS. CARTER: Objection, asked and answered.

23 Q. Did he ever say that?

24 A. No.

25 Q. He never suggested that at any time?

1 MS. CARTER: Objection, asked and answered.

2 A. No.

3 Q. Through the whole time you were there he never
4 suggested that?

5 MS. CARTER: Object to form.

6 A. He never suggested the coaches were at fault, he just
7 wanted to get to the bottom of what happened.

8 Q. Now, why -- how did the subject of the September --
9 of the practice come up during this discussion?

10 A. That was just what, um, I think he believed that
11 happened, I think somebody along the way said
12 Matthew, I don't know when, Matthew suffered a
13 headache from the practice before and he took that as
14 a serious deal and went with that because he had
15 been, you know, educated in that kind of field so he
16 believed that's what happened, he was trying to find
17 evidence to prove that's what happened.

18 Q. So he was looking for evidence that there was some
19 injury the day before in practice; is that what
20 you're telling me?

21 MS. CARTER: Object to the form.

22 A. Yes.

23 Q. Did he suggest to you what kind of injury he was
24 looking for?

25 MS. CARTER: Object to the form.

1 so he went and watched him and then he left just
2 because he had other things to do. He was only in
3 town for one night.

4 Q. Okay. Did you talk to him at any other time --

5 A. No.

6 Q. -- on that trip --

7 A. No.

8 Q. -- last weekend?

9 A. No.

10 MR. NORTHCRAFT: That's all I have at this
11 point. Thank you.

12 A. I have a question. Am I allowed to clarify one of
13 the questions?

14 Q. Sure.

15 A. You asked me if I thought that play was the one that
16 caused Matthew's injury and I said yes, but I was
17 trying, like what I was trying to explain was I
18 believe that this happened the day before and I, I
19 think that affected Matthew in some way, but that
20 play on Friday, yeah, Friday night during the game is
21 what set it off.

22 Q. Why do you think that? Who told you that?

23 A. No one told me that, I just, I saw Matthew that day,
24 and I mean, um, I was one of the few people that
25 didn't think Matthew had that injury the night

1 before, or that -- that that was the sole reason. I
2 think that that caused something in his head not
3 right from the way he acted, the headache he had, um,
4 I mean I've done a little research on it, and just I
5 think that that second hit on Friday night, that was
6 really vicious, caused something to go off that was
7 already prior existing. Maybe it happened that day,
8 it could have happened at any time, but I, I don't
9 think that just one hit caused what happened to him.

10 Q. And your belief is based upon your own independent
11 research?

12 A. Research and from what I saw, from what happened to
13 Matthew. I mean, he took a hard hit on Thursday, and
14 obviously something was wrong if he had a headache
15 all day for, you know, over 24 hours, I don't know
16 what, I'm not a doctor, but something was wrong.

17 Q. So why would that have anything to do with his injury
18 the day before, or the next day?

19 A. I think, you know, I've heard like blood clotting or,
20 I think maybe something happened on Thursday that
21 caused like a clot and on Friday night that second
22 hit that was really, really vicious, it was just like
23 waiting, and then when that happened, that set it
24 off. I don't know how that works after that, but I
25 do know that hits cause clotting.

1 Q. Do you think that Matthew experienced a brain bleed
2 or clotting, as you have kind of described it, as
3 part of this injury?

4 A. Yes.

5 Q. Okay. How do you know that?

6 A. Just I know that sometimes concussions, that's where
7 concussions come from.

8 Q. I didn't ask you that. I want to ask you a better
9 question. I'm sorry. What I want to know is, how do
10 you know that Matthew sustained a brain, a bleed, a
11 blood clot or a bleed in his brain, how do you know
12 that?

13 A. I do not know.

14 Q. You don't know that?

15 A. I don't know that.

16 MR. NORTHCRAFT: All right. That's all I've
17 got. Do you have any other questions?

18 MS. CARTER: I have a few follow-up, but I need
19 to take a quick restroom break.

20 (A SHORT RECESS WAS HAD.)

21

22 CONTINUED EXAMINATION

23 BY MS. CARTER:

24 Q. Just a few follow-up questions for you, Billy.

25 You were asked some questions by Mr. Northcraft

1 regarding your statement, Exhibit 3. Regardless of
2 who asked you the questions, your responses were true
3 and accurate in your own words, correct?

4 MR. NORTHCRAFT: Object to the form.

5 A. Yes.

6 Q. Were you promised anything in exchange for giving
7 that statement?

8 MR. NORTHCRAFT: Object to the form.

9 A. No.

10 Q. Okay. Were you promised anything in exchange for
11 your testimony here today?

12 A. No.

13 MR. NORTHCRAFT: Object to the form.

14 Q. Has anyone told you what to say in response to
15 questions?

16 A. No.

17 Q. You testified earlier that your statement, Exhibit 3,
18 is word for word what you said, those are your words,
19 correct?

20 MR. NORTHCRAFT: Object to the form.

21 A. Yes.

22 Q. And when Mr. Adler interviewed you back in the summer
23 of 2010, did you know that he was not retained by the
24 Newman family at that point?

25 MR. NORTHCRAFT: Object to the form.

1 A. Not that he was not, that that they hadn't hired him
2 yet?

3 Q. Right.

4 A. Yes, yes, I knew that.

5 Q. Okay. And when he met with you again in the fall of
6 2012, a few months ago, he told you that he had been
7 hired by the Newman family for a lawsuit against the
8 school district?

9 MR. NORTHCRAFT: Object to the form.

10 A. Yes.

11 Q. Would it have made a difference to you when you were
12 interviewed back in the summer of 2010 if Mr. Adler
13 was in fact the attorney for the Newman family versus
14 working on an independent research project regarding
15 brain injuries?

16 MR. NORTHCRAFT: Object to the form.

17 A. The only difference would have been is I think I
18 would have stayed more away from the medical side of
19 it just because I only, when he said he was a medical
20 researcher, I wanted to help with that. But
21 everything I said was still true, I just would have
22 avoided more of going into depth about the medical
23 stuff. I think going into that would give him wrong
24 leads about Matthew.

25 Q. Do you feel as though you were misled in any way back

1 in the summer of 2010?

2 MR. NORTHCRAFT: Object to the form.

3 A. No.

4 Q. You told the truth then?

5 MR. NORTHCRAFT: Object to the form.

6 A. Yes.

7 Q. And you're telling the truth today?

8 MR. NORTHCRAFT: Object to the form.

9 A. Yes.

10 Q. You said that you had a headache on game day as well.

11 Do you recall that?

12 A. Yes.

13 Q. Did you suffer any kind of tackling and blows to the

14 head in the practice the day before the game?

15 A. I did not.

16 Q. So there would be no reason for you to report a

17 headache to the coach on the game day?

18 A. No.

19 MR. NORTHCRAFT: Object to the form.

20 Q. You were also asked a question about whether you

21 heard Matthew report his head pain to the coaches on

22 game day. You did hear him tell Coach Shafer that

23 his head hurt during practice, correct?

24 MR. NORTHCRAFT: Object to the form.

25 A. Yes.

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 3

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. Okay.

2 Q. Have you had a chance to review Exhibit 3?

3 A. Yes.

4 Q. Does that appear to accurately reflect the recorded
5 interview that you gave to Mr. Adler in the Newman
6 home in 2010?

7 MR. NORTHCRAFT: Object to the form.

8 A. Yes.

9 Q. On the last page of Exhibit 3 there is a signature at
10 the bottom. Do you recognize that signature?

11 A. Yes, I do.

12 Q. Is that yours?

13 A. It is.

14 Q. Did you sign that on June 28, 2010?

15 A. I did.

16 Q. How was it that you got a copy of this in late June
17 2010 to sign?

18 A. Richard, I met with him for a second time, he brought
19 me a copy to review and sign that it was my
20 statement.

21 Q. Okay. Is there anything contained within your
22 statement marked as Exhibit 3 that you do not believe
23 is accurate today?

24 A. I do not believe so. The only questionable thing
25 that I've recently come into knowledge about, it's

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?

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 4

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 Q. Do you know if it was the morning, afternoon?

2 A. I believe it was the morning. But it could have been
3 the afternoon.

4 Q. How long did the interview take approximately?

5 A. Probably around an hour.

6 Q. Okay. Do you recall what Mr. Adler said to you prior
7 to the interview?

8 A. Not very well. Not at all.

9 Q. Okay. Do you recall what Mr. Adler said to you, if
10 anything, at the conclusion of the interview?

11 A. Not really. But I know that it was -- he was -- he
12 told me that the purpose of the interview was to just
13 research into Matthew's case just to see if he could
14 figure out what happened to Matthew.

15 Q. Did anyone suggest to you what you should say in
16 response to the questions before you were interviewed?

17 A. No.

18 MR. NORTHCRAFT: Object to the form.

19 Q. (By Ms. Carter) And upon reviewing Exhibit 3, does
20 Exhibit 3 appear to accurately reflect the interview
21 that you gave to Mr. Adler on July 28th, 2010?

22 A. Yes.

23 Q. And the responses that you provided to Mr. Adler's
24 questions that we see in Exhibit 3, were those your
25 words that you provided on July 28th?

1 A. Yes, I believe so.

2 Q. Anything inaccurate about the statements that you
3 provided in Exhibit 3 after you reviewed it here
4 today?

5 A. One second, let me just go over this again and make
6 sure.

7 Q. Sure.

8 A. No, there's nothing inaccurate that I can notice.

9 Q. Okay. And you gave this statement July of 2010, where
10 were you in school at that point?

11 A. I was a junior in high school still.

12 Q. Okay. And July, that's the summer, correct?

13 A. Yes.

14 Q. So had you just completed your junior year?

15 A. Yeah, I was just recently coming off of finishing my
16 junior year.

17 Q. When did Matthew's injury occur that you were
18 discussing in this interview?

19 A. It happened during the Naches football game against
20 Highland that junior year, I don't remember the date
21 of that game, but it was that game.

22 Q. How about the month?

23 A. The month would have been October or November. It was
24 definitely October, because it was the beginning of
25 the football season.

1 Matthew.

2 Q. (By Mr. Northcraft) Do you remember what you said?

3 A. No, I do not.

4 Q. Do you remember any subject of what you talked about
5 other than providing information about Matthew?

6 A. It was mostly Matthew as a person and his -- just some
7 questions about him specifically, not really -- I
8 think it focused more on Matthew and less on the
9 injury itself.

10 Q. Okay. Did this Mr. Adler, did he suggest to you how
11 it was that Matthew came to suffer this injury that he
12 suffered?

13 A. Not that I remember.

14 Q. Were you asked questions about the practice on the
15 17th?

16 A. Yes.

17 Q. Do you know why you were being asked questions about
18 the 17th?

19 MS. CARTER: Object to form.

20 A. No, I did not.

21 Q. (By Mr. Northcraft) At the time you were there as I
22 understand what you've told me is that Mr. Newman was
23 there and possibly Mrs. Newman, a camera crew and
24 Mr. Adler, anyone else?

25 A. Not that I recall. But I can't remember for sure.

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 5

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

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

Plaintiffs,)

vs.)

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

Defendant.)

NO. 12-2-03162-1

DEPOSITION UPON ORAL EXAMINATION OF KYLE BELTON

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

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
SUSAN E. ANDERSON, RPR, CCR

1 Q. Okay.

2 A. I don't think so.

3 Q. And then were there any subsequent meetings after
4 that?

5 A. No.

6 Q. Are you certain that it wasn't tape recorded?

7 A. I -- I can't remember to be honest with you.

8 Q. I'll represent to you that I don't recall a tape
9 recorder being there.

10 Do you have any reason to disagree with me?

11 MR. NORTHCRAFT: Object to the form.

12 A. No.

13 Q. (By Ms. Carter) Have you seen any kind of a transcript
14 of a statement that you've given on paper?

15 A. I don't think so. I don't remember.

16 Q. Okay. Have you talked with any of your former
17 teammates about the fact that you're being deposed
18 here today?

19 A. No.

20 Q. Have you talked with any of your former teammates
21 about what happened during this pregame practice
22 tackle?

23 A. No.

24 Q. Have you been contacted by anyone on behalf of the
25 school district?

1 A. Yes.

2 Q. When were you contacted?

3 A. A month or two ago.

4 Q. Who contacted you?

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

6 Q. Does John Young sound familiar?

7 A. Yeah.

8 Q. How did he contact you?

9 A. He called me.

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

11 A. He told me who he was, said he was with the school

12 district. And then asked me if he could ask me some

13 questions.

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

15 A. Yes.

16 Q. And did he to your knowledge?

17 A. Yes.

18 Q. What questions did he ask you?

19 A. He asked me about the incident at practice. He asked

20 me if I met with the Newmans, if I met with their

21 attorneys. That kind of stuff.

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

23 A. Yes.

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

25 Newmans or their attorneys were attempting to lead you

1 in a certain direction?

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

8 Q. And did they?

9 A. Not at all.

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

12 A. It made me mad, very mad.

13 Q. Why did it make you mad?

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

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

19 A. No.

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

22 A. I have not.

23 Q. Did you request a copy?

24 A. I did not.

25 Q. Would you like to see a copy?

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 6

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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 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 A. A little bit.

2 Q. Do you know Lisa's sister?

3 A. Emily?

4 Q. Emily, okay, Emily. Did you talk to Emily
5 about what happened to Matthew?

6 A. Never specifics.

7 Q. Okay. And didn't you, didn't you date Emily
8 Sorenson?

9 A. No, that's been a rumor that was rolling
10 through that place for a long time.

11 Q. Okay. So you never dated Emily Sorenson?

12 A. No.

13 Q. You never took her to Las Vegas?

14 A. No.

15 Q. Okay. Did you ever have any hot tub parties
16 with any of the players while you were at -- a coach at
17 Highland?

18 A. No.

19 Q. Did you ever ask any of the players to spend
20 the night at your house?

21 A. No.

22 Q. Did you ever ask John Hein to spend the night
23 at your house?

24 A. No.

25 Q. Do you know who John Hein is?

1 Q. Okay. When I asked you about Emily Sorenson,
2 Lisa Sorenson's sister, I think you said you didn't
3 specifically discuss Matthew's injury. What did you
4 discuss with Emily Sorenson about Matthew?

5 A. I'm not sure.

6 I guess I'll retract some stuff I said
7 earlier, it's kind of a regrettable situation that I
8 got myself in with Emily.

9 Q. What do you mean?

10 A. As far as -- her parents and my parents were
11 friends and I guess I answered too quickly out of
12 embarrassment a little bit earlier. Her parents and my
13 mother were friends and they kind of got us talking a
14 little bit. So that's where I stand on that.

15 Q. So you did have a relationship with Emily?

16 A. Not a relationship, a friendship that was kind
17 of being coaxed on by parents. And as far as stuff
18 that I've talked about with her with Matthew I can't
19 recall.

20 Q. Did you ever have any physical relationship
21 with Emily Sorenson?

22 MR. NORTHCRAFT: Object to the form.

23 A. Yes.

24 Q. (BY MR. LERITZ) So you were a little more
25 than friends?

1 A. Yeah.

2 Q. Okay. So when I asked you earlier about Emily
3 Sorenson, you weren't telling the truth at that point?

4 A. I acted out of embarrassment.

5 Q. Okay.

6 A. And it was -- I was going to bring that up at
7 the end of this.

8 Q. Okay. So what did you discuss with Matthew?
9 What did you discuss with her about Matthew?

10 A. I'm not sure.

11 Q. Okay. When you were having a physical
12 relationship with Emily, was she a student at the time?

13 A. I was not at the school, no.

14 Q. When was this -- what time period are we
15 talking about?

16 A. I can't remember. It was long after I'd left.
17 You know, it would have been the summer after I'd left.

18 Q. So the summer after you left?

19 A. 2010.

20 Q. Okay.

21 A. Ish. 2010, 2011.

22 Q. Okay. Was she still a student at Highland
23 High School?

24 A. I can't remember.

25 Q. Okay. What's the age difference between you

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 7

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

--oOo--

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 government)
agency,)

Defendants.)

DEPOSITION OF ALEXANDER LAUGHERY

Spokane, Washington

May 7, 2013

CDA Reporting Court Reporters
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Toll Free 888-894-CDAR www.cdareporting.com
REPORTED BY: KERI VEARE, CSR 675, CCR 3033, RPR

1 the field, so like -- or sideline to sideline, I was
2 probably more in the middle of the field, so I don't
3 know how far that would be about.

4 Q. You spent way more time on a football field
5 than I have, so I'm going to let you come up with the
6 answer.

7 A. I mean, probably 25 yards or so away.

8 Q. Okay. Okay. And now you testified that you
9 thought Matthew had the wind knocked out of him. What
10 did you mean by that?

11 A. Well, I mean, just from the way he was sitting
12 and starting to get up and like pacing around, it's like
13 you got -- fell down to the ground hard and just got the
14 wind knocked out of you.

15 Q. What was he doing with his body that led you
16 to conclude he had the wind knocked out of him?

17 A. Just the pacing back and forth and kind of
18 like he was trying to catch his breath back or, you
19 know.

20 Q. Did you hear him say anything?

21 A. I did not hear him say anything.

22 Q. Did you see whether he was conversing with
23 anyone else as he was pacing?

24 A. I do not recall if he was talking to anybody
25 else while he was pacing around.

1 Q. Did you see him grab any part of his body?

2 A. No, I don't recall that.

3 Q. Okay. How long would you say he was pacing
4 around before you saw him playing catch?

5 A. I mean, for probably like five or so minutes.
6 Just like walking back and forth and kind of, you know,
7 regathering himself. And after that I feel like he was
8 just back playing around and stuff and everything.

9 Q. Okay. Did you -- do you have a recollection
10 of running any further drills after you saw Matthew
11 getting up?

12 A. I do not have any memory of running any
13 further drills.

14 Q. Okay. Do you have a recollection of Matthew
15 participating in any drills after you saw him getting
16 up?

17 A. No, I don't have any recollection.

18 Q. Okay. And going back to Exhibit 1 here, you
19 circled a large area toward the end zone and it says,
20 "Where they were playing catch." Who is the "they" that
21 you're referring to?

22 A. Like I said before, I don't know who he was
23 exactly playing catch with, but I know he was playing
24 catch with a few people.

25 Q. And do you have a recollection one way or

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 8

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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,)
Plaintiffs,)

vs.)

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



12-2-03162-1

DEPOSITION UPON ORAL EXAMINATION OF

AARON BAUGHMAN

5:58 p.m.

MAY 20, 2013

1701 EAST YAKIMA AVENUE, BOARDROOM CONFERENCE ROOM

YAKIMA, WASHINGTON

REPORTED BY: ELEANOR J. MITCHELL, RPR, CCR 3006



YAMAGUCHI OBIEN MANGIO
court reporting, video and videoconferencing
800.831.6973 206.622.6875
production@yomreporting.com
www.yomreporting.com

1 Q. So what happened after this tackle occurred?

2 Did you -- what do you remember seeing after that?

3 A. Well, I don't really remember seeing what
4 happened after that.

5 Q. Do you recall seeing, as you sit here today,
6 the two boys that were involved in this tackle get up?

7 A. No, I don't remember that part, them getting
8 up.

9 Q. Is there anything else that you remember about
10 this particular practice other than this tackle that
11 you've described for us?

12 A. Involving Matthew?

13 Q. Yeah.

14 A. No, I don't remember.

15 Q. Do you know whether or not he was ever held
16 out of practice that day?

17 A. I think he was -- he was held out of practice.

18 Q. And why do you say that?

19 A. Because after that, we moved to different
20 drills after that. So...

21 Q. And when you say that you think he was held
22 out of practice, what do you mean by that?

23 A. Well, I think he sat out of practice.

24 Q. Do you know why?

25 A. I think he was hurt. That's what I'm



1 guessing.

2 Q. Yeah, I don't want you to guess. I just want
3 you to -- from your memory and your personal knowledge,
4 I want you to just tell me what you remember, if you
5 do. If you don't remember anything, that's fine, too.

6 A. I don't remember.

7 Q. Okay. So my question was: Do you know why he
8 didn't participate in practice --

9 A. No.

10 Q. -- after that tackle?

11 A. No.

12 Q. Do you recall seeing him somewhere as you sit
13 here today? Do you recall him after this tackle being
14 on the sideline or any other place on the field?

15 A. No.

16 Q. After this play in which Matthew was involved
17 in a tackle, was there a water break taken?

18 A. I don't remember that.

19 Q. Did you ever talk to Matthew after this tackle
20 that day about what had happened or how he felt or
21 anything like that?

22 A. No.

23 Q. Did you talk to any coaches about this
24 tackle --

25 A. No.



1 A. No.

2 Q. Did you ever say -- hear anybody say that
3 Matthew had a headache?

4 A. No.

5 Q. What about the next day? Did anybody ever
6 suggest to you or tell you that they thought Matthew
7 had a headache?

8 A. No.

9 Q. Have you had any other conversations with any
10 other lawyers representing the Newmans --

11 A. No.

12 Q. -- regarding Matthew's case?

13 A. No.

14 Q. Do you remember being contacted by telephone
15 by a -- on December 1, 2012, by a fellow named John
16 Young?

17 A. I remember a conversation, but I don't
18 remember much about that phone call.

19 Q. Do you recall whether or not he informed you
20 that the conversation that the two of you were about to
21 have was going to be recorded?

22 A. I don't remember.

23 Q. Don't remember either way?

24 A. (Shaking head.)

25 Q. Do you remember either way? Do you remember



1 with Forrest Kopta's statement that you reviewed?

2 MR. NORTHCRAFT: Object to the form.

3 A. No.

4 Q. (BY MS. CARTER.) Have you ever met with
5 Richard Adler, the attorney for the Newmans that you
6 met with about a week ago, at any time prior to that
7 meeting?

8 A. No.

9 Q. That was your first meeting with him?

10 A. Yes.

11 Q. So you've only met him on one occasion?

12 A. Yes.

13 Q. Were you ever asked to attend a meeting with
14 fellow teammates at the Newman home in the summer of
15 2010 to discuss Matthew Newman?

16 A. No.

17 Q. Did Mr. Adler suggest to you during your
18 meeting with him at the Newman home about a week ago
19 what you should say in response to questions here
20 today?

21 A. No.

22 Q. Did Mr. Adler suggest to you that you should
23 agree with the statements that you reviewed?

24 A. No.

25 Q. Did you change your position regarding what



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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 9

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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)
 government agency,)
 Defendant.)



DEPOSITION UPON ORAL EXAMINATION OF

SAUL RUIZ

3:06 p.m.

MAY 20, 2013

1701 EAST YAKIMA AVENUE, BOARDROOM CONFERENCE ROOM

YAKIMA, WASHINGTON

REPORTED BY: ELEANOR J. MITCHELL, RPR, CCR 3006



YAMAGUCHI OBIEN MANGIO
 court reporting, video and videoconferencing
 800.831.6973 206.622.6875
 production@yomreporting.com
 www.yomreporting.com

1 Q. Did you see whether or not either one of them
2 took off their headgear or their hat or their helmet?

3 A. I don't remember. 'Cause we were focused up
4 over here. So I didn't bother to look down there.

5 Q. Say that again.

6 A. I didn't bother to look down there 'cause we
7 were just running the plays. So...

8 Q. So what plays do you remember running after
9 that?

10 A. It was a field goal. Field goal attempts, I
11 believe. Yeah.

12 Q. Did you ever have any more -- any additional
13 offensive plays?

14 A. No.

15 Q. Do you know whether or not -- do you have any
16 memory as to whether or not Matthew played in any of
17 the other drills or plays that afternoon?

18 A. He didn't come back after Shafer had checked
19 up on him. He didn't come back to any of the future
20 plays that afternoon.

21 Q. I hear what you're saying. Is there something
22 that makes you remember that in particular, that he
23 didn't come back?

24 A. Well, Shafer was looking at him. And it
25 looked like he had gotten hurt. So since he had gotten



1 think much of it. We just left home right away.

2 Q. Did you ever talk to Coach Shafer as to why
3 you didn't ever see Matthew come back in to play that
4 afternoon on the Thursday practice?

5 A. No.

6 Q. Did you ever talk to anybody as to why you
7 believe he did not come back?

8 A. No.

9 Q. Has anybody ever told you that -- as part of
10 this tackle involving Joe Scott and Matthew Newman,
11 that any part of Matthew's body hit the pole vault pit?

12 A. No.

13 Q. What about the run-up to the pole vault pit?
14 Anybody ever say that Matthew's body, any part of
15 his body collided with the run-up to the pole vault
16 pit?

17 A. Well, I heard that his head hit it, but I'm
18 not a hundred percent sure.

19 Q. Who did you hear that from?

20 A. I don't know.

21 Q. Did you -- when did you hear that?

22 A. I think it was the next day or that -- or that
23 team dinner. 'Cause after every Thursday practice,
24 we'd always have team diner.

25 Q. Do you remember who said that?



1 A. No.

2 Q. And you think -- are you certain that it
3 occurred at this team dinner?

4 A. Well, it was somewhere between that. I'm not
5 a hundred percent sure when that was heard, but I
6 remember someone saying about that.

7 Q. Did anybody ever say that Matthew had collided
8 with a goal post after practice?

9 A. Not that I know of.

10 Q. Have you ever talked to Billy Gellerson about
11 this incident?

12 A. No. I don't really talk to him.

13 Q. What about Tyler Hakala?

14 A. No.

15 Q. What about Kavan Stoltenow? Have you talked
16 to any -- my question is: Have you talked to any of
17 these boys involved --

18 A. No.

19 Q. -- about this incident involving Matthew?

20 A. No.

21 Q. What about Ryan Martin? Did you ever talk to
22 him about it?

23 A. After the hit that Thursday?

24 Q. Yeah.

25 A. No. The only time I ever talked about the hit



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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 10

1 different kinds of practices than say Monday, Tuesday,
2 Wednesday; is that how you recall it?

3 A. Yes.

4 Q. And in what way are they different?

5 A. We don't really do anything like really rough.
6 We would just -- it's more lenient. Just pretty much
7 go through everything.

8 Q. Okay. Now, the day that you played -- your
9 high school played Naches Valley High School was
10 September 18, 2009. Do you happen -- do you have any
11 memory of the practice the day before, the Thursday
12 practice on September 17, 2009?

13 A. Yeah, well, everything was going pretty good.
14 I mean, there was a play when Matt got tackled, but I
15 didn't think much of it because he was just talking to
16 the coach and everything seemed fine so I didn't think
17 much.

18 Q. Okay. Do you know -- do you recall where he
19 got tackled?

20 A. I just -- I don't know exactly where. But
21 because I'm in the front lines, like -- and it was on a
22 kickoff return so I was like blocking and when I have
23 my back towards him -- I had my back towards him so I
24 can't really -- when I turned around everything already
25 happened, so.

1 Q. Do you recall whether or not Matthew continued
2 to practice through the end of the practice during
3 that -- on that day?

4 A. I don't think he did. He just -- he was just
5 talking with the coaches and stayed with the coaches.

6 Q. Okay. Do you recall giving a statement to a
7 Mr. John Young by -- on the telephone?

8 A. I don't know if that was his name, but I
9 remember that somebody -- because somebody called me
10 and they were talking to me about it, but it was so
11 long ago I don't remember who it was.

12 Q. So Mr. Young -- do you recall that the
13 conversation was tape-recorded?

14 A. No.

15 Q. Do you recall Mr. Young asking you the
16 question: How about the game, the Thursday before the
17 game, the Thursday practice, do you remember anything
18 significant about that, whether or not Matthew
19 practiced during the whole session or whether he was
20 injured during that time? Do you remember anything
21 specific about that?

22 Your answer was: No, everything was normal.
23 Everything was -- all the practice was like any other
24 practice before the game.

25 Do you remember telling him that?

1 MR. LERITZ: Object to the form. Go
2 ahead and answer.

3 A. I don't remember. It was long ago, so.

4 Q. (BY MR. NORTHCRAFT) And why is it that you
5 now think that Matthew did not practice after --

6 A. Well, because I remember him like talking to
7 the coach and I don't -- it's not like -- everything's
8 still kind of a blur like I'm not going to remember
9 everything. But that's just how I -- like everything
10 seems like how it went. So.

11 Q. Okay. So you remember Matthew talking to a
12 coach?

13 A. Yeah.

14 Q. After this tackle?

15 A. (Nodding.)

16 Q. Do you remember where you saw them talking?

17 A. Well, I just remember them on the sideline,
18 that's pretty much most of it.

19 Q. Okay. Do you remember anything else about the
20 practice?

21 A. Not really. Pretty much like I said,
22 everything's a blur. The only thing I do remember
23 mostly is the game.

24 Q. I see.

25 A. I don't really remember the practice very

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 11

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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.)

DEPOSITION UPON ORAL EXAMINATION OF
BRANDON SOMMERVILLE

4:51 P.M.
APRIL 16, 2013
1701 EAST YAKIMA AVENUE
YAKIMA, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578

1 Q. Okay. Now, I want to talk about the day
2 before, the practice before. Do you have a memory of
3 that practice, the Thursday night practice the day
4 before?

5 A. Yeah, I remember him getting tackled.

6 Q. Okay.

7 A. And that's pretty much all I remember.

8 Q. All right.

9 A. I remember him getting tackled. And some of
10 the stories are that he hit his head. I don't
11 remember -- I mean, it was so long ago. I don't
12 remember him hitting his head or anything, but it is
13 possible.

14 Q. Okay. So what I want to know, though, is what
15 you actually saw, not what you've heard.

16 A. Yeah.

17 Q. So were you part of that punt return drill
18 that day?

19 A. No.

20 Q. Because as I understand it, the 11 players
21 that are basically the starters would be the receiving
22 team and then the scout team, kind of like other
23 players that weren't starting would be on the kickoff
24 team. Is that how these --

25 A. Yeah. I was either on the sidelines or I was

1 on the kickoff part of it.

2 Q. And do you remember being on the kickoff part?

3 A. I don't remember either or.

4 Q. Either way?

5 A. It was one of them. But I do remember
6 standing there and, you know, seeing him get tackled.

7 Q. Do you remember where he got tackled?

8 A. No, I don't.

9 Q. Do you remember who tackled him?

10 A. Joe Scott.

11 Q. Do you remember anything else about the
12 tackle?

13 A. No. Just -- I mean, nothing really came to
14 mind. I mean, everybody gets tackled in football. So
15 I mean, it was just somebody getting tackled.

16 Q. Do you recall him getting up?

17 A. Yeah, I do.

18 Q. Do you recall him returning to practice?

19 A. No, I don't know.

20 Q. Don't know either way?

21 A. No.

22 Q. Do you recall where the tackle took place?

23 A. It was -- it was near the sidelines.

24 Q. Was it inbounds or out of bounds?

25 A. I'm not sure.

1 he left -- does that mean that he was taken off the
2 field or do you know if he was still on the field but
3 not involved in practice after the tackle?

4 MR. NORTHCRAFT: Object to the form.
5 Misstates your testimony.

6 A. I honestly -- honestly, I have -- I don't
7 remember.

8 Q. (BY MR. LERITZ) So you do remember Matthew
9 getting tackled, though, at practice?

10 A. Yeah, I do remember him getting tackled. But
11 what he did after that, like if he was out of practice,
12 I don't remember that.

13 Q. Okay. Do you remember him continuing in plays
14 the rest of the practice?

15 A. No, I don't.

16 Q. Okay. You don't remember if he played or you
17 don't remember -- you just don't have a memory of it?

18 A. I don't remember after that.

19 Q. Okay. All right. So you don't know if
20 Matthew was taken out as a precaution after the tackle,
21 you don't remember anything like that?

22 A. No, I don't.

23 MR. NORTHCRAFT: Object to the form.

24 Q. (BY MR. LERITZ) Are you saying that that
25 didn't occur or that you just don't know, you don't

1 remember?

2 MR. NORTHCRAFT: What? Object to the
3 form.

4 Q. (BY MR. LERITZ) All right. Let me ask you it
5 this way. Do you know -- are you saying that you don't
6 have any memory of Matthew being taken out of the
7 practice after his tackle?

8 A. Yes. I -- I just don't have any memory of it.

9 Q. Okay.

10 A. I mean, I didn't think -- I mean, it was
11 just -- he got tackled and that was it. I mean, after
12 that, I -- I don't remember.

13 Q. Okay.

14 A. At the time it didn't seem important at all.

15 Q. Okay. And you don't remember if he got taken
16 out -- you don't have a memory of whether or not he was
17 taken out of practice after that?

18 A. Correct.

19 Q. Okay. Are -- excuse me. Are tackles pretty
20 common --

21 A. Yeah.

22 Q. -- during a practice?

23 A. (Nodding.) Yeah.

24 Q. Okay. So full-on take the person down all the
25 way to the ground tackles were common during practice

1 during watching the video?

2 A. No, I don't.

3 Q. Okay. Do you remember anything being
4 discussed about Matthew specifically at that Monday
5 meeting to watch the Naches game film?

6 A. No, I don't.

7 Q. Okay. Do you remember talking with Joe Scott
8 the following Monday after the Naches game?

9 A. No, I don't remember.

10 Q. Okay. Brandon, it looks like you brought in
11 some papers with you for the deposition. Can I take a
12 look at those?

13 A. They're just the papers they sent me in the
14 mail.

15 Q. Okay. Okay, thank you. Have you received any
16 other paperwork from Mr. Northcraft's office other than
17 the ones that you brought with you today?

18 A. No. Just that and then this check here, and
19 that's it.

20 Q. And that's the witness check for your
21 appearance here today?

22 A. Yes.

23 Q. Okay. Is there anything else in the envelope?

24 A. No. Just these. That's it.

25 Q. Okay. All right. Anything else about the

1 practice, Brandon, that sticks out in your mind that
2 you remember?

3 A. No, there's no -- just it seemed like a normal
4 practice.

5 Q. Except getting tackled during Thursday wasn't
6 normal?

7 A. Yeah.

8 Q. Yes?

9 A. Yes.

10 Q. Okay. In terms of that, anything that was
11 unusual or atypical at that practice?

12 A. No.

13 Q. Okay. Do you remember if there were mats
14 covering the pole vault track -- pole vault track
15 during the practice on September 17th of '09?

16 A. Yes.

17 Q. Do you have a specific recollection of them
18 covering the pole vault track?

19 A. Yes, they're always covered. We always
20 covered them right before practice.

21 Q. Okay. And that's the standard practice or
22 rule is to cover them -- the pole vault track with the
23 mats before a practice?

24 A. Wait, no, never mind. We don't put any of
25 them on during practice. Only the games is when we put

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 12

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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.)

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. No.

2 Q. Where were you standing when Coach Shafer
3 talked to you about keeping the players up, not taking
4 them down to the ground?

5 A. I was -- it was as I was getting up and I
6 heard it -- it was more of a shout towards me, like
7 Hey, what are you doing? -- kind of thing.

8 Q. Was he approaching you at that point?

9 A. No.

10 Q. He was still in the end zone?

11 A. It was -- I was over here and I could hear it
12 from behind me so he had to have been around this area
13 right here on the end line, on the end zone line.

14 Q. Okay. And was he moving in your direction?

15 A. I didn't see him.

16 Q. Okay. Do you have a recollection of Coach
17 Shafer having a discussion with Matthew in the tackle
18 area as you moved away?

19 A. No.

20 Q. Did you see whether Coach Shafer walked with
21 Matthew back towards the end zone area?

22 A. I did not see that.

23 Q. So you don't recall seeing Matthew the rest of
24 practice after tackle. Why is that?

25 A. No. I just kind of kept to myself after that,

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

**Declaration of Fred P. Langer in Support of
Plaintiffs' Reply in Support of Motion for Protective Order**

EXHIBIT 13

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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)
 government agency,)
 Defendant.)



DEPOSITION UPON ORAL EXAMINATION OF
 TREY TREPANIER

7:16 p.m.

MAY 20, 2013

1701 EAST YAKIMA AVENUE, BOARDROOM CONFERENCE ROOM
 YAKIMA, WASHINGTON

REPORTED BY: ELEANOR J. MITCHELL, RPR, CCR 3006



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1 Q. (BY MR. LERITZ.) Again, though, it's your
2 testimony that you do not believe Matthew was taken out
3 of practice; is that right?

4 A. Yes.

5 Q. So you would disagree with that portion of
6 Kavan's statement?

7 A. Yes.

8 MR. NORTHCRAFT: Object to the form.

9 A. But it looks like he said he did come back to
10 practice. He just said he was out for a while.

11 Q. (BY MR. LERITZ.) Where do you see that?

12 A. "I'm not sure, but I know it was a while."

13 "How long was Matt out of practice? I'm not
14 sure, but I know it was a while."

15 Q. All right. Do you have any reason to believe
16 that Kavan or -- Kavan Stoltenow or Antonio Gonzalez or
17 Ryan Martin or Tyler Hakala or Billy Gellerson would
18 have any reason to lie about what they saw?

19 MR. NORTHCRAFT: Object to the form.

20 A. I don't know if they'd have a reason to lie or
21 not.

22 Q. (BY MR. LERITZ.) Okay. You don't -- would
23 you think that they had any reason to lie about what
24 they saw that day during practice?

25 MR. NORTHCRAFT: Object to the form.



1 A. No.

2 Q. (BY MR. LERITZ.) Would you describe them as
3 honest guys?

4 MR. NORTHCRAFT: Object to the form.

5 A. Yes.

6 (Deposition Exhibit 4 was marked for
7 identification.)

8 Q. (BY MR. LERITZ.) So, Trey, handing you what's
9 been marked as Exhibit 4 to your deposition, it's the
10 statement of Ryan Martin. Do you see that there at the
11 top?

12 A. Yes.

13 Q. Okay. If you turn to the third page, the
14 third page in.

15 A. (Witness complies.)

16 Q. Starting about halfway down the page there, it
17 says, Question, RA: "What do you remember happening
18 next, question mark." Do you see that?

19 A. Yes.

20 MR. NORTHCRAFT: Object to the form.

21 Q. (BY MR. LERITZ.) Answer by RM: "I remember
22 that Matt was taken out of practice, period. I
23 remember that part, period."

24 Next question by RA: "Do you remember any
25 coach coming over to Matt to talk with him, comma, tell



1 him to sit out, question mark."

2 Answer by RM: "One of the coaches goes over
3 to talk with Matt and then one of the coaches walks
4 with him to the end zone in the direction that they
5 just came from, period."

6 Do you see that?

7 MR. NORTHCRAFT: Object to the form.

8 A. Yes.

9 Q. (BY MR. LERITZ.) If Ryan Martin says that
10 Matt walked down to the end zone with one of the
11 coaches, you wouldn't have any reason to disagree with
12 him, right?

13 MR. NORTHCRAFT: Object to the form.

14 A. No. I don't remember if that happened or not,
15 but -- walking to the end zone. I don't recall that.

16 Q. (BY MR. LERITZ.) But if that's --

17 A. That could have happened. That's what I'm
18 saying is I don't know. I don't remember that.

19 Q. Okay. But if Ryan was saying that that's what
20 he remembers, you don't have any reason to disagree
21 with him or challenge him on that, do you?

22 MR. NORTHCRAFT: Object to the form.

23 A. No.

24 Q. (BY MR. LERITZ.) Okay. I don't think I have
25 any other questions for you, Trey.

