IN THE COURT OF COMMON PLEAS

OF CUYAHOGA COUNTY, OHIO

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JACOB A. FIKTUS, a minor by and thru his next of friend and natural mother, KELLY FIKTUS, et al.,

Plaintiffs,

vs Case No. 430662

UNIVERSITY HOSPITALS of CLEVELAND, et al.,

Defendants.

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DEPOSITION OF CAROLINE WOLFE, CRC, M.Ed, LPC

THURSDAY, APRIL 10, 2003

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Deposition of CAROLINE WOLFE, CRC, M.Ed, LPC, a Witness herein, called by counsel on behalf of the Defendants for examination under the statute, taken before me, Vivian L. Gordon, a Registered Diplomate Reporter and Notary Public in and for the State of Ohio, pursuant to agreement of counsel, at the offices of Becker & Mishkind, Suite 660 Skylight Office Tower, Cleveland, Ohio, commencing at 9:00 o'clock a.m. on the day and date above set forth.

APPEARANCES:

On behalf of the Plaintiff

Becker & Mishkind
HOWARD D. MISHKIND, ESQ.
Skylight Office Tower Suite 660
Cleveland, Ohio 44113
216-241-2600

On behalf of the Defendant University Hospitals

Davis & Young
JAN ROLLER, ESQ.
1700 Midland Building
Cleveland, Ohio 44115
216-348-1700

On behalf of the Defendants University OB/GYN Specialties and Dr. Kiwi

Sutter, O'Connell, Mannion & Farchione
DAVID W. SKALL, ESQ.
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CAROLINE WOLFE, CRC, M.Ed, LPC, a witness herein, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, was deposed and said as follows:

EXAMINATION OF CAROLINE WOLFE, CRC, M.Ed, LPC

BY MS. ROLLER:

Q. Good morning.

A. Goods morning.

Q. My name is Jan Roller and I represent University Hospitals and we are here to take your deposition. But maybe the first thing we should do is state your full name on the record.

A. Caroline Wolfe.

Q. Can you spell Wolfe for us.

A. W-O-L-F-E.

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(Thereupon, Defendant's Deposition Exhibit A was marked for purposes of identification.)

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Q. Ms. Wolfe, you had your deposition taken before?

A. Yes.

Q. You know the procedure that we will

follow; that it's important to keep in mind that you give a verbal response to each question; correct?

A. Yes.

Q. And if you don't understand my question, will you tell me that?

A. I will.

Q. Because you understand that if you answer a question, I will assume you understood it. Do you understand that, as well?

A. Yes.

Q. Mr. Mishkind has been kind enough to hand me what we have marked as Defendant's Exhibit A, your curriculum vitae; is that correct?

A. Yes.

Q. Is this up to date?

A. Yes.

Q. Does it contain all of your education since high school?

A. Yes.

Q. And all of your work experience?

A. Yes.

Q. And also does it indicate all certifications and/or licenses that you hold?

A. Yes.
Q. Have you written in your field at all?
A. No, I haven't.
Q. And what would you define as your field?
A. Rehabilitation counseling.
Q. When would you say that you began to work professionally in that field?
A. In 1983.
Q. And what did you do at that time?
A. At that time, I was a vocational evaluator for the Lorain City School System.
Q. When did you receive your masters in education from Kent State?
A. In 1983, August.
Q. I'm sorry, you said 19 --
A. 83.
Q. And you received some graduate studies in speech and language pathology at the University of Colorado. When did you do that?
A. In the fall of 1968 through January of 1969.
Q. When did you graduate from Oberlin?
A. In 1968.

Q. What did you do at the Upjohn Health Programs?

A. I was a case manager working with injured workers.

Q. And what were your responsibilities in that position?

A. I was involved with helping them to get whatever physical rehabilitation services they needed to help them improve their condition and then to assist them in returning to work, either to their previous job or to an alternate job in the same company, and sometimes to find a new job or to receive training to develop new skills.

Q. And what did you do? I mean, what were the tasks you would do to make sure they received the physical rehabilitation they needed?

A. I consult with their physician, met with them. I consult with their therapist. I would consult with the employer to find out exactly what it was they needed to be able to do to return to work. I would write plans to submit either to the employer if they were self-insured, or to the state if they were state

funded in state funded plans.

Q. And the plans you would write at that time, how would you characterize them?

A. They were rehabilitation plans involving physical rehabilitation, vocational rehabilitation, return to work plans.

Q. When is the first time that you would have prepared a life care plan?

A. I believe I began working on life care plans in the late '80s.

Q. And what situation was that that caused you to first prepare life care plans?

A. My employer sent me to a training program. It was an intensive program to learn to prepare life care plans. And then I worked as an assistant to one of my colleagues, who was writing life care plans for several years.

Q. What was that training program that you just referred to?

A. It was one run by Paul Deutch in Orlando, Florida.

Q. Is that listed here on your CV?

A. No. Life care planning, I think, is listed on my additional education or something. I don't remember. I haven't looked at that for

a while.

Q. Life care planning you have as a bullet under continuing education?

A. Right.

Q. What did that consist of, that education regarding life care planning?

A. That was a week-long intensive program in life care planning. This was when life care planning was pretty new and he was the man who pretty much developed the life care planning system. I have since then had several courses in life care planning and conferences and seminars that I have gone to.

Q. This first program that you said was a week-long session, what was the name of the individual who led it?

A. Paul Deutch.

Q. You said that was in Florida?

A. Yes.

Q. Where in Florida?

A. Orlando.

Q. And you believe that was in the late '80s?

A. Yes. I think it was '89. It might have been '90, but I think it was '89.

Q. What other training have you had regarding life care planning?

A. As I said, I go to a lot of professional meetings and many of the sessions that I would choose to go to would be on life care planning.

Q. Can you be a little more specific? I mean, how many such courses or sessions have you gone to?

MR. MISHKIND: Since the late 1980's? Since '89?

MS. ROLLER: Correct.

A. I go to at least one professional meeting a year and there is always at least one course or seminar involved in those, and often more than that. I can't be any more specific than that.

Q. Is there a professional association that you're affiliated with regarding life care planning?

A. Not involving life care planning per se, but the International Association of Rehabilitation Professionals has a lot of members who do life care planning and they provide a lot of training for life care

planning. National Rehabilitation Association is another one.

Q. Who sponsors these professional meetings that you are attending that you say you go to one a year?

A. Well, those organizations do.

Q. Any others?

A. The Ohio Rehabilitation Association is part of the National Rehabilitation Association. I believe that's all.

Q. Does any body, organization, et cetera, offer certification in life care planning?

A. Yes.

Q. Who is that?

A. You can become a certified life care planner, CLCP, certified life care planner.

Q. Who is it?

A. I think that -- I'm not sure what the organization is called. I have met a lot of those people, but I haven't gone through the training because it's pretty much what I have already had. They just started doing that a few years ago.

Q. But it is fair for me to understand

that you do not hold that certification?
A. I don't.
Q. And do you know what the requirements are to obtain a CLCP?
A. It's attending a number of modules, seminars that take place all over the country to go through the type of training that I went through in that week in Florida.
Q. It says from 1990 to 1996, you have an entry here, but who did you work for at that time? Was that Select Rehabilitation Associates?
A. That's right.
Q. Where is that located, first of all?
A. It isn't anymore.
Q. Where was it at the time?
A. It was located in different places. It was a subsidiary of Lorain Community Hospital. We had an office in Warrensville Heights for a while, an office in North Olmsted for a while.
Q. And what was the work of Select Rehabilitation Associates?
A. It was the same thing that I did at Upjohn. Only at that point, I began working

more consistently on life care plans.

Q. Who were the clients of Select Rehabilitation Associates?

A. They were injured workers and people who needed life care planning or vocational opinions.

Q. And of that category, who were those individuals? How did they come to Select Rehabilitation Associates?

A. Through attorneys, defense and plaintiff's attorneys.

Q. Was that the same population that you worked with at Upjohn Health Programs?

A. I didn't do as much legal work at Upjohn as I did when I went to Select and began to do more and more legal work and less case management work, but I did both at that point.

Q. So you did some legal work at Upjohn Health Programs, but more at Select Rehabilitation?

A. Yes.

Q. And when did you first begin to work with cases involving litigation?

A. Well, that would be life care planning, so it would have been in the early

'90s.

Q. Where were you working at that time?

A. At Select Rehabilitation Associates. I think it was Upjohn that sent me for the training, but I believe it was shortly after that that we went to Select Rehabilitation Associates.

Q. Did Upjohn Health Programs become Select Rehabilitation Associates?

A. No, but it was a lot of the same employees.

Q. Just so I'm clear, did you do any life care planning when you were at Upjohn?

A. I think I was beginning to, but it was at the very beginning stages.

Q. What is VoCare Services?

A. VoCare Services is a private rehabilitation company. They provide a number of rehabilitation services.

Q. And what are those services?

A. We provide case management for injured workers, although I myself do not do that anymore. We provide case management for severely disabled veterans, which I did until December. We provide the legal forensic

services of life care planning and vocational opinions and some case management for people with catastrophic injuries.

Q. How many employees are there at VoCare?

MR. MISHKIND: Are you talking about people doing this kind of work as opposed to secretaries, or the whole gamut?

MS. ROLLER: Thank you. I mean the whole gamut right now.

Q. How big of an operation is it?

A. I think there are seven or eight of us. No, no. It's probably more like 20, because I wasn't counting the people who do the veterans' work. Quite a few of them.

Q. Of those 20 people, how many of those prepare life care plans?

A. Three of us. Four actually, but one doesn't do it very often.

Q. You were asked by the law firm of Becker & Mishkind to prepare a life care plan for Jacob Fiktus; is that true?

A. Yes.

(Discussion off the record.)

Q. Is it fair for me to understand that

when you were first contacted by Becker & Mishkind, you understood that Jacob Fiktus and his family were involved in litigation regarding his condition?

A. Yes.

Q. Have you been retained by Becker & Mishkind before?

A. I have not.

Q. Do you know if VoCare has been?

A. Yes.

Q. To your knowledge, how many times has Becker & Mishkind, the law firm, retained the services of VoCare?

A. I don't know.

Q. How is it that you know that then that they have been retained before?

A. Because my colleague George Cyphers has often talked about cases he is working on.

Q. How many life care plans do you prepare a month?

A. It depends on the month.

Q. If you want to use a year then instead, average it out.

A. I really haven't counted them, but probably a couple dozen.

Q. What's a couple dozen to you? Is that 24, 36 or somewhere in between?
A. Probably somewhere in between.
Q. That's annually?
A. Yes.
Q. And it is, of course, fair for me to understand that the life care plans that you prepare are all prepared for a pending case in litigation?
A. Almost always.
Q. When would that not be so?
A. We have had occasion to prepare a life care plan on behalf of a family who just wants to be sure that their dependent is going to be cared for in the future, and we have had occasion to prepare them for insurance companies.
Q. How long has that been the case that you prepare life care plans, about 24 to 36 a year? For how many years has that been the case?
A. Probably the last three years, two or three years.
Q. And how about before then?
A. Before then I was doing

significant -- about half my work was case management for either injured workers or veterans.

Q. How is that work different? Tell me what the duties are of doing case management.

A. That is more individual work with setting up rehabilitation plans, working with employers, working with people providing educational programs in order to arrange for services for these individuals.

Q. Now, of these cases that you work on in providing life care plans, what percentage are for individuals who are plaintiffs in a case? By that I mean, you were retained on behalf of the plaintiff as opposed to being retained on the behalf of the defense.

A. Up until recently I would say it was half and half, but I've become aware it's probably more 75 percent plaintiff, 25 percent defense.

Q. What are the charges for your services?

A. I charge $150 an hour for preparation of the opinion and I charge $1,500 for depositions and trial testimony.

Q. When you say trial testimony, is that $1,500 per hour?
A. For the first three hours that I'm present. The same way with a deposition. If it's more than three hours, then it's $500 an hour.
Q. When you say $150 an hour to prepare your opinion, does that mean the background work that you spend as well as the actual writing?
A. That's right.
Q. It includes everything?
A. The interview, the research, the writing.
Q. How often have you testified live in court?
A. Probably two to three dozen times.
Q. Do you plan to do that in this case?
A. Yes. I expect to.
Q. Now, you wrote a report that's dated October 29th, 2002. It's addressed to Larry Peskin of the Becker-Mishkind law firm; is that correct?
A. Yes.
Q. Who first contacted you about this case?

A. Larry did.
Q. And when was that?
A. It was July 19th, 2002.
Q. What did he ask you to do?
A. He asked me to prepare a life care plan and a vocational opinion for this child who had experienced a brain injury.
Q. Now, do you have any medical training yourself?
A. Only in terms of medical information classes for rehabilitation counselors, not as a nurse or a doctor.
Q. When did you receive that training that you just referred to?
A. That's been ongoing. I received it both in that initial intensive training program and at continuing education classes through my professional organizations.
Q. And can you describe or explain what the body of that work is, that training? You said medical information?
A. I also had it in my masters program to become a rehabilitation counselor.
I had classes in various types of disabilities, brain injuries, spinal cord

injuries, amputations, eye injuries, hearing impairment, so forth.

And then I have had more intensive classes through the continuing education classes on those various types of disabilities. Sometimes they are brain injuries, sometimes they are spinal cord injuries.

Q. When you say you had education on those topics, those areas of injury, what's the substance that you learn regarding those topics?

A. What the mechanism of the damage can be, what the effects of the damage is, what kinds of rehabilitation interventions can be provided in order to mitigate the damages, what types of adaptive equipment or services or care people are going to need who have various types of disabilities.

Q. In preparing your report or in order to prepare your report, tell me what you did, what you reviewed. I want to know what you reviewed and who you talked to. It's a broad question, but I think you know what I'm getting at. Just lead us through that.

A. I met with Dr. Friedman. That was the first thing I did. I think that was July.

Q. July 25th?
A. July 25th of 2002. Shortly after that, I met with the Fiktus family. That was on August 7th, 2002.
Q. Who did you meet with?
A. I met with Mr. and Mrs. Fiktus and Jacob was present and his sister was there.
Q. Who, if anyone else, did you meet with at any time?
A. Those are the only people I met with. I did meet with Kelly Fiktus and Jacob last week in order to update my information about what's been going on and to see them again.
Q. Did you have any telephone calls with anyone to obtain information?
A. Yes, I had telephone calls. I think I made some calls to Kelly just to clarify information she had given us. I also wrote letters to the physical therapist who was working with him after his surgery, to Dr. Gurd who had performed the surgery to lengthen his heel cords, to the occupational therapist that he worked with through the school system. I think those are the people I communicated with.
Q. You wrote letters to them. Did they

respond to you?
A. Dr. Gurd did and the physical therapist did. I'm still trying to get information from the occupational therapist.
Q. Obviously I'm going to want to look at your file, but right now you are just giving me a list of the contacts you made.
A. Yes.
Q. Other than Dr. Friedman, Jacob's parents and Jacob himself, it's fair for me to understand that you have not spoken to anyone about his condition?
A. I did not. My assistant did talk to the physical therapist as well as getting his written response to our questions.
Q. Who is your assistant?
A. Her name is Ricki Englehaupt, something like that.
Q. Anyone else that anyone contacted, either you or someone on your behalf, to learn Jacob's condition?
A. I don't believe so. That covers it.
Q. Now, did you receive anything in writing from Dr. Friedman?
A. No, I didn't. I just had the

conversation with him.

Q. Did you take any notes when you spoke with him?

A. Yes.

Q. Could I see those, please?

Did you have him fill out a form?

A. No.

MS. ROLLER: Would you have any objection if we mark this Exhibit B?

(Discussion off the record.)

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(Thereupon, Defendant's Deposition Exhibit B was marked for purposes of identification.)

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Q. Caroline, if it's all right with you, we will mark as B your notebook, everything that's in it, the black binder here.

You also have here a manila folder and you have a number of transcripts in it and I will just read them: James Fiktus, Kelly Fiktus and Dr. Friedman; is that correct?

A. That's right.

Q. There is some letters here from Becker & Mishkind, from Howard Mishkind. It

indicates that on October 8th, 2002, you were sent a letter enclosing a copy of Dr. David Hornick's record from Pediatric and Adolescent Care, Inc. Did you receive those?

A. Yes.

Q. Are they with the other records you have indicated off the record that you have?

A. Yes.

Q. And February 19th, 2003, you received updated records from The Cleveland Clinic; is that correct, which include Jacob's surgery by Dr. Gurd?

A. Yes.

Q. Now, on the left side of this manila folder it says case activity log. Can you tell me what type of information is contained here?

A. That's just my notes as to when I did various activities; when I met with Dr. Friedman, when I met with the family, when I worked on the report.

Q. And then there is a form here, it says intake form, a little bit of information on it.

A. That's just demographics on the family for the case.

Q. What is the reference here on a post-it note? It says --

A. Those are the directions to their house.

Q. I can see that, sure.

MS. ROLLER: Why don't we mark these three pages from this manila folder as Exhibit C.

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(Thereupon, Defendant's Deposition Exhibit C was marked for purposes of identification.)

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Q. What is an IEP?

A. Individual education program.

Q. And what does that mean, an individual education program?

A. When a child has some kind of a disability that the school system needs to deal with, they write an individual education program, meeting with the teacher, the parents, the specialists who are going to be working with the child, and they determine what the child's goals are, what kinds of special services they are going to be receiving in the school.

Q. Did you inquire whether an IEP has been prepared for Jacob Fiktus?
A. My understanding is that it had been.
Q. Do you have a copy of that?
A. Yes.
Q. And where is that contained?
A. It's in here.
Q. As part of Exhibit B?
A. Yes.
Q. And what school system prepared that?
A. The Garfield Heights City Schools.
Q. And did you do any testing yourself of Jacob?
A. No, I didn't. I observed him.
Q. Has any neuropsychological testing been done of Jacob?
A. No. Not to my knowledge, anyway.
Q. What is the purpose of neuropsychological testing?
A. It would be to determine whether he has any cognitive deficits, what his intellectual capacity is, how his brain affects not only his ability to think, but his physical coordination, fine motor coordination and gross motor coordination.

Q. Now, other than what we have marked here as Exhibits B and C, you do have additional records; correct?

A. Medical records that I presume you would have.

Q. And I just want to make sure I know what they are that you had. And maybe to shortcut this, there is a list of the records that you reviewed as page six of your report; is that correct?

A. That's right.

Q. Now, are there any records that you have that you reviewed other than those listed here?

A. Yes, there are. I have made a continuing list, but I didn't make a copy for the report.

Q. And that will be part of Exhibit B?

A. Yes.

Q. Could you just show that to me, take that page out. I want to look at it.

A. This is the last one. There are several pages. As I got new records, I would make an additional list and then make the notes from those records. This is the last one.

Q. Well, why don't you give me the prior pages that are similar. I want to take a look at them here for a minute.

The first page that you handed me, it has at the top page seven. Is that meant to be page seven as an addendum to your report?

A. No. When I start a report, I often will use kind of a template as a model so that I don't forget anything, and that happened to be page seven of that template.

Q. Could I see the beginning pages then?

A. No, because it changes as I write the report. It ends up being a final report. There isn't any hard copy of what I start with.

Q. It becomes your final report?

A. That's right.

Q. But just so I understand, why is this page seven, this first page here that says documents reviewed?

A. Because when I started the report, I started it -- it was at the back of a model report that I was using that would just -- it has the outline and suggested language, so that I don't leave anything out, I'm sure I am covering everything.

Q. So that I understand -- this probably won't make much sense on the record -- the pages you have handed me, they have a grid at the top indicating the records you have reviewed and there are several pages that look like that, but they are all basically the same, they are just being added to. And the first page you handed me is the complete list of all the records you reviewed?

A. That's correct.

MS. ROLLER: Let's mark that Exhibit B-1.

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(Thereupon, Defendant's Deposition Exhibit B-1 was marked for purposes of identification.)

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Q. Just so that we are clear then, Exhibit B-1, is it fair for me to understand that is a complete list of the records you reviewed other than what's contained in Exhibit B? And of course we have your intake notes which are Exhibit C.

A. Yes. The IEP is not on that because I just received it this morning.

Q. So other than the IEP?
A. That's everything I have reviewed.
Q. Okay. Thank you.
(Discussion off the record.)
(Recess had.)
Q. I would like to turn to your report. On page two under functional capacities, you have various descriptions of Jacob's condition. And I just would like to ask you where you obtain the information for that description.
A. This description was from the parents.
Q. Everything that's contained there under functional capacities?
A. Yes.
Q. Were there any other sources than the parents for that information?
A. Not for this.
Q. Is it fair for me to understand that you wrote your report based upon an understanding of his functional capacities as described in these paragraphs under that section in your report?
A. No. I also used the description from Dr. Friedman and from the therapist that was

working with him.
Q. And who was that?
A. Chris Sullivan.
Q. And where is Chris Sullivan?
A. Aurora Medical Center.
Q. Give me that one more time.
A. Aurora Medical Center.
Q. And the notes you are looking at, is that from a personal meeting with him?
A. No. A telephone call.
Q. When was that telephone call?
A. August 20th, August 26th, February 2nd -- no, that was last year. It was those two days, August 20th and August 26th.
Q. Of '02?
A. '02. And then he wrote answers to questions on the letter that we sent him that he answered on September 24th.
Q. Of '02?
A. Yes.
Q. Could I see that?
Now, this letter that Mr. Sullivan provided information on, which is dated September 24th, '02, this is a form letter prepared by VoCare; correct?

A. That's correct.
Q. Did you send a similar letter to Dr. Friedman?
A. No, because I talked to him.
Q. That yellow piece of paper from Dr. Friedman, that's what I'm looking for.
A. It's towards the beginning, the second session.
Q. I would like to mark the information you received from the physical therapist that you just described and also your notes from Dr. Friedman as additional exhibits. First, since we were talking about the physical therapist, the form that you just --
A. Why don't you take Dr. Friedman's out first.
MS. ROLLER: If we can mark the information you received from Dr. Friedman as B-2.

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(Thereupon, Defendant's Deposition Exhibit B-2 was marked for purposes of identification.)

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MS. ROLLER: The physical therapist's

form will be B-3.

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(Thereupon, Defendant's Deposition Exhibit B-3 was marked for purposes of identification.)

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Q. If we can just leave them here, because I might want to refer to them.

In addition to information from the family, your conversation with Dr. Friedman, the telephone conversations with the physical therapist, Chris Sullivan, first of all, is that all the basis of the information you have for the functional capacity of Jacob that you utilized for preparation of your report?

A. That's what I used when I prepared the report. Since, an IEP has been prepared.

Q. Your only notes that you have from Dr. Friedman are Exhibit B-2; is that correct?

A. Those are the only notes I have from him. I have medical records from him.

Q. And how about any notes you have from your telephone conversations with the therapist? Do you have any?

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(Thereupon, Defendant's Deposition Exhibit B-4 was marked for purposes of identification.)

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Q. B-4 are your notes from the telephone conversation with Chris Sullivan. And B-3 is the information you received in response to the form you sent to Chris Sullivan; correct?

A. Yes.

Q. So then --

A. In addition there are also physical therapy notes from Aurora, or from Menora Park where he has been getting aquatic therapy.

Q. But with respect to information you used to understand Jacob's physical capacities and prepare your report, is there anything other than the conversation with Dr. Friedman, the conversations with the physical therapist and the conversations with the parents?

MR. MISHKIND: You mean functional capacities?

MS. ROLLER: Yes.

A. This is what I started with. I believe I also had physical therapy notes from the Achievement Center that I based it on. And

then as I received more, the physical therapy notes from Menora Park and from, I guess it was just from the IEP. If they had determined something different, I would make changes, I would have done that, but instead they confirmed. But this is what I started with, Achievement Center, physical therapy notes and this information.

Q. Which we have marked Exhibits B-2, 3 and 4?

A. Right.

Q. But of course the IEP wasn't used for your report?

A. It wasn't used, but I received it later, and in looking it over, it confirms what I have picked up from these other sources.

Q. The IEP you received this morning?

A. Yes.

Q. Your life care plan assumes that certain conditions will exist related to Jacob in the future. A general statement, but that's certainly true, isn't it?

A. Yes.

Q. Your plan describes needs through his life and the effects on his ability to access

the labor market and on his wage earning capacity.

That's the substance of your opinions that you have outlined in your report; correct? They relate to those issues?

A. Yes.

Q. Do you agree that people with cerebral palsy are unpredictable to what physical outcomes or capabilities they will have in the future?

MR. MISHKIND: Objection.

A. Somewhat unpredictable only as far as how much of an impairment they are going to have. Not that they are going to be totally impairment free, most often.

Q. What do you understand with respect to Jacob's impairment? What do you understand his impairment to be?

A. He has spastic diplegia, cerebral palsy, which mostly affects his lower extremities.

Let me check my notes so I don't mix up the right and left. I believe it's his right leg more than the left. And his left arm more than the right arm -- it affects the right arm

more than the left arm.

Q. First of all, what is your definition of spastic diplegia?

A. He has a spastic condition in that the muscles in his legs, in particular, are tighter than they ought to be. And then it affects the upper extremities in that his fine motor coordination isn't as good as it could be.

He also had some speech involvement and had some speech therapy when he was younger.

Q. But currently, what is the condition of his speech abilities?

A. Currently he is not receiving any speech therapy. When I was there it seemed to me that his speech was not very clear and it was a little immature, but I know at the time that he was discharged they thought that his speech was within normal limits.

Q. With respect to his speech, does it play a part at all, do you think, in his vocational -- his ability to access the labor market, his speech?

A. I did not take into account any speech problems for the vocational opinion.

Q. And with his mental condition, his

cognitive abilities, what do you understand those to be?

A. It has not been thoroughly examined or evaluated. Dr. Friedman said he could be a little delayed cognitively, but he wasn't sure. The father thinks that he learns a little slowly. He did have the delayed speech and language, so it's really unclear whether he has any cognitive involvement or not at this point.

Q. For your life care plan, what did you assume his cognitive abilities to be?

A. I assumed that they were in the average range.

Q. So does that mean that you did not discount his mental abilities in any way for his access to the labor market?

A. The jobs that his family had were just a little bit above average and I assume that he was in the average range.

Q. So that means you have discounted -- if I can finish -- so you have discounted his access to the labor market because of his mental capabilities?

A. I decreased it by one step, but it's still within the average range.

Q. And what is your basis to decrease it one step?

A. The basis that Dr. Friedman said that he might be somewhat impaired, and the fact that the father thinks that his learning is not on schedule; the fact that he is having trouble learning his alphabet and his numbers at age five when most kids should probably have those skills.

Q. So for your work in preparing a life care plan for Jacob, speech did not play a part -- I want to summarize -- speech did not play a part; correct?

A. Correct.

Q. For his mental ability you put him one step below his parents. You will categorize him as average rather than one step above average?

A. Right.

Q. And with respect to his physical condition, tell me first of all what limitations you utilized to prepare your report, understanding that you told me he has spastic diplegia, it affects his lower extremities more than his upper.

A. That's true.
Q. And his right more than his left?
A. No, his right arm more than his left, his left leg more than his right. Let me double-check, because I keep getting that mixed up.
He uses the left arm less than the right arm.
MR. MISHKIND: I think you said right greater than left on both sides.
THE WITNESS: Yeah, that's what I have written in my notes. I was thinking that because the mom mentioned something about it. It was kind of cockeyed.
Q. The bottom line is, what is your understanding?
A. It seems to be his right more than his left.
Q. Right what?
A. Right leg, right arm are more affected than the left.
Q. And first of all, with respect to his lower extremities, what is your understanding with respect to the degree of impairment?
A. His lower extremities are quite

tight. They have to stretch his legs every day. Even though he just had that surgery last fall, he is still walking on his toes. He is very unsteady when he walks.

Balance is very poor. He falls frequently. It's difficult for him to get up on his bed. He is not able to go up and down stairs standing up. He sits, scoots or crawls.

It's difficult for him to coordinate his feet to run. He doesn't run very well. He has a very difficult time riding either a tricycle or bicycle, because he can't get on by himself. He can't coordinate his feet to stay on the pedals.

He is awkward with his hands. It's difficult for him to get himself dressed. And feeding himself is still kind of awkward.

Q. That's his physical condition now?

A. Yes.

Q. He is five years old?

A. Yes.

Q. Do you assume that those conditions will remain static?

A. I assume that with therapy that he might make some improvement, but I doubt that he

is going to be totally steady, for instance, on his feet.

His doctors have said that he is going to need physical therapy and occupational therapy through his life, at least evaluations, and set up a home exercise program.

Q. But with respect to his physical abilities, you would agree with me that it is unclear at this point exactly what his condition will be and physical capabilities will be, say when he is 25 years old?

MR. MISHKIND: Objection.

Q. Go ahead.

A. It's unclear whether he is going to improve a lot or whether he is not going to improve. We hope he is not going to get any worse.

Q. Of course, the nature of his defects determine what he can and cannot do. Would you agree with that?

A. Yes.

Q. And with respect to the nature of his defects, you would agree with me that Dr. Friedman characterizes them as mild?

A. Yes.

Q. Now, it's also true that a person's vocational outcomes, what they want to do in life is not predictable at age five?

MR. MISHKIND: Objection.

A. It is somewhat predictable in that it is standard procedure for people in my line of work and vocational rehabilitation counselors to look at the kind of work the family has done and to assume that without having been damaged, this child could have at least done that type of work, and that it's frequently children do pursue the type of work that they have seen modeled for them.

Q. Can I ask what your parents have done?

A. My mother was a teacher.

Q. Okay.

A. My father was a factory worker.

(Discussion off the record.)

Q. I want to talk about the vocational opinion you have for Jacob. You use the term sedentary strength range. Can you define that for me?

A. Sedentary work is work that can primarily be done in a seated position, where

one doesn't have to be all day on their feet.

The next strength category up is light, and in that category one might have to be on their feet all day. It also usually involves lifting up to ten pounds.

Q. Which one does; sedentary or light?

A. Sedentary. Light, one might lift up to 20 pounds occasionally and ten pounds frequently.

Q. What are the other categories?

A. Medium. And all the other strength categories one might be on their feet all day. And medium, one would lift up to 50 pounds occasionally and 25 pounds frequently.

Then there is heavy, which I think goes up to 70 pounds. I'm not positive of that. It might be 75 or 80. But it's about 70 to 80 pounds occasionally and less than that frequently.

Q. Who defines these strength categories?

A. The Department of Labor.

Q. And is sedentary then the lowest strength category?

A. Yes, it is.

Q. And this was your determination that he would fall into the sedentary strength range?
A. Yes, it was.
Q. I mean, you didn't discuss this with Dr. Friedman, did you?
A. No, I didn't.
Q. Now, you obtained information about Jacob's paternal and maternal grandparents, what they do for a living, and his paternal aunts and uncle; correct?
A. And maternal uncle, yes.
Q. Is that all the aunts and uncles he has?
A. Yes.
Q. The information you received there was verbally from Jacob's parents?
A. That's right.
Q. You didn't speak to any of them individually?
A. No.
Q. And you have listed here in your report on pages two and three the amount of education they received and the work that they have done?
A. That's right.

Q. Is this the work that they are currently doing?
A. I believe all of them are current, yes.
Q. It doesn't mean that they have done something differently before these current positions that they hold?
A. They might have. For instance, with the father and the mother, I have put down what she had done in the past. But most of them are current.
Q. All right. You make the statement in your report, most of his family have worked in jobs that are skilled trades. Tell me what how are you defining skilled trades.
A. Some kind of occupations that require some kind of training to prepare them for that kind of work.
Q. Is a lawyer a skilled trade?
A. It's a skilled profession, yes.
Q. As opposed to a skilled trade?
A. Yes.
Q. So being a lawyer is not a skilled trade?
A. It's a skilled position. And mostly

how the Dictionary of Occupational Titles and the Department of Labor quantifies them is as to how much training they take.

Q. Well, does the term skilled trade involve the physical aspect of the job?

A. No.

Q. So it's just whether you had some training for the job?

A. Yes. But they quantify it as to whether it's brief training, or highly skilled would be college and beyond.

Q. So what's a nurse?

A. I couldn't tell you offhand.

Q. I mean, is that a skilled trade?

A. Yes.

Q. Is it a highly skilled trade because it involves college or beyond?

A. I believe it's kind of in the medium range, because you don't have to have a college degree to be a nurse, but you have to have training.

Q. You don't have to have a college degree to be a nurse?

A. Yes.

Q. The term skilled trade, is that a

term of art from the Dictionary of Occupational Titles?

A. No. A skilled level of training, what I consider to be trades would be things less academic, like being a police officer, being a nurse, things in which you are learning skills that are more physically oriented, more rote, certainly some problem-solving skills are necessary. The professions are which you need more education and academics.

Q. You do put a nurse into the category of a skilled trade?

A. Yes.

Q. You indicate that most of his family have worked in jobs that are skilled trades or occupations that are physically demanding, such as law enforcement, fire fighting, electrician or pipefitter. He certainly has some relatives who are not in the skilled trades or physically demanding jobs; correct?

A. Correct.

Q. That would include number 13, the paternal uncle?

A. Yes.

Q. Number 11?

A. Yes.
Q. Number 9?
A. Yes.
Q. Number 8?
A. Yes.
Q. The drafter?
A. Uh-huh.
Q. Number 6?
A. Yes.
Q. And number 4?
A. Well, that's pretty physical.
Q. Working at McDonald's?
A. Yes. You are doing a lot of running around all day.
Q. Jacob's mother doesn't work right now, does she?
A. Not at the moment. She does seasonal work occasionally on holidays.
Q. So where do you put working at McDonald's? Is that a --
A. That's an unskilled job.
Q. So you would not put that in a skilled trade?
A. No.
Q. Or a physically demanding job either?

A. It's physically demanding in that you have to be on your feet all day and sometimes it gets pretty hectic, rushed.

Q. But for your sentence here, most of his family have worked in skilled trades or occupations that are physically demanding, do you put working at McDonald's in that category?

A. It's certainly more physically demanding than mentally demanding, so I would put it in that category.

Q. The first paragraph under vocational opinion, you indicate, you assign him to the sedentary strength range and then you say, his poor balance will preclude him from work in inclement weather, on a vibrating surface, and in high exposed places.

This is your opinion not something you received from a physician --

A. That's correct.

Q. -- or a physical therapist?

A. That's right.

Q. Same for that his motor coordination and dexterity are considered to be below average. I mean, that is your conclusion?

A. That's my conclusion, but that's also

documented in the therapy notes.

Q. Fine. Now, I just want you to define for me a couple things as you use it here in your report.

Vocational preparation, is that simply for me to understand education and training?

A. Yes.

Q. Aptitude, how are you using that in your work here?

A. One's innate abilities to process information, whether it be verbal information, numerical information, spacial information, clerical perception. Some people are just innately better at some things than they are at others. And we look at aptitude, we kind of look at where their innate skills are.

Q. And for traits, as that term is defined and used in the Dictionary of Occupational Titles, how is the term temperaments defined?

A. These are the types of emotional demands that are common in certain jobs.

Q. And interests, I assume, is the ordinary use of that word, the interest of the

worker?

A. Yes.

Q. To what degree of accuracy do you believe your parents, uncles and grandparents' work history is a predictor for any individual's future vocation?

A. It is a good predictor of one's potential, at least minimum potential; that one is probably going to be able to do at least what other family members have done, if they did not have any kind of disability.

This is a commonly used procedure to evaluate the worth of a child in litigation that has peer review articles written about it and it's standardly used by people in that field.

Q. I understand that and I appreciate what you said, but I think my question is a little different. I want to know to what degree of accuracy it is a predictor of the vocation of a child to look at the family's history?

A. It's the best predictor we have. We don't really have another predictor. As I say, what I'm looking at is what the minimum is that he probably would have been able to do.

Q. So you can't tell me --

A. I can't give you a percentage.
Q. That's the best you can use, is that what you are saying, the family's work history?
A. That's right. We don't have a crystal ball. We are not able to look into it and say this is what he definitely would have done, but we can look at the family and say, you know, without these impairments this child could have done at least this type of work and these are the types of wages we can expect him to have earned.
Q. Now, in your report, you refer to a pre/post report.
A. Yes.
Q. Who writes that or who has written that?
A. This is a computer program devised by a company called SkillTRAN, that is simply a tool that helps me use the Dictionary of Occupational Titles much more quickly than if I had to go through it job-by-job myself.
Q. How many titles are there?
A. 12,000.
Q. And the universe for those 12,000 titles, is that the United States?

A. Yes.
Q. 12,000 titles?
A. It's actually more than 12,000, but I don't remember.
Q. Okay. Now, you write in your report this sentence. Jacob's access to jobs in the labor market that are related to his family's experience has been reduced by 98.6 percent. Tell me how you derived that number.
A. I considered all of the jobs that his family has done. The computer then pulls them out, along with the characteristics, the worker traits that were necessary for these family members to do these jobs.
Q. Can I stop you right there and just ask you a question about that? That means you put into the SkillTRAN computer program jobs such as work with computers?
A. Yes.
Q. And being a drafter?
A. Being a nurse.
Q. And all of the jobs that are listed here in your report on pages two and three?
A. That's correct.
Q. You put those jobs into the computer

program and then what did you do?

A. That generates a general worker trait profile. That gives me the top level of skill that he has in all these different worker traits that have been demonstrated by the work that his family has done in the past.

I take that generalized worker trait profile and I modify it to take into account the limitations that Jacob has. Then the computer for me sorts through the jobs to determine how many jobs are related to that that his family have done, that Jacob can still do. And then it also looks at unskilled jobs, which you don't need any training, and how many of those jobs is he still able to do.

Q. Now, do you have a copy of the computer program?

A. Yes.

Q. Is that part of Exhibit B?

A. Yes.

Q. Can you show it to me?

It appears to be a 44 page report?

A. Yes.

Q. Is there a conclusion or a bottom line somewhere?

A. Two bottom lines. One was if Jacob is able to benefit from some formal training to enhance his skill level, and the other one is if he is not able to benefit, and then it also gives me access to Bureau of Labor Statistics for the occupational employment survey wages for those jobs, so you can get an average median wage that he would be expected to earn.

This is a tool I use. I don't totally rely on that, but that, in conjunction with my education and my training, my experience, I'm able to draw conclusions about how I think this child is going to be able to access the labor market.

MS. ROLLER: I want to mark this as Exhibit B-5.

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(Thereupon, Defendant's Deposition Exhibit B-5 was marked for purposes of identification.)

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Q. And just for a moment, if I can look over your shoulder, can you tell me and show me in that report where you inputted the family's jobs, the ones that they have done?

A. The first several pages are the jobs done by the family. This gives a description of the job, the Dictionary of Occupational Title number, the worker traits that are required to do that job, and there is one for sales clerk, for police officer that his father has done, fire fighter, and so forth, fast food worker.

Q. How many jobs did you put into this program?

A. Probably 13. Let's see, one, two -- 11.

Q. And they are listed here on page 12 of 44?

A. Yes.

Q. You said you modified -- first of all, the worker traits for each of these jobs are part of this?

A. They are combined here into the general worker trait profile that gives you the top level of each skill.

Q. What do you mean by top level of each skill?

A. The highest level which his family has performed. In other words, if his grandmother is a fast food worker, she is

probably not lifting more than ten pounds, but if his grandfather was a fire fighter, and he is having to lift very heavy weights, then the top level is going to be very heavy.

Q. For all of the combined categories?

A. For the combined worker trait profile, we are going to take the top level for each characteristic. If someone is able to read on a very high level and another job shows that at a much lower level, the combined worker trait profile is going to give me the strongest level for reading.

Q. So if I understand, if he has 12 family members who sit behind a desk and are a computer programmer -- that's a job sitting at a computer all day -- and that job has what kind of lifting requirements, would you say?

A. I'll tell you. It's sedentary.

Q. Okay. And he has one family member who is a pipefitter -- and I think his grandfather is that. Can you find that? What is that categorized at as far as strength?

A. Heavy.

Q. That when you run this computer program, you take all of the 12 jobs and even

though 11 of them would be sedentary, because one of them was in the heavy category, this computer program will look for jobs then that are have a heavy strength category?

A. Heavy or below.

Q. Heavy or below?

A. That's right.

Q. What traits did it come up with after you put his family in?

A. That he should be able, had he not had any kind of physical disability, he should be able to go into a job that requires him to lift very heavy weights over 100 pounds. He could occasionally climb, balance, frequently stoop, kneel, crouch, occasionally crawl, constantly reach, handle, frequently finger, feel, constantly talk and hear, occasionally taste and smell, constantly see things up close, frequently see things far away, have depth perception, accommodate to looking close and then far and going back and forth, have color vision and field vision, peripheral vision.

Q. Those were the physical demands and that's listed on page 12 and 13 and then you have environmental conditions and that's on page

13. I don't want to go through that, to save time.

But tell me, you obtained that information you put in a modified categories because of Jacob's limitations. Can you show me where you put in Jacob's limitations?

A. Yes. I first reduced his strength to sedentary. I took out any job that required him to climb, balance, stoop or crouch, because of his severe balance problems, and reduced his necessity to use fine motor coordination, which is fingering, to occasional because that's difficult.

Q. You are listing that page 17 of 44; correct?

A. Yes.

Q. Did you modify it in any other way?

A. Took out exposure to weather. In other words, he can't walk on ice or if it's very wet out; vibration and exposure to high hazardous places where he might fall.

Q. Okay.

A. I reduced his reasoning from a five to a four, which is from very much above average to a little bit above average. Mathematical

skills to three. His family's was a five, four, five and I reduced him to four, three, four and those are still within the average range.

Q. In relation to reasoning, math and language?

A. Right. But I left his intelligence alone. It was within the average range, verbal within the average, numerical in the average range. Actually maybe I didn't.

Q. You told us earlier you had reduced that.

A. I had, but I was thinking -- Yes, they have been above average. Dr. Friedman said he thought it was in the above average range, so I reduced it to average.

Spacial form and clerical perception I did not change. Motor coordination is below average. Finger dexterity is below average. Manual dexterity is below average and eye-hand-foot coordination is below average. And those are all documented in the physical therapy notes.

I initially did not make any change in the vocational preparation.

Q. What does that mean?

A. That is how many years of training it would take to achieve the level of occupation that his family had, and that was from two to four years.

Q. You said you did not change that initially?

A. I did not.

Q. Did you change it later?

A. Yes.

Q. What did you change it to?

A. Well, let me go through this one first.

Q. Sure.

A. On this one then, I looked at what kinds of jobs he would be able to do that would be related to what his family had done. And that's where I found that his access to the types of jobs the family has done has been reduced by 98 percent, the unskilled occupations by 99.7 percent.

Then I did it again, assuming that maybe he may not have the ability to go through two to four years of training, because Dr. Friedman had said he may be a little delayed cognitively. And so I went back and -- here it

is. I modified it again to limiting him to three to six months of training instead of two to four years.

Q. That's on page 20?

A. Yes. Either from short demonstration on-the-job training, to three to six months of training.

Q. Okay.

A. And then I ran the analysis again, and that's where I found that he had 98.7 percent loss of access to jobs related to those that his family had done, and 99.7 percent unskilled.

Q. Did you modify this report to see what access he would have to the market if his training was more than two to four years?

A. No.

Q. Why not?

A. Because I don't know that he has the ability to do that compared to what his family has done. Nobody in his family has done anything more than that. So what I'm looking at is what the maximum is his family has demonstrated their abilities are. He may not have the ability to do more than that because no

one in the family has demonstrated an ability to do more than that.

Q. It is fair to say he may or may not have that ability?

A. He may or he may not.

Q. And with the training that you're referring to, this two to four years, or the three to six months, is that any type of training that's vocational training?

A. Vocational.

Q. As well as Harvard University?

A. Yes. Well, you are probably not going to go to Harvard University for three to six months.

Q. A four year education, that could be four years at a vocational college or four years at a private university?

A. Yes.

Q. Okay. Then using that information on the SkillTRAN, did you then go through and determine his wage, his ability to earn wages?

A. Yes.

Q. And that's still part of SkillTRAN?

A. SkillTRAN has access to the Bureau of Labor Statistics 2001 wage estimates, which when

I did that, they were the most recent wage estimates available through the census, with local adjustments for the Ravenna area, which is his location.

Q. Why did you choose the Ravenna area?

A. That's the closest to where he is living.

Q. Is there the Cleveland area?

A. Yes.

Q. If Jacob when he gets older lives in the Cleveland area, that would be a more accurate area to use than Ravenna?

A. They could be. They are not that far different, so I try to pick it as close to their home area as I can.

Q. Is Boston different than Cleveland?

A. Yes. But Ravenna is probably not that different from Cleveland.

Q. And then just explain the analysis quickly or briefly that you did with respect to putting the numbers that you received from the vocational list to obtain the salary list.

A. Then I'm able to pull up what the average wages are for all the jobs preinjury and postinjury, and for both jobs that are related

to what his family has done. The other one is if he didn't have any training, so I had unskilled jobs in that one.

Here it is, unskilled as well as those related to those of his family.

Q. So just reading this chart on page 43 of 44, this is for the unskilled?

A. No. The top ones, that would be related to what his family did. This one is listed unskilled.

Q. So just interpreting this for me, what does this mean, preinjury?

A. Preinjury, unskilled jobs related to his job, he might earn $411 a week; postinjury he might earn $403 a week.

Q. So an $8 difference?

A. His family mostly did jobs that are skilled except for fast food workers, so I compared it to what they would've made, what his family makes in their skilled positions.

Q. The occupational group, directly transferable?

A. Those are the ones that are most closely either equal to the jobs his family had done or that they would be able to do with no

additional training.

Q. Does this relate to what he would be able to do, this directly transferable?

A. Yes. If he had had that training. He couldn't be a policeman now because he hasn't had any training, but his father could. His father could be a policeman or he could be a detective or he could be a private investigator. Something that wouldn't take any additional training in order for him to be able to do.

And then the categories get farther away. The closely transferable he might need a little bit of skill upgrade or skill training in order to go to these jobs. Generally transferable, he might need, related to what he had done before or some training, some different kind of training in order to be able to do it.

Q. So an example of directly transferable job would be what?

A. For a policeman, it would be a private investigator, head of security for a company, something that he would already have the skills to do.

Q. Does one who works with computers have similar earning capacity to a policeman or

more?

A. I'm not sure offhand. Probably more.

Q. And is that a category that's in the directly transferable area?

A. It would be for that individual who does the computer programming, sure. That would be jobs directly transferable to a computer programmer.

Q. You have no reason to believe right now that Jacob is not capable when he is an adult to be a computer programmer?

A. Well, the computer programmer, I believe, takes above average intelligence and so far people are saying that Jacob is probably in the average range.

He is above average in reasoning and language, above average in general education, verbal and numerical skills.

MR. MISHKIND: As a computer programmer?

THE WITNESS: Yes.

Q. You are looking at page 9 of 44?

A. That's right.

Q. Under aptitudes, what is the range here, one to five?

A. One to five, one being the highest and five being the lowest.
Q. For aptitude?
A. Yes.
Q. And?
A. Reasoning, math and language.
Q. Again the scale is one to five?
A. Yes.
Q. And five is the highest?
A. Yes.
Q. Not one?
A. Right.
Q. It's the opposite?
A. It's the opposite. That's why I was sitting here thinking, I have to figure it out, because they are the opposite.
MR. MISHKIND: It's kind of difficult when she is standing over your shoulder. She likes to do that.
Q. What is average for reasoning, math?
A. Three.
Q. Three is average?
A. Yes.
Q. With respect to Jacob's physical capabilities, mental capabilities, you would

defer obviously to Dr. Friedman?

MR. MISHKIND: Objection. You can go ahead and answer.

A. Dr. Friedman has not tested him. Dr. Friedman has a lot of experience working with children with neurological disabilities, so I would trust his gut reaction to what somebody's capabilities are. If he would say he could be somewhat impaired cognitively but he seems to be about average, I would not dispute that.

But he has not tested him to see what his intellectual ability is, what his neuropsychological capabilities are in terms of perception, spacial perception and coordination.

Q. But to be fair, neither have you?

A. No, I haven't.

Q. So therefore, he would be in as good or better position than you to give opinions on those matters?

A. Yes.

Q. You think he is in as good a position as you?

A. Yes.

Q. Has he received any testing?

A. Not that I saw any evidence of.
Q. So as you sit here today, there is no reason for you to say that Jacob cannot obtain more education than his parents and family members; correct?
A. Nobody is saying this is a really, really bright little kid. His parents are saying he seems to learn a little slow. He had delayed language. Dr. Friedman is saying he may be developmentally cognitively a little slow. No one is saying he is real, real bright. So I don't think that he is probably going to get much more education than his parents had.
Q. Are you saying that as to a reasonable degree of probability?
A. I'm saying that to my best professional opinion.
Q. But to what level of certainty?
A. I'd say that it's more likely than not that he is not going to excel in school.
Q. And you base that upon?
A. Upon the fact that Dr. Friedman said he may be a little delayed, the fact that his parents say he doesn't learn real fast, the fact that nobody said that this is a really bright

kid, the fact that his language was delayed, the fact that I saw him and he seems to me to be a little immature for a five-year-old.

Q. But you would agree as you sit here today, you can't say that he won't earn more money in an occupational sense than his parents when he is an adult, that's true, isn't it?

A. I don't believe that he is going to earn more money than his parents. With the capabilities that he has, with the limitations that he has, I think it's more likely than not that he is not going to earn as much as his father -- his mother is not making anything -- but his family members.

MR. MISHKIND: Off the record.

(Recess had.)

Q. As you stated, you don't have a crystal ball and nobody does; correct?

A. Correct.

Q. In order to determine what Jacob's cognitive abilities will be as his life goes on, neuropsychological testing would be needed?

A. Well, it would be helpful. It would also be helpful once he starts to school to see how he performs at school. That's a good

indicator, as well.

Q. Well, if you don't have testing, then you don't have a firm basis to determine what the future will bring, you would agree with me, wouldn't you?

MR. MISHKIND: Objection.

Q. Go ahead.

A. There are other indicators, such as current performance, the doctor's guess of his observations of how this child is functioning. The parents are pretty good indicators of how they think this child is functioning. It's not totally impossible to have an idea.

Q. But that's all you have?

A. Yes.

Q. Looking at your life care plan, with respect to the therapeutic evaluations, and modalities and the various other components that make up the costs for Jacob's care, I just want to go through them with you and ask you some questions.

The costs associated with each, where did you obtain that information?

A. I obtained those from two different providers, one of which the Fiktuses were using

or currently using at the time of my interview which was Aurora Medical Center, and the other one we chose was The Cleveland Clinic Children's Hospital, because his surgery was done by Dr. Gurd and we thought he might send him to The Cleveland Clinic Children's Hospital. So those were the two we chose and took an average of their prices.

Q. For each of the items listed, how do you obtain that information? I realize these are your sources, but how do you obtain the information for each item?

A. We call them and inquire as to what the costs are.

Q. Is that information contained in your file?

A. Yes.

Q. Can you show me where that is?

A. Yes.

This is the information from The Cleveland Clinic Children's Hospital from August of 2002 and it indicates that they were contacted and what they told us the costs were. And then the page after, that was the other vendor.

Q. Well, is there a sheet entitled resource information for each item of cost in your report?
A. Yes.
Q. And who obtains this information for you?
A. My research assistant.
Q. Is that --
A. Ricki Englehaupt.
Q. So you are saying there is such a document entitled research information for each item?
A. Yes. And then at the beginning of that is where they are combined and it has the summary of what both of them are and how we arrived at a cost.
Q. The page you are referring to is under therapeutic modalities?
A. Yes.
Q. The first page. All right.
I just want to go through a couple of them. The physical therapy sessions, under the page therapeutic modalities, if I understand how to read this, in the second column, it says age and year, so you are saying that at age five he

will begin physical therapy sessions in the year 2002 and it will end when he is 18 in the year 2115; is that correct?

A. He will have probably the last of the formal physical therapy at age 18. That doesn't mean it's going to go on that entire time. What I said is he is going to have a total of 23 each time he has a surgery.

Q. Each time he has a surgery.

A. Yes. Post-op visits.

Q. Okay. How many surgeries do you anticipate that he is going to have?

A. One to two more.

Q. And so these 23 post-op visits are just in the years that he has the surgeries?

A. That's right.

Q. Okay. Now, does your plan call for any other therapy?

A. Not formal therapy. There is some recreational activities that are therapeutic that have also been recommended for him.

Q. And that's under recreation and leisure?

A. Yes.

Q. The amount of or number of

occupational therapy evaluations one time a year, where did you receive information that he would need that one time a year?

A. From Dr. Gurd.

Q. And how about the physical therapy evaluation?

A. Dr. Gurd. I believe Dr. Friedman also said that.

Q. And I'm sorry, did you have a telephone conversation with Dr. Gurd?

A. No. I sent him a letter and requested the answers to the questions.

Q. Can I see that?

MS. ROLLER: Let's mark that.

MR. SKALL: Let's mark all of the correspondence to and from Dr. Gurd of whatever kind or nature.

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(Thereupon, Defendant's Deposition Exhibit B-6 was marked for purposes of identification.)

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Q. The information for the orthotics that you have in your plan for Jacob, who provided you with that information?

A. Dr. Friedman said that he would probably need them through life. I think Dr. Gurd also addressed that. I don't have his report in front of me.

Q. So walk me through this, the orthotics page, orthotics AFO's bilateral.

A. Starting at age five he will need them every year through his growth years until age 19. Starting at age 19, he will need them every other year through his life.

Q. And what are you using as his life expectancy?

A. I'm not anticipating life expectancy.

Q. I thought you said he would need it every other year through his life?

A. I did, but I didn't say how long that was going to be. That's up to the economist, it's not up to me.

Q. And for the cost per unit for the after age 19, you have $1,397.10?

A. Per each time he gets them, yes.

Q. So you assign a yearly amount for half that?

A. Prorated, yes.

Q. I see. And the frequency of medical

care for follow-up visits, who did you receive that from; either Dr. Friedman for the neurology visits and Dr. Gurd for the orthopedic visits?

A. That's right.

Q. And that's contained in the records that you received from them?

A. Yes.

Q. Show me where Dr. Friedman said that he will need -- do you have him having any neurology follow-ups as an adult?

A. No.

Q. And where did he indicate that he needed yearly visits? You say kindergarten through eight years.

A. Dr. Friedman said he would need a neurology follow-up every six months until he was in kindergarten and then he would need yearly follow-ups through age eight if he has mild CP. That's what he was anticipating.

Q. And after that he wouldn't need any?

A. More likely after that he would be followed up by the orthopedic or the physiatrist.

Q. That's contained in your notes?

A. Here.

Q. B-2. You ask, there is a term here, equipment question mark on B-2. What equipment, if any, did Dr. Friedman indicate that Jacob would need?

A. He didn't think of anything that he thought he would need.

Q. Likewise, with medicine he did not think he would need any medicine?

A. That's right. Because he said the medicine would probably be for seizures and he didn't seem to have seizures.

Q. And for aquatic therapy, he said he didn't necessarily need it?

A. Right.

Q. And what is this notation here?

A. Hippo therapy, horseback riding therapy, and he didn't really address that.

Q. Meaning you asked do you think it would be good for him to have horseback therapy and his response was --

A. I think he just didn't answer. I think he went on to the next one. I said would he benefit from hippo therapy or aquatic therapy and he said not necessarily. However, Dr. Gurd confirmed that would be a good idea, as did the

physical therapist.

Q. You have a notation at the bottom of Exhibit B-2, September '99, developmentally a little slow. Then you have a name, Dr. Robert Bauer at The Cleveland Clinic Children's Hospital, or Lisa Stanford, and then you say question mark. What is your reference to?

A. When we asked if he was cognitively normal or whether he had any delay, Dr. Friedman said he thought that he might be developmentally a little slow. And he suggested that if we really want to know for sure, a neuropsychological evaluation would be helpful.

Q. Okay. Thank you.

When did you receive Dr. Gurd's response?

A. Did he date it on the last page?

Q. There is a signature there.

A. Yes, that's his signature. 8-21-02. So we probably would have gotten it shortly after that.

Q. Just looking at Dr. Gurd's response to your letter of August 20th, so we can both see it, it says, are there any additional surgeries that you anticipate Jacob might need

at any point in the future? If so, what surgery or surgeries and at what approximate ages.

I'm reading this to say surgery often needed one to two times?

A. More during growth.

Q. Times cannot be predicted?

A. Right.

Q. Okay.

A. But he has said one to two times.

Q. Where did he say that?

A. Right above it. He said surgery often needed one to two times, but he said I can't tell for sure.

Q. You have on here leisure and recreational activities. Adapted camp residential, you have included that?

A. Right.

Q. When Dr. Gurd was asked do you think Jacob would benefit from an adapted camp for children with special needs, he said, I'm not sure?

A. Right.

Q. But you did include it?

A. I certainly did.

Q. What was the reason you included it?

A. Because I worked at a camp for adapted children when I was in college and it was a very beneficial experience for these kids. They received a lot of therapy at camp and plus they were with a lot of kids like themselves and got a lot of personal attention and made a lot of progress at that time.

Q. Is it fair to say that the only reason that this was added was because you think it would be beneficial?

A. That's right. It's not a medical recommendation necessarily, it's a functional recommendation, something to make his life more normal and something he would enjoy.

Q. Have you prepared any other drafts of your report other than this one?

A. No.

Q. Although you had additional information after you received this report, October 29th, 2002, you have not provided any supplemental reports; correct?

A. No, nothing I received caused me to change my opinion.

MS. ROLLER: I don't think I have anything further. I want to look through that

while David might have some questions, which I'm sure he does.

EXAMINATION OF CAROLINE WOLFE, CRC, M.Ed, LPC

BY MR. SKALL:

Q. Can I call you Mrs. Wolfe?

A. Right.

Q. I introduced myself to you before. My name is David Skall and I represent Drs. Kiwi and Loret de Mola and they are physicians named as a party in the lawsuit.

I want to follow up on some of the areas you already discussed. Before we do so, I think what I would like to do initially -- I don't think we have done so -- can you take a look -- I have copied, I think, your October 29th 2002 report on to my nifty yellow paper that happened to come out of my copier when I did so.

Can you look that over and verify for us that that is a full and complete copy of your report that I can mark as an exhibit.

A. Certainly appears to be, yes.

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(Thereupon, Defendant's Deposition Exhibit D was marked for

purposes of identification.)

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Q. We have marked your report and you authenticated your report as Exhibit D; agreed?

A. Yes.

Q. Now, since October 29th, we can agree you have received some additional information concerning this case?

A. Yes.

Q. And those have included some deposition transcripts, including the deposition of Dr. Friedman; right?

A. Yes.

Q. Nothing in Dr. Friedman's records, deposition transcript subsequent to October 29th has changed your opinions, has it?

A. No.

Q. Aside from additions to the records that you had in your possession to review since you prepared your report, are there any other changes that you want to testify to today that you can think of?

MR. MISHKIND: Objection. It's such a vague question. Do you understand what he is asking you?

THE WITNESS: Not really.
Q. Are there other opinions you have since October 29, 2002 that aren't reflected in your report concerning the case?
A. Nothing specific. The only thing that I feel more strongly about now than I did then is that he is going to be very limited in his ability to work without some kind of extra education or training. I think his balance and his coordination is so poor that I think he is going to need some kind of specialized training.
Q. So any information you have received since October 29th has reinforced your opinions?
A. Yes.
Q. Especially as relates to his motor function --
A. Yes.
Q. -- Jacob Fiktus' motor function?
A. That's right.
Q. Has anything you received since October 29th, 2002, changed your opinion one way or another as to your forecast of his cognitive function?
A. Just in seeing him last week, he was more communicative than he was the first time I

saw him, and I felt that his speech was very difficult to understand and his language was a little immature.

Q. And that was at your most recent visit with him?

A. Yes, last week. Again, that's not a formal evaluation, but I do have background in speech pathology, so I'm not a novice.

Q. You are also not an expert in speech pathology?

A. That's right.

Q. I want to clarify. We did clarify when you were answering questions for Ms. Roller that nobody has done any neuropsychological testing on Jacob?

A. Not as far as I know.

Q. And am I correct that as between your opinions and those of a neuropsychologist, you would defer to a neuropsychologist?

MR. MISHKIND: Objection.

A. Most likely.

Q. If you brought a neuropsychologist in as an expert in assessing Jacob's cognitive limitations?

A. Cognitive function, yes.

Q. Over the long term of his life?
A. Yes.
Q. While Dr. Friedman, you say, didn't do any neuropsychological evaluations either, would you regard him, if he had done so, to have been in a superior position to you in that regard?
MR. MISHKIND: Objection. Speculative. Go ahead.
A. Not necessarily.
Q. I guess what I would like to know is, do you have any expertise that allows you to assess whether Jacob has a cognitive developmental delay?
A. I have training in testing for -- I didn't do any testing of this child, but I do have training in various types of aptitude and achievement testing. And in my experience as a rehabilitation counselor, I see children of all different levels, so I have a pretty clear idea of what to expect of children at different ages.
Q. But does your professional expertise as a rehabilitation consultant/life care planner allow you to assess whether Jacob Fiktus has a developmental delay?

A. Not to formally assess, only to make observations.

Q. So you will not be offering testimony in this case based on any reasonable degree of medical certainty that Jacob Fiktus has a cognitive developmental delay?

A. Only an opinion as to my observations and those of his parents and Dr. Friedman. Not on a formal basis, no.

Q. I'm going to ask my question again, because there is some very specific language to what I would like to know.

Do you intend to offer opinions in this case based on a reasonable degree of medical certainty that Jacob Fiktus has a cognitive developmental delay?

MR. MISHKIND: I'm going to object -- because obviously she is not a doctor -- to asking her opinions to a reasonable degree of medical certainty, but having said that, go ahead.

A. I think the term is probable psychological certainty, but I will not be offering either of those opinions.

Q. So again, you will not be offering

any opinions as to a reasonable degree of medical certainty that Jacob Fiktus has a cognitive developmental delay?

MR. SKALL: You can renew your objection. I want the question answered the way I'm asking.

MR. MISHKIND: She will. Object.

A. I guess my answer is no.

Q. Are you aware of any physician who has seen Jacob or is providing testimony in this case that is of the opinion that he has a permanent or a developmental delay and has offered that based on a reasonable degree of medical probability?

A. I think Dr. Friedman has said he has a developmental delay.

MR. MISHKIND: That's a different question than what you asked before.

Q. I want to kind of back up. What you are saying is Jacob is suffering developmental delay to a reasonable degree of medical probability?

MR. MISHKIND: Objection.

A. He has developmental delay definitely from the medical standpoint.

Q. When I asked you the question that you will not be offering testimony in this case that Jacob has a cognitive developmental delay to a medical certainty, you will not?

A. Right.

Q. By that same token, I assume you will not be offering testimony in this case that he has a permanent cognitive developmental delay to a medical certainty?

A. Correct.

Q. You will also not be offering testimony in the case that he is suffering a permanent impairment of his cognitive function to a medical certainty?

A. I don't know if I will be asked that question, but he does have a permanent impairment. That's a medical decision, but Dr. Friedman has said that he has a permanent impairment.

Q. You believe in what you have reviewed in this case and the investigation you have done that Dr. Friedman is of the opinion that Jacob has a permanent cognitive impairment?

A. You didn't say cognitive before. You said --

MR. MISHKIND: You are saying cognitive and them then impairment. They are different terms. You are switching back and forth, going from the right side to the left side.

Q. I'm going to ask it this way. Is it your belief in the work you have done and the materials you have reviewed in this case, that Dr. Friedman has issued an opinion that Jacob has a permanent cognitive impairment?

A. No.

Q. What is your understanding of Dr. Friedman's opinions as to the status and prognosis for Jacob's cognitive function?

A. He said that he wasn't sure; that he might be a little developmentally delayed cognitively.

Q. Having said he is not sure, was it then your understanding that Dr. Friedman did not offer opinions as to Jacob's cognitive function to a reasonable degree of medical certainty?

MR. MISHKIND: Objection.

A. I don't know what Dr. Friedman was thinking.

Q. So you would defer to the testimony that Dr. Friedman has provided as to the strength of his opinions?

MR. MISHKIND: Objection. Go ahead, if you understand his question.

A. He knows the strength of his opinions better than I do.

Q. If I reviewed Dr. Friedman's deposition testimony and he never said that Jacob Fiktus has a permanent cognitive impairment based on a reasonable degree of medical probability, you wouldn't have any reason to say otherwise?

MR. MISHKIND: Wait a second. Your review is not in evidence and what you reviewed and what you saw in a discovery deposition is irrelevant.

Q. Let me back up. If nowhere in Dr. Friedman's deposition transcript or notes in this case states that Jacob Fiktus has a permanent cognitive impairment, you wouldn't have any reason to say otherwise, would you?

MR. MISHKIND: Objection. Go ahead.

A. The way I read it was that he said I don't know if he does or not. He didn't say he

definitely doesn't have it. He didn't say he definitely does have it.

Q. If nowhere in the same materials I referenced in my prior question Dr. Friedman gives an opinion as to Jacob Fiktus having a permanent cognitive impairment to a reasonable degree of medical probability, you wouldn't have an opinion otherwise?

MR. MISHKIND: Objection. Asked and answered.

MS. ROLLER: I didn't get the answer.

MR. MISHKIND: Go ahead and answer it again.

A. He did not say that he has a cognitive impairment. He also did not say he did not have a cognitive impairment.

Q. Are you aware of any other records, notes, physician documents, any material whatsoever that you've reviewed where a medical doctor has indicated that Jacob has a permanent cognitive impairment --

A. No.

Q. -- to a reasonable degree of medical certainty?

A. No.

Q. Of the physician's records and notes that you have reviewed in this case, which professional is of primary responsibility to date in the assessment of Jacob's cognitive ability?

A. As far as I know, no one has assessed his cognitive ability.

Q. Who in your opinion of the people involved in his care to date would have been in the best position to do so?

MR. MISHKIND: Objection. Go ahead.

A. Doctors usually don't assess cognitive ability. It's usually neuropsychologists or a psychiatrist.

Q. So without Jacob having a neuropsychological evaluation, is there no one who has been in a superior position to assess his cognitive impairment and future?

MR. MISHKIND: Objection.

A. In my opinion, not to date.

Q. So let me see if I have this straight. We don't have, to your knowledge, through records and review, and your investigation, there is no evaluation of Jacob Fiktus' cognitive function that has been

provided to a reasonable degree of medical certainty?

MR. MISHKIND: David, she has answered it four times. She will answer it one more time, but she is not going to answer it beyond that. I don't know how many times you are going to ask it over again. She has already given you the answer. She has answered the question honestly. You keep coming back and asking the same question over and over and over again.

Go ahead and answer it one more time.

MR. SKALL: Howard, I paid good money for this deposition, so I will ask my questions until my three hours are up.

(Discussion off the record.)

(Record read.)

MR. MISHKIND: Answer it one more time.

A. Not that I'm aware of. There hasn't been any formal assessment.

Q. Thank you.

MR. SKALL: I'll try not to be redundant any more than I think is necessary. Maybe I lack a little experience in these brain

damage baby cases.

MS. ROLLER: You are doing fine.

MR. MISHKIND: Go ahead and ask your question.

Q. I would like to move along. Who of the providers in Jacob's course of care to date do you regard as in the best position, if at all, to assess the status of his motor function and the future of his motor function?

A. I would have to say both Dr. Friedman and Dr. Gurd. I don't think one is any more qualified than the other.

Q. Have either of those two physicians expressed any prognosis as to Jacob's motor function and the permanency of an impairment of motor function to a reasonable degree of medical certainty?

A. They have both said he will need physical therapy and occupational therapy through his life, and Dr. Friedman did say he had permanent impairment.

Q. Did either of them provide a prognosis as to what improvement or regression they foresee for Jacob to a reasonable degree of medical certainty?

MR. MISHKIND: Objection. If you know.

A. No, not that I know of.

Q. So you wouldn't have any reason to have an opinion on that issue as to whether they had expressed an opinion one way or the other? You don't know?

MR. MISHKIND: Objection.

A. As to exactly how much he will improve, no. As to whether he will improve totally, yes, because they said he will need PT on OT through his life, and orthotics through his life. That says to me he is not going to be healed, cured; he is going to continue to have some impairment.

Q. I just to want clarify. You don't know whether they have offered opinions as to Jacob's prognosis for his motor function to a reasonable degree of medical certainty?

MR. MISHKIND: Objection. Asked and answered.

A. No.

Q. I asked this question of you I know with regard to your evaluation of Jacob's cognitive function. You will not be offering

opinions in this case to a reasonable degree of medical certainty as to Jacob's prognosis as to his motor function?

A. Only to the extent that he will need prosthesis -- I'm sorry, orthotics and therapy through his life.

Q. I will ask the question again. You won't be offering any prognosis as to potential improvement or regression to a reasonable degree of medical certainty as relates to his motor function?

MR. MISHKIND: Objection.

A. Specifically, no. But in general, yes, he will need it. He will need services.

Q. Do we have marked as Exhibit B-6 -- take a quick look -- all of the correspondence to or from your office between Dr. Gurd?

A. Yes.

Q. There are no additional documents as to Dr. Gurd?

A. Not communications. I have his operative report and some of his office notes, yes.

Q. Were there any other telephone conversations between either you or your

assistant and Dr. Gurd?

A. No.

Q. What part of your report that we have marked as Defendant's D accounts for any improvements or regressions that Jacob may have over the course of his life with regard to impairments?

A. We cannot know exactly how much he is going to improve or regress, so what I put in was simply what the doctor said was the minimum number that he was going to need, the physical therapy, the occupational therapy, the orthotics. They don't anticipate that he is going to not need those things, so I'm assuming in my plan that he will need those things through his life.

Q. Is it fair for me to say that as to those impairments, both mental and physical, the report applies to the present status of those impairments as permanent?

A. His impairments are permanent. The degree of impairment, we can't know for sure how impaired he will be as an adult, but they do not expect that he is going to have full function of his limbs.

Q. All right. So your report -- let me see if I understand correctly. Your report implies a certain amount of his mental impairment as permanent, but it will vary on degree; a correct statement?

MR. MISHKIND: Objection.

A. I did not really give him much of a mental impairment. I stated that he is probably in the average range because that's what Dr. Friedman said, rather than above average that maybe his family would have been. In the life care plan I did not address that at all in terms of cognitive impairments.

Q. Where did you apply cognitive impairment?

A. Only in adjusting his worker trait profile from above average to average range.

Q. And that was what you used in the SkillTRAN report?

A. Yes.

Q. And you answered some questions on this when Jan was asking her questions. And I think you said the reason why you downgraded Jacob somewhat as relates to his mental impairment was based on the report of his father

as to how quickly he was learning; is that one thing?

A. No. His father, Dr. Friedman was saying that he might be a little delayed, my own observations that he appears to me to be a little immature, the fact that his language was delayed, which is an indicator. I think it's those things.

Q. Is there anything else that caused you to downgrade him from a little bit above average to average as far as his mental impairment?

A. I don't remember that there was anything else.

Q. Do you know any qualifications Jacob's father would have to assess Jacob as having an impairment?

MR. MISHKIND: Objection.

A. He has an older child. He has nieces and nephews.

Q. Outside of his parental experience --

A. No.

Q. -- or familial experience would he have any other basis --

A. No.

Q. -- to assess Jacob's impairment?
A. No.
Q. We have already discussed some of Dr. Friedman's assessments and your opinions of those assessments, so I won't go over those.
Do you have any other, than your observation, professional certification and training in evaluating the level of mental impairment for a boy in Jacob's situation?
A. It's my education and experience. I don't have any professional qualifications.
Q. Why is it that in preparing a life care plan you consult the subject's health care providers?
A. Because I am not a doctor and I need to have them either confirm or inform me as to what they think his future medical needs are going to be.
Q. And that would, in this case, apply to both of the impairments you applied in this plan, his motor function and his cognitive function?
A. I only asked the doctor about his motor function. I did ask Dr. Friedman about his cognitive function and he said he might be a

little delayed, but that's as far as we took it. In terms of services, I didn't pursue that.

Q. Why didn't you ask the doctors other than Dr. Friedman about cognitive impairment?

A. That's not their area of expertise.

Q. Is it fair for me to say it's not your area of expertise either?

MR. MISHKIND: Objection.

A. As a life care planner I see dozens of children a year and I have background in speech and hearing and training in testing.

Q. So is it my understanding, as a life care planner, you regard yourself as having an expertise to offer opinions as to whether Jacob Fiktus has a cognitive impairment?

A. I can offer observations. I can't offer professional opinions. I'm not a neuropsychologist.

Q. Likewise, can you offer opinions as to whether Jacob Fiktus has a motor function impairment?

A. On the basis of all the records I reviewed, yes, I can offer that, and in observing him.

Q. You can't offer any opinions as to

whether the symptoms that you reviewed as to his impairment of his motor function will improve or regress?

MR. MISHKIND: Objection. Asked and answered.

A. I cannot offer an opinion as to how much they are going to do that. I can offer an opinion that according to the evidence that I have seen that he is not going to be without impairment in his life.

Q. Is it fair for me to say that two of the primary components factored into your vocational assessment and opinion as to Jacob were his mental impairment and the impairment of his motor function?

A. Yes.

Q. When you most recently visited with Jacob, how would you describe his motor function at that time?

A. He was very uncoordinated. He was very off balance, unsteady. He was walking on his toes. He moved around a lot on the main floor. When he had to go up and down stairs, he sat down, scooted or crawled. He is clearly not very well coordinated.

Q. How would you say your observations of his motor function differed between the first time you visited in August and your most reason visit?

A. The first time I visited Jacob was the week after his surgery and he was sitting on the couch with casts on his legs.

Q. So is it fair for me to say you weren't able to get an impression as to how he walked and moved at that point?

A. That's right. Not personally. I had to rely on what the parents reported. And when I actually saw him, he was actually worse than what I anticipated he would be.

Q. So that would be one of those situations where your subsequent work, your work subsequent to your report affirmed your report findings?

A. Definitely.

Q. But your report findings would have been basically on his parents' reporting on how he moved and walked?

A. His parents and the medical records that he needed, the heel cord lengthening surgery, and that he did have motor delays,

motor problems that were from the physical therapy notes and Achievement Center notes.

Q. Can you explain kind of in a nutshell why it is that you survey the family vocational history in trying to make your assessment of Jacob?

A. Two reasons. One is that the nut doesn't fall far from the tree. What types of skills and abilities the family has genetically Jacob is probably going to have similar types of abilities and skills. The other thing is that with the interests modeled for him by other members of his family, that gives me an idea of what kind of direction he is likely to chose to go in.

Q. Is it fair for me to say that the idea is that you surveyed the family history as far as vocation and with the idea that it's a predictive value for Jacob?

A. Yes.

Q. Anything else that can be done with a boy Jacob's age to assist in predicting potential vocations?

A. No.

Q. My understanding in forming that

assessment is you formulated what is called a worker trait profile and that is what you applied in the SkillTRAN; correct?

A. Yes.

Q. Then for Jacob's purposes, you factor in his limitations?

A. Yes.

Q. Aside from the limitations on cognitive impairment and impairment of his motor skills, were there any other impairments that you factored in?

A. No.

Q. So those would be the two impairments?

A. Yes. And it was only a slight reduction for cognitive. The major reduction was because of his motor impairments.

Q. So there was a slight reduction for his cognitive impairment; correct?

MR. MISHKIND: Objection. Asked and answered. That's the tenth time. David, I have to get to a meeting. I don't mean to be rude to you, but you are asking the same questions over and over again.

(Discussion off the record.)

Q. Have we discussed all of the bases on which you formulated your opinion that there was a cognitive impairment?

A. Yes.

Q. In the paragraph on your report -- and I'll give it to you so that you have it for your reference, and I'll point it out to you -- the one that references the SkillTRAN test, which I think is the first full paragraph on page four, the last sentence reads, his choice of occupations is severely restricted as a result of his permanent impairments.

A. Yes.

Q. When you reference permanent impairments there, can you tell me more specifically what you mean?

A. The motor impairments and the fact that he appears to be in the average range of cognitive function.

Q. And have we discussed the reasons why you formulated your opinions as to those impairments?

A. I believe we have.

Q. The paragraph following that remarks in the second sentence, that if Jacob was

capable of advanced training or skilled work, that he could perform certain jobs; correct?

A. Correct.

Q. In that hypothetical, as opposed to in that paragraph, he would not suffer a wage loss in his lifetime, in your opinion?

A. Yes, he would. The average wages for those jobs is lower than the work experience of his family.

Q. So what you are saying is even if he is able to, even if he is capable of skilled or advanced training, he is still going to earn less money?

A. Yes.

Q. Why is that?

A. Because the types of jobs that he is still going to be capable of performing will not pay the amount that his family has been able to earn.

Q. And that's based upon comparisons to his father's present salary as a police officer?

A. Not only his father, his family; the other members of his family, as well.

Q. Do you have any numerical computation anywhere, aside from the ones listed in your

report?

A. Not computation. Let me correct myself. In the fifth paragraph, I compare his wages to that of his family. In the sixth paragraph, I do compare them to that of his father. I had forgotten about that. Because his father followed his father, as did his uncle, into the protective services and that seems to be a pattern for a lot of people in protective services, so I felt safe in comparing them to his wages.

Q. I note in reading these paragraphs together that you are posing two scenarios: He may be capable of skilled or advanced training in a college setting or he may not?

A. That's right.

Q. Is there anywhere in your report that offers an opinion as to professional certainty of whether you think he will or will not be able to be capable of skilled or advanced training in college?

A. No. That's why I put both scenarios in there.

Q. Would any of your opinions change if you hadn't factored in a cognitive impairment?

A. There might be more jobs that he would be capable of performing.

Q. Could you stand by this report to a professional certainty if you hadn't factored it without factoring in a cognitive impairment?

MR. MISHKIND: Objection. Go ahead.

A. As I said before, nobody has said this is a really bright kid. The evidence is he is probably average and so I do stand by it. I think that it's correct.

Q. I want you to hypothetically remove from your analysis that there was a cognitive impairment. Do you think your report would have changed substantively?

MR. MISHKIND: Objection.

A. It would have changed to some extent. He still would have been pretty limited in accessing the jobs his family has done because of his physical limitations.

Q. Does this report assess the severity, the present severity of Jacob's motor function impairment on a permanent basis?

A. Yes.

Q. In the scenario that his motor function improved or digressed, do you think

that would also modify your opinions set forth in this report?

A. I don't believe so.

Q. In reviewing this chart, did you list that you reviewed medical report as provided by Dr. Friedman?

A. Did I say that?

Q. Page six where you list the documents reviewed, I guess I notice you don't reference having reviewed Dr. Friedman's medical records.

A. Yes, I did. Mel Friedman, M.D., Cleveland Clinic, medical records, medical report.

Q. It says medical report.

A. It should say reports. There were two of them, I believe, at that time.

Q. Do you recall reviewing Dr. Friedman's medical chart for Jacob from his office notes?

A. I believe I have seen it, yes.

Q. Or were they narrative summaries?

A. I believe I also saw the office notes.

Q. If you did see those --

A. Some of those I received later and

didn't clarify it on what I had already written in there.

MR. SKALL: Did we mark the additional --

MR. MISHKIND: It's all in there.

Q. Looking at what we marked as Exhibit B-1 which updates the documents you reviewed, can you tell me after the therapy reports from the Achievement Center for Children, which I believe is right here, when did you receive the records that followed that listing?

A. I couldn't tell you exactly, except some of those letters say we are sending you additional letters from so-and-so. Here it is.

Q. You can't tell me when you received those records?

A. No. I received the parents' depositions early April. I received the deposition of Dr. Friedman in late February, and some updated records from The Cleveland Clinic, and from Dr. Gurd. Dr. Hornick's records came in October, the middle of October, but I can't tell you every one of them.

Q. You were discussing when you think you received certain records and you are

reviewing a series of correspondence from Mr. Mishkind's office; correct?

A. Yes.

Q. Did you obtain any medical records independent of Mr. Mishkind's office in this case?

A. Only answers to the questions that I asked the therapist and Dr. Gurd.

Q. So any of the reports and office charts from Jacob's treating physicians would have been provided to you through the law firm of Becker & Mishkind?

A. Yes.

Q. I wanted to ask you a question about what was marked as Exhibit C on your case activity log. Is this complete and accurate as to the services you performed in the case?

A. I may not have written down every single thing, but it's certainly complete as to what I recorded. I mean, sometimes I neglect to write something down if I reviewed a record or something.

Q. And it has dates to indicate when you approximately provided the services; right?

A. Yes.

Q. Do you have anywhere an itemization of the amounts that have been charged or the time spent for the services?
A. I don't have it.
Q. Where could I find it?
A. Our billing office would have it.
Q. Do you have any idea what the charges have been for your review on this case to date?
A. No idea.
Q. If we asked you to obtain a copy of the charges for the services you provided to date, could you do that and give it to Mr. Mishkind?
A. Yes.
MR. SKALL: I'm going to request that as a matter of record at this point.
MR. MISHKIND: Send me a letter.
Q. Do you have any idea how many hours you have spent without referencing your notes and records?
A. No.
Q. Not even an approximation?
A. No.
Q. Is most of your work over the past three years preparing life care plans in

conjunction with litigation?

A. Life care plans and vocational opinions. Not over the last three years. I really started doing only work for litigation in December. Up until then I was still doing some case management and it just became gradually more and more expert opinions and less and less case management.

Q. What percentage of your work is expert opinion in litigation presently?

A. Now, 100 percent.

Q. When you formulate the life care plans in conjunction with litigation, are there occasions when your life care plans are implemented on behalf of the subject?

A. Yes.

Q. On how many occasions do you think that one of your plans has been prepared for litigation and implemented?

A. I really couldn't tell you because once it goes to the individual, I usually don't have anything more to do with the case. But I do know I have been at times told that they have been provided with a life care plan and were using it.

Q. Does your company, VoCare Services, offer case management in that situation?
A. Yes.
Q. Has VoCare had an occasion to work as case manager of one of the life care plans originally prepared for litigation?
A. Yes.
Q. How many times is that?
A. I don't know.
Q. Do you have a case list of litigation files that you are working on currently?
A. Yes.
Q. Where do we obtain that case list?
A. I don't know that you have a right to it. Isn't that confidential? Nobody has ever asked me for that before and I don't think I can give those names out.
MR. MISHKIND: He can make a request and then we will deal with that as to whether or not it needs to be disclosed.
Q. You do have such an accumulation of case lists?
A. Cases I'm working on now or forever?
Q. How about over the last five years.
A. No.

Q. What period of time do you have case listing for?
A. Just what I'm working on now while pending trial.
Q. Your current work and what is pending?
MR. MISHKIND: Off the record.
(Discussion off the record.)
EXAMINATION OF CAROLINE WOLFE, CRC, M.Ed, LPC
BY MS. ROLLER:
Q. Caroline, in your black binder which we marked as Exhibit B, there is a document. Can you just tell me -- it's in red ink -- what is the date, because it's obliterated?
A. 4-2-03.
Q. Are those notes in red ink from your latest visit with Jacob and Kelly Fiktus?
A. Yes.
Q. And would it be fair for me to understand that the red, the notes in red ink in other parts of your file are from that same period?
A. That's right.
Q. Reader Rabbit is a computer program that Jacob uses?

A. Yes.
Q. Tell me what it is.
A. It's a computer program that assists children in learning letters and reading skills.
Q. You have the word Jump Start in red there.
A. I think that's another computer program and I'm not sure what that one does.
Q. That he is using?
A. Yes.
Q. Is it fair for me to understand that you have assumed for your opinions and your report that how Jacob is now, both mentally and physically, is how he will be as an adult?
MR. MISHKIND: Objection.
A. No. But I don't believe he is going to be significantly different as an adult. I don't believe he is going to be able to do a physically demanding job as an adult, if he needs to wear orthesis, he needs physical therapy every year.
Q. But to the extent that the jobs that Jacob would be able to do now, assuming he was an adult, based on his condition, that is what your report reflects?

A. Yes. But I don't think it would change if he made a little bit of progress with his therapy. I don't think he is going to be that much different.

Q. So just to back up because I'm not sure I understand your answer. The jobs that he can access as an adult, you believe based upon your review and what you put in your report is based upon your understanding of Jacob's physical condition and mental condition as he is now?

A. Yes.

Q. And so that the jobs that he will obtain in the future you believe are based upon that condition without any significant change?

A. Yes.

MS. ROLLER: Thank you.

EXAMINATION OF CAROLINE WOLFE, CRC, M.Ed, LPC
BY MR. SKALL:

Q. Is there any way you can tell me how many of your life care plans that have been prepared in conjunction with litigation have been implemented?

A. No.

Q. Can you tell me as you sit here today

how Jacob's motor function will be at age 18?
A. I think it will be impaired. I can't tell you how much.
Q. Can you tell me how his mental capacity will be at age 18?
A. I expect he will still be within the average range as people think he is now, because intelligence doesn't change.
Q. Tell me one more time why again your evaluation involves consulting patient's treating physicians and other medical providers.
A. Because they are in a better position than I am to know exactly what types of medical interventions he is going to need.
Q. Tell me one more time just so I'm clear, what your report regards as impairments.
A. He has mobility impairments because of problems with his legs, he has balance impairments, he has fine motor impairments, and his intelligence is probably a little bit decreased over what his family's is.
Q. And what about each of those conditions does your report account for as permanent and without change as to Jacob's prognosis?

A. All of them. I wouldn't say without change, but without significant change, let me qualify that.

Q. What are the criteria you use to classify somebody capable for only sedentary work?

A. Two things: How much they can lift, which in Jacob's case was not an issue, and how steady they are on their feet and how much they are able to be up and walking around. That's what I take into consideration.

Q. How many times have you been deposed in your career, if you know?

A. Probably four or five dozen, three to five dozen, I don't know, I'm not sure. It feels like hundreds.

Q. Do you have a copy of the model report that you used to input information to prepare the one that you made in this case?

A. No.

Q. Is there a form that you typically use?

A. No. I usually start with another report that's similar and then I change it to be appropriate for the individual I'm working with.

I don't even remember who I started with.

MR. SKALL: I guess I'm done.

MS. ROLLER: Can I ask, Howard, that Caroline bring with her the original file at trial?

MR. MISHKIND: Sure. Absolutely.

MR. SKALL: One thing, whether she has seen this document.

Q. That's a record I have from Dr. Friedman, an assessment we received from Mr. Mishkind recently in this case. Have you had an opportunity to review that record of Dr. Friedman's?

MR. MISHKIND: I believe that may have been in the set of records.

A. I don't remember seeing this one. I went through them pretty carefully and this doesn't look familiar.

Q. So as you sit here today, you don't have a specific recollection of having reviewed that two-page document which I will mark as the next letter for deposition purposes?

A. I haven't seen it.

MS. ROLLER: It's dated Jan 27th, 2003.

MR. MISHKIND: I think it's in the material I sent to you recently. But be that as it may, you don't recall.

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(Thereupon, Defendant's Deposition Exhibit E was marked for purposes of identification.)

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(Deposition concluded at 11:55 a.m.)

(Signature not waived.)

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AFFIDAVIT

I have read the foregoing transcript from page 1 through 125 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE
61	14	above should be "about"
68	17	" " " "

Caroline Wolfe

CAROLINE WOLFE, CRC, M.Ed, LPC

Subscribed and sworn to before me this day of , 2003.

Notary Public

My commission expires .

AFFIDAVIT

I have read the foregoing transcript from page 1 through 125 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE

CAROLINE WOLFE, CRC, M.Ed, LPC

Subscribed and sworn to before me this day of , 2003.

Notary Public

My commission expires .

CERTIFICATE

State of Ohio,

SS:

County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named CAROLINE WOLFE, CRC, M.Ed, LPC was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 21st day of April, 2003.

Vivian L. Gordon

Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

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DEPOSITION OF CAROLINE WOLFE, CRC, M.Ed, LPC

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