

1 IN THE COURT OF COMMON PLEAS
2 OF CUYAHOGA COUNTY, OHIO

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

Plaintiffs,

7

vs

Case No. 430662

8

9 UNIVERSITY HOSPITALS
of CLEVELAND, et al.,

10 Defendants.

11 - - - - -

12 DEPOSITION OF CAROLINE WOLFE, CRC, M.Ed, LPC
13 THURSDAY, APRIL 10, 2003

14 - - - - -

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

25

1 APPEARANCES:

2 On behalf of the Plaintiff

3 Becker & Mishkind

4 HOWARD D. MISHKIND, ESQ.

5 Skylight Office Tower Suite 660

6 Cleveland, Ohio 44113

7 216-241-2600

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10 On behalf of the Defendant University Hospitals

11 Davis & Young

12 JAN ROLLER, ESQ.

13 1700 Midland Building

14 Cleveland, Ohio 44115

15 216-348-1700

16

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18 On behalf of the Defendants University OB/GYN

19 Specialties and Dr. Kiwi

20 Sutter, O'Connell, Mannion & Farchione

21 DAVID W. SKALL, ESQ.

22 3600 Erieview Tower

23 Cleveland, Ohio 44114

24 216-928-4501

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1 CAROLINE WOLFE, CRC, M.Ed, LPC, a witness
2 herein, called for examination, as provided by
3 the Ohio Rules of Civil Procedure, being by me
4 first duly sworn, as hereinafter certified, was
5 deposed and said as follows:

6 EXAMINATION OF CAROLINE WOLFE, CRC, M.Ed, LPC
7 BY MS. ROLLER:

8 Q. Good morning.

9 A. Goods morning.

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

14 A. Caroline Wolfe.

15 Q. Can you spell Wolfe for us.

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

17 - - - - -

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

21 - - - - -

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

24 A. Yes.

25 Q. You know the procedure that we will

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

4 A. Yes.

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

7 A. I will.

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

11 A. Yes.

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

16 A. Yes.

17 Q. Is this up to date?

18 A. Yes.

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

21 A. Yes.

22 Q. And all of your work experience?

23 A. Yes.

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

1 A. Yes.

2 Q. Have you written in your field at
3 all?

4 A. No, I haven't.

5 Q. And what would you define as your
6 field?

7 A. Rehabilitation counseling.

8 Q. When would you say that you began to
9 work professionally in that field?

10 A. In 1983.

11 Q. And what did you do at that time?

12 A. At that time, I was a vocational
13 evaluator for the Lorain City School System.

14 Q. When did you receive your masters in
15 education from Kent State?

16 A. In 1983, August.

17 Q. I'm sorry, you said 19 --

18 A. 83.

19 Q. And you received some graduate
20 studies in speech and language pathology at the
21 University of Colorado. When did you do that?

22 A. In the fall of 1968 through January
23 of 1969.

24 Q. When did you graduate from Oberlin?

25 A. In 1968.

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

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

5 Q. And what were your responsibilities
6 in that position?

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

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

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

1 funded in state funded plans.

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

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

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

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

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

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

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

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

22 Q. Is that listed here on your CV?

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

1 a while.

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

4 A. Right.

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

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

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

17 A. Paul Deutch.

18 Q. You said that was in Florida?

19 A. Yes.

20 Q. Where in Florida?

21 A. Orlando.

22 Q. And you believe that was in the late
23 '80s?

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

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

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

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

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

12 MS. ROLLER: Correct.

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

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

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

1 planning. National Rehabilitation Association
2 is another one.

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

6 A. Well, those organizations do.

7 Q. Any others?

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

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

14 A. Yes.

15 Q. Who is that?

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

18 Q. Who is it?

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

25 Q. But it is fair for me to understand

1 that you do not hold that certification?

2 A. I don't.

3 Q. And do you know what the requirements
4 are to obtain a CLCP?

5 A. It's attending a number of modules,
6 seminars that take place all over the country to
7 go through the type of training that I went
8 through in that week in Florida.

9 Q. It says from 1990 to 1996, you have
10 an entry here, but who did you work for at that
11 time? Was that Select Rehabilitation
12 Associates?

13 A. That's right.

14 Q. Where is that located, first of all?

15 A. It isn't anymore.

16 Q. Where was it at the time?

17 A. It was located in different places.
18 It was a subsidiary of Lorain Community
19 Hospital. We had an office in Warrensville
20 Heights for a while, an office in North Olmsted
21 for a while.

22 Q. And what was the work of Select
23 Rehabilitation Associates?

24 A. It was the same thing that I did at
25 Upjohn. Only at that point, I began working

1 more consistently on life care plans.

2 Q. Who were the clients of Select
3 Rehabilitation Associates?

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

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

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

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

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

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

21 A. Yes.

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

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

1 '90s.

2 Q. Where were you working at that time?

3 A. At Select Rehabilitation Associates.

4 I think it was Upjohn that sent me for the
5 training, but I believe it was shortly after
6 that that we went to Select Rehabilitation
7 Associates.

8 Q. Did Upjohn Health Programs become
9 Select Rehabilitation Associates?

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

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

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

16 Q. What is VoCare Services?

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

20 Q. And what are those services?

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

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

4 Q. How many employees are there at
5 VoCare?

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

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

11 Q. How big of an operation is it?

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

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

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

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

23 A. Yes.

24 (Discussion off the record.)

25 Q. Is it fair for me to understand that

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

5 A. Yes.

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

8 A. I have not.

9 Q. Do you know if VoCare has been?

10 A. Yes.

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

14 A. I don't know.

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

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

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

21 A. It depends on the month.

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

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

1 Q. What's a couple dozen to you? Is
2 that 24, 36 or somewhere in between?

3 A. Probably somewhere in between.

4 Q. That's annually?

5 A. Yes.

6 Q. And it is, of course, fair for me to
7 understand that the life care plans that you
8 prepare are all prepared for a pending case in
9 litigation?

10 A. Almost always.

11 Q. When would that not be so?

12 A. We have had occasion to prepare a
13 life care plan on behalf of a family who just
14 wants to be sure that their dependent is going
15 to be cared for in the future, and we have had
16 occasion to prepare them for insurance
17 companies.

18 Q. How long has that been the case that
19 you prepare life care plans, about 24 to 36 a
20 year? For how many years has that been the
21 case?

22 A. Probably the last three years, two or
23 three years.

24 Q. And how about before then?

25 A. Before then I was doing

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

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

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

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

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

21 Q. What are the charges for your
22 services?

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

1 Q. When you say trial testimony, is that
2 \$1,500 per hour?

3 A. For the first three hours that I'm
4 present. The same way with a deposition. If
5 it's more than three hours, then it's \$500 an
6 hour.

7 Q. When you say \$150 an hour to prepare
8 your opinion, does that mean the background work
9 that you spend as well as the actual writing?

10 A. That's right.

11 Q. It includes everything?

12 A. The interview, the research, the
13 writing.

14 Q. How often have you testified live in
15 court?

16 A. Probably two to three dozen times.

17 Q. Do you plan to do that in this case?

18 A. Yes. I expect to.

19 Q. Now, you wrote a report that's dated
20 October 29th, 2002. It's addressed to Larry
21 Peskin of the Becker-Mishkind law firm; is that
22 correct?

23 A. Yes.

24 Q. Who first contacted you about this
25 case?

1 A. Larry did.

2 Q. And when was that?

3 A. It was July 19th, 2002.

4 Q. What did he ask you to do?

5 A. He asked me to prepare a life care
6 plan and a vocational opinion for this child who
7 had experienced a brain injury.

8 Q. Now, do you have any medical training
9 yourself?

10 A. Only in terms of medical information
11 classes for rehabilitation counselors, not as a
12 nurse or a doctor.

13 Q. When did you receive that training
14 that you just referred to?

15 A. That's been ongoing. I received it
16 both in that initial intensive training program
17 and at continuing education classes through my
18 professional organizations.

19 Q. And can you describe or explain what
20 the body of that work is, that training? You
21 said medical information?

22 A. I also had it in my masters program
23 to become a rehabilitation counselor.

24 I had classes in various types of
25 disabilities, brain injuries, spinal cord

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

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

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

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

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

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

1 Q. July 25th?

2 A. July 25th of 2002. Shortly after
3 that, I met with the Fiktus family. That was on
4 August 7th, 2002.

5 Q. Who did you meet with?

6 A. I met with Mr. and Mrs. Fiktus and
7 Jacob was present and his sister was there.

8 Q. Who, if anyone else, did you meet
9 with at any time?

10 A. Those are the only people I met with.
11 I did meet with Kelly Fiktus and Jacob last week
12 in order to update my information about what's
13 been going on and to see them again.

14 Q. Did you have any telephone calls with
15 anyone to obtain information?

16 A. Yes, I had telephone calls. I think
17 I made some calls to Kelly just to clarify
18 information she had given us. I also wrote
19 letters to the physical therapist who was
20 working with him after his surgery, to Dr. Gurd
21 who had performed the surgery to lengthen his
22 heel cords, to the occupational therapist that
23 he worked with through the school system. I
24 think those are the people I communicated with.

25 Q. You wrote letters to them. Did they

1 respond to you?

2 A. Dr. Gurd did and the physical
3 therapist did. I'm still trying to get
4 information from the occupational therapist.

5 Q. Obviously I'm going to want to look
6 at your file, but right now you are just giving
7 me a list of the contacts you made.

8 A. Yes.

9 Q. Other than Dr. Friedman, Jacob's
10 parents and Jacob himself, it's fair for me to
11 understand that you have not spoken to anyone
12 about his condition?

13 A. I did not. My assistant did talk to
14 the physical therapist as well as getting his
15 written response to our questions.

16 Q. Who is your assistant?

17 A. Her name is Ricki Englehaupt,
18 something like that.

19 Q. Anyone else that anyone contacted,
20 either you or someone on your behalf, to learn
21 Jacob's condition?

22 A. I don't believe so. That covers it.

23 Q. Now, did you receive anything in
24 writing from Dr. Friedman?

25 A. No, I didn't. I just had the

1 conversation with him.

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

4 A. Yes.

5 Q. Could I see those, please?
6 Did you have him fill out a form?

7 A. No.

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

10 (Discussion off the record.)

11 - - - - -

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

15 - - - - -

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

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

23 A. That's right.

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

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

5 A. Yes.

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

8 A. Yes.

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

13 A. Yes.

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

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

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

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

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

3 A. Those are the directions to their
4 house.

5 Q. I can see that, sure.

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

9 - - - - -

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

13 - - - - -

14 Q. What is an IEP?

15 A. Individual education program.

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

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

1 Q. Did you inquire whether an IEP has
2 been prepared for Jacob Fiktus?

3 A. My understanding is that it had been.

4 Q. Do you have a copy of that?

5 A. Yes.

6 Q. And where is that contained?

7 A. It's in here.

8 Q. As part of Exhibit B?

9 A. Yes.

10 Q. And what school system prepared that?

11 A. The Garfield Heights City Schools.

12 Q. And did you do any testing yourself
13 of Jacob?

14 A. No, I didn't. I observed him.

15 Q. Has any neuropsychological testing
16 been done of Jacob?

17 A. No. Not to my knowledge, anyway.

18 Q. What is the purpose of
19 neuropsychological testing?

20 A. It would be to determine whether he
21 has any cognitive deficits, what his
22 intellectual capacity is, how his brain affects
23 not only his ability to think, but his physical
24 coordination, fine motor coordination and gross
25 motor coordination.

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

4 A. Medical records that I presume you
5 would have.

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

11 A. That's right.

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

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

18 Q. And that will be part of Exhibit B?

19 A. Yes.

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

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

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

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

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

11 Q. Could I see the beginning pages then?

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

15 Q. It becomes your final report?

16 A. That's right.

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

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

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

10 A. That's correct.

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

13 - - - - -
14 (Thereupon, Defendant's Deposition
15 Exhibit B-1 was marked for
16 purposes of identification.)

17 - - - - -

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

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

1 Q. So other than the IEP?

2 A. That's everything I have reviewed.

3 Q. Okay. Thank you.

4 (Discussion off the record.)

5 (Recess had.)

6 Q. I would like to turn to your report.
7 On page two under functional capacities, you
8 have various descriptions of Jacob's condition.
9 And I just would like to ask you where you
10 obtain the information for that description.

11 A. This description was from the
12 parents.

13 Q. Everything that's contained there
14 under functional capacities?

15 A. Yes.

16 Q. Were there any other sources than the
17 parents for that information?

18 A. Not for this.

19 Q. Is it fair for me to understand that
20 you wrote your report based upon an
21 understanding of his functional capacities as
22 described in these paragraphs under that section
23 in your report?

24 A. No. I also used the description from
25 Dr. Friedman and from the therapist that was

1 working with him.

2 Q. And who was that?

3 A. Chris Sullivan.

4 Q. And where is Chris Sullivan?

5 A. Aurora Medical Center.

6 Q. Give me that one more time.

7 A. Aurora Medical Center.

8 Q. And the notes you are looking at, is
9 that from a personal meeting with him?

10 A. No. A telephone call.

11 Q. When was that telephone call?

12 A. August 20th, August 26th, February
13 2nd -- no, that was last year. It was those two
14 days, August 20th and August 26th.

15 Q. Of '02?

16 A. '02. And then he wrote answers to
17 questions on the letter that we sent him that he
18 answered on September 24th.

19 Q. Of '02?

20 A. Yes.

21 Q. Could I see that?

22 Now, this letter that Mr. Sullivan
23 provided information on, which is dated
24 September 24th, '02, this is a form letter
25 prepared by VoCare; correct?

1 A. That's correct.

2 Q. Did you send a similar letter to
3 Dr. Friedman?

4 A. No, because I talked to him.

5 Q. That yellow piece of paper from
6 Dr. Friedman, that's what I'm looking for.

7 A. It's towards the beginning, the
8 second session.

9 Q. I would like to mark the information
10 you received from the physical therapist that
11 you just described and also your notes from
12 Dr. Friedman as additional exhibits. First,
13 since we were talking about the physical
14 therapist, the form that you just --

15 A. Why don't you take Dr. Friedman's out
16 first.

17 MS. ROLLER: If we can mark the
18 information you received from Dr. Friedman as
19 B-2.

20 - - - - -

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

24 - - - - -

25 MS. ROLLER: The physical therapist's

1 form will be B-3.

2 - - - - -

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

6 - - - - -

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

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

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

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

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

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

25 - - - - -

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

4 - - - - -

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

9 A. Yes.

10 Q. So then --

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

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

20 MR. MISHKIND: You mean functional
21 capacities?

22 MS. ROLLER: Yes.

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

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

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

11 A. Right.

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

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

17 Q. The IEP you received this morning?

18 A. Yes.

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

23 A. Yes.

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

1 the labor market and on his wage earning
2 capacity.

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

6 A. Yes.

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

11 MR. MISHKIND: Objection.

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

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

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

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

1 more than the left arm.

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

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

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

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

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

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

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

25 Q. And with his mental condition, his

1 cognitive abilities, what do you understand
2 those to be?

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

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

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

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

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

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

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

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

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

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

14 A. Correct.

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

19 A. Right.

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

1 A. That's true.

2 Q. And his right more than his left?

3 A. No, his right arm more than his left,
4 his left leg more than his right. Let me
5 double-check, because I keep getting that mixed
6 up.

7 He uses the left arm less than the
8 right arm.

9 MR. MISHKIND: I think you said right
10 greater than left on both sides.

11 THE WITNESS: Yeah, that's what I have
12 written in my notes. I was thinking that
13 because the mom mentioned something about it.
14 It was kind of cockeyed.

15 Q. The bottom line is, what is your
16 understanding?

17 A. It seems to be his right more than
18 his left.

19 Q. Right what?

20 A. Right leg, right arm are more
21 affected than the left.

22 Q. And first of all, with respect to his
23 lower extremities, what is your understanding
24 with respect to the degree of impairment?

25 A. His lower extremities are quite

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

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

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

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

18 Q. That's his physical condition now?

19 A. Yes.

20 Q. He is five years old?

21 A. Yes.

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

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

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

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

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

12 MR. MISHKIND: Objection.

13 Q. Go ahead.

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

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

21 A. Yes.

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

25 A. Yes.

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

4 MR. MISHKIND: Objection.

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

14 Q. Can I ask what your parents have
15 done?

16 A. My mother was a teacher.

17 Q. Okay.

18 A. My father was a factory worker.

19 (Discussion off the record.)

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

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

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

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

6 Q. Which one does; sedentary or light?

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

10 Q. What are the other categories?

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

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

20 Q. Who defines these strength
21 categories?

22 A. The Department of Labor.

23 Q. And is sedentary then the lowest
24 strength category?

25 A. Yes, it is.

1 Q. And this was your determination that
2 he would fall into the sedentary strength range?

3 A. Yes, it was.

4 Q. I mean, you didn't discuss this with
5 Dr. Friedman, did you?

6 A. No, I didn't.

7 Q. Now, you obtained information about
8 Jacob's paternal and maternal grandparents, what
9 they do for a living, and his paternal aunts and
10 uncle; correct?

11 A. And maternal uncle, yes.

12 Q. Is that all the aunts and uncles he
13 has?

14 A. Yes.

15 Q. The information you received there
16 was verbally from Jacob's parents?

17 A. That's right.

18 Q. You didn't speak to any of them
19 individually?

20 A. No.

21 Q. And you have listed here in your
22 report on pages two and three the amount of
23 education they received and the work that they
24 have done?

25 A. That's right.

1 Q. Is this the work that they are
2 currently doing?

3 A. I believe all of them are current,
4 yes.

5 Q. It doesn't mean that they have done
6 something differently before these current
7 positions that they hold?

8 A. They might have. For instance, with
9 the father and the mother, I have put down what
10 she had done in the past. But most of them are
11 current.

12 Q. All right. You make the statement in
13 your report, most of his family have worked in
14 jobs that are skilled trades. Tell me what how
15 are you defining skilled trades.

16 A. Some kind of occupations that require
17 some kind of training to prepare them for that
18 kind of work.

19 Q. Is a lawyer a skilled trade?

20 A. It's a skilled profession, yes.

21 Q. As opposed to a skilled trade?

22 A. Yes.

23 Q. So being a lawyer is not a skilled
24 trade?

25 A. It's a skilled position. And mostly

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

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

6 A. No.

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

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

12 Q. So what's a nurse?

13 A. I couldn't tell you offhand.

14 Q. I mean, is that a skilled trade?

15 A. Yes.

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

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

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

24 A. Yes.

25 Q. The term skilled trade, is that a

1 term of art from the Dictionary of Occupational
2 Titles?

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

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

13 A. Yes.

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

21 A. Correct.

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

24 A. Yes.

25 Q. Number 11?

1 A. Yes.

2 Q. Number 9?

3 A. Yes.

4 Q. Number 8?

5 A. Yes.

6 Q. The drafter?

7 A. Uh-huh.

8 Q. Number 6?

9 A. Yes.

10 Q. And number 4?

11 A. Well, that's pretty physical.

12 Q. Working at McDonald's?

13 A. Yes. You are doing a lot of running

14 around all day.

15 Q. Jacob's mother doesn't work right

16 now, does she?

17 A. Not at the moment. She does seasonal

18 work occasionally on holidays.

19 Q. So where do you put working at

20 McDonald's? Is that a --

21 A. That's an unskilled job.

22 Q. So you would not put that in a

23 skilled trade?

24 A. No.

25 Q. Or a physically demanding job either?

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

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

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

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

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

19 A. That's correct.

20 Q. -- or a physical therapist?

21 A. That's right.

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

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

1 documented in the therapy notes.

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

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

8 A. Yes.

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

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

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

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

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

1 worker?

2 A. Yes.

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

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

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

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

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

25 Q. So you can't tell me --

1 A. I can't give you a percentage.

2 Q. That's the best you can use, is that
3 what you are saying, the family's work history?

4 A. That's right. We don't have a
5 crystal ball. We are not able to look into it
6 and say this is what he definitely would have
7 done, but we can look at the family and say, you
8 know, without these impairments this child could
9 have done at least this type of work and these
10 are the types of wages we can expect him to have
11 earned.

12 Q. Now, in your report, you refer to a
13 pre/post report.

14 A. Yes.

15 Q. Who writes that or who has written
16 that?

17 A. This is a computer program devised by
18 a company called SkillTRAN, that is simply a
19 tool that helps me use the Dictionary of
20 Occupational Titles much more quickly than if I
21 had to go through it job-by-job myself.

22 Q. How many titles are there?

23 A. 12,000.

24 Q. And the universe for those 12,000
25 titles, is that the United States?

1 A. Yes.

2 Q. 12,000 titles?

3 A. It's actually more than 12,000, but I
4 don't remember.

5 Q. Okay. Now, you write in your report
6 this sentence. Jacob's access to jobs in the
7 labor market that are related to his family's
8 experience has been reduced by 98.6 percent.
9 Tell me how you derived that number.

10 A. I considered all of the jobs that his
11 family has done. The computer then pulls them
12 out, along with the characteristics, the worker
13 traits that were necessary for these family
14 members to do these jobs.

15 Q. Can I stop you right there and just
16 ask you a question about that? That means you
17 put into the SkillTRAN computer program jobs
18 such as work with computers?

19 A. Yes.

20 Q. And being a drafter?

21 A. Being a nurse.

22 Q. And all of the jobs that are listed
23 here in your report on pages two and three?

24 A. That's correct.

25 Q. You put those jobs into the computer

1 program and then what did you do?

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

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

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

18 A. Yes.

19 Q. Is that part of Exhibit B?

20 A. Yes.

21 Q. Can you show it to me?

22 It appears to be a 44 page report?

23 A. Yes.

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

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

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

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

17 - - - - -
18 (Thereupon, Defendant's Deposition
19 Exhibit B-5 was marked for
20 purposes of identification.)

21 - - - - -
22 Q. And just for a moment, if I can look
23 over your shoulder, can you tell me and show me
24 in that report where you inputted the family's
25 jobs, the ones that they have done?

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

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

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

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

14 A. Yes.

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

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

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

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

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

5 Q. For all of the combined categories?

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

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

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

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

23 A. Heavy.

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

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

5 A. Heavy or below.

6 Q. Heavy or below?

7 A. That's right.

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

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

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

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

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

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

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

16 A. Yes.

17 Q. Did you modify it in any other way?

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

22 Q. Okay.

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

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

4 Q. In relation to reasoning, math and
5 language?

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

10 Q. You told us earlier you had reduced
11 that.

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

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

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

25 Q. What does that mean?

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

5 Q. You said you did not change that
6 initially?

7 A. I did not.

8 Q. Did you change it later?

9 A. Yes.

10 Q. What did you change it to?

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

13 Q. Sure.

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

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

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

4 Q. That's on page 20?

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

8 Q. Okay.

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

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

17 A. No.

18 Q. Why not?

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

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

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

5 A. He may or he may not.

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

10 A. Vocational.

11 Q. As well as Harvard University?

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

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

18 A. Yes.

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

22 A. Yes.

23 Q. And that's still part of SkillTRAN?

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

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

5 Q. Why did you choose the Ravenna area?

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

8 Q. Is there the Cleveland area?

9 A. Yes.

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

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

16 Q. Is Boston different than Cleveland?

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

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

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

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

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

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

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

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

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

16 Q. So an \$8 difference?

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

21 Q. The occupational group, directly
22 transferable?

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

1 additional training.

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

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

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

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

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

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

1 more?

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

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

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

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

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

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

19 MR. MISHKIND: As a computer
20 programmer?

21 THE WITNESS: Yes.

22 Q. You are looking at page 9 of 44?

23 A. That's right.

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

1 A. One to five, one being the highest
2 and five being the lowest.

3 Q. For aptitude?

4 A. Yes.

5 Q. And?

6 A. Reasoning, math and language.

7 Q. Again the scale is one to five?

8 A. Yes.

9 Q. And five is the highest?

10 A. Yes.

11 Q. Not one?

12 A. Right.

13 Q. It's the opposite?

14 A. It's the opposite. That's why I was
15 sitting here thinking, I have to figure it out,
16 because they are the opposite.

17 MR. MISHKIND: It's kind of difficult
18 when she is standing over your shoulder. She
19 likes to do that.

20 Q. What is average for reasoning, math?

21 A. Three.

22 Q. Three is average?

23 A. Yes.

24 Q. With respect to Jacob's physical
25 capabilities, mental capabilities, you would

1 defer obviously to Dr. Friedman?

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

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

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

16 Q. But to be fair, neither have you?

17 A. No, I haven't.

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

21 A. Yes.

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

24 A. Yes.

25 Q. Has he received any testing?

1 A. Not that I saw any evidence of.

2 Q. So as you sit here today, there is no
3 reason for you to say that Jacob cannot obtain
4 more education than his parents and family
5 members; correct?

6 A. Nobody is saying this is a really,
7 really bright little kid. His parents are
8 saying he seems to learn a little slow. He had
9 delayed language. Dr. Friedman is saying he may
10 be developmentally cognitively a little slow.
11 No one is saying he is real, real bright. So I
12 don't think that he is probably going to get
13 much more education than his parents had.

14 Q. Are you saying that as to a
15 reasonable degree of probability?

16 A. I'm saying that to my best
17 professional opinion.

18 Q. But to what level of certainty?

19 A. I'd say that it's more likely than
20 not that he is not going to excel in school.

21 Q. And you base that upon?

22 A. Upon the fact that Dr. Friedman said
23 he may be a little delayed, the fact that his
24 parents say he doesn't learn real fast, the fact
25 that nobody said that this is a really bright

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

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

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

15 MR. MISHKIND: Off the record.

16 (Recess had.)

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

19 A. Correct.

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

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

1 indicator, as well.

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

6 MR. MISHKIND: Objection.

7 Q. Go ahead.

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

14 Q. But that's all you have?

15 A. Yes.

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

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

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

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

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

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

15 Q. Is that information contained in your
16 file?

17 A. Yes.

18 Q. Can you show me where that is?

19 A. Yes.

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

1 Q. Well, is there a sheet entitled
2 resource information for each item of cost in
3 your report?

4 A. Yes.

5 Q. And who obtains this information for
6 you?

7 A. My research assistant.

8 Q. Is that --

9 A. Ricki Englehaupt.

10 Q. So you are saying there is such a
11 document entitled research information for each
12 item?

13 A. Yes. And then at the beginning of
14 that is where they are combined and it has the
15 summary of what both of them are and how we
16 arrived at a cost.

17 Q. The page you are referring to is
18 under therapeutic modalities?

19 A. Yes.

20 Q. The first page. All right.

21 I just want to go through a couple of
22 them. The physical therapy sessions, under the
23 page therapeutic modalities, if I understand how
24 to read this, in the second column, it says age
25 and year, so you are saying that at age five he

1 will begin physical therapy sessions in the year
2 2002 and it will end when he is 18 in the year
3 2115; is that correct?

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

9 Q. Each time he has a surgery.

10 A. Yes. Post-op visits.

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

13 A. One to two more.

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

16 A. That's right.

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

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

22 Q. And that's under recreation and
23 leisure?

24 A. Yes.

25 Q. The amount of or number of

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

4 A. From Dr. Gurd.

5 Q. And how about the physical therapy
6 evaluation?

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

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

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

13 Q. Can I see that?

14 MS. ROLLER: Let's mark that.

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

18 - - - - -

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

22 - - - - -

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

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

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

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

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

13 A. I'm not anticipating life expectancy.

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

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

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

21 A. Per each time he gets them, yes.

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

24 A. Prorated, yes.

25 Q. I see. And the frequency of medical

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

4 A. That's right.

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

7 A. Yes.

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

11 A. No.

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

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

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

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

24 Q. That's contained in your notes?

25 A. Here.

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

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

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

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

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

14 A. Right.

15 Q. And what is this notation here?

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

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

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

1 physical therapist.

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

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

14 Q. Okay. Thank you.

15 When did you receive Dr. Gurd's
16 response?

17 A. Did he date it on the last page?

18 Q. There is a signature there.

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

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

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

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

5 A. More during growth.

6 Q. Times cannot be predicted?

7 A. Right.

8 Q. Okay.

9 A. But he has said one to two times.

10 Q. Where did he say that?

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

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

17 A. Right.

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

22 A. Right.

23 Q. But you did include it?

24 A. I certainly did.

25 Q. What was the reason you included it?

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

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

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

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

17 A. No.

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

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

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

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

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

5 Q. Can I call you Mrs. Wolfe?

6 A. Right.

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

11 I want to follow up on some of the
12 areas you already discussed. Before we do so, I
13 think what I would like to do initially -- I
14 don't think we have done so -- can you take a
15 look -- I have copied, I think, your October
16 29th 2002 report on to my nifty yellow paper
17 that happened to come out of my copier when I
18 did so.

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

22 A. Certainly appears to be, yes.

23 - - - - -

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

1 purposes of identification.)

2 - - - - -

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

5 A. Yes.

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

9 A. Yes.

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

13 A. Yes.

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

17 A. No.

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

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

1 THE WITNESS: Not really.

2 Q. Are there other opinions you have
3 since October 29, 2002 that aren't reflected in
4 your report concerning the case?

5 A. Nothing specific. The only thing
6 that I feel more strongly about now than I did
7 then is that he is going to be very limited in
8 his ability to work without some kind of extra
9 education or training. I think his balance and
10 his coordination is so poor that I think he is
11 going to need some kind of specialized training.

12 Q. So any information you have received
13 since October 29th has reinforced your opinions?

14 A. Yes.

15 Q. Especially as relates to his motor
16 function --

17 A. Yes.

18 Q. -- Jacob Fiktus' motor function?

19 A. That's right.

20 Q. Has anything you received since
21 October 29th, 2002, changed your opinion one way
22 or another as to your forecast of his cognitive
23 function?

24 A. Just in seeing him last week, he was
25 more communicative than he was the first time I

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

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

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

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

11 A. That's right.

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

16 A. Not as far as I know.

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

20 MR. MISHKIND: Objection.

21 A. Most likely.

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

25 A. Cognitive function, yes.

1 Q. Over the long term of his life?

2 A. Yes.

3 Q. While Dr. Friedman, you say, didn't
4 do any neuropsychological evaluations either,
5 would you regard him, if he had done so, to have
6 been in a superior position to you in that
7 regard?

8 MR. MISHKIND: Objection.
9 Speculative. Go ahead.

10 A. Not necessarily.

11 Q. I guess what I would like to know is,
12 do you have any expertise that allows you to
13 assess whether Jacob has a cognitive
14 developmental delay?

15 A. I have training in testing for -- I
16 didn't do any testing of this child, but I do
17 have training in various types of aptitude and
18 achievement testing. And in my experience as a
19 rehabilitation counselor, I see children of all
20 different levels, so I have a pretty clear idea
21 of what to expect of children at different ages.

22 Q. But does your professional expertise
23 as a rehabilitation consultant/life care planner
24 allow you to assess whether Jacob Fiktus has a
25 developmental delay?

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

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

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

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

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

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

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

25 Q. So again, you will not be offering

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

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

7 MR. MISHKIND: She will. Object.

8 A. I guess my answer is no.

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

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

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

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

23 MR. MISHKIND: Objection.

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

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

5 A. Right.

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

10 A. Correct.

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

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

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

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

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

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

11 A. No.

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

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

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

23 MR. MISHKIND: Objection.

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

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

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

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

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

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

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

23 MR. MISHKIND: Objection. Go ahead.

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

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

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

9 MR. MISHKIND: Objection. Asked and
10 answered.

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

12 MR. MISHKIND: Go ahead and answer it
13 again.

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

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

22 A. No.

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

25 A. No.

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

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

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

11 MR. MISHKIND: Objection. Go ahead.

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

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

19 MR. MISHKIND: Objection.

20 A. In my opinion, not to date.

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

1 provided to a reasonable degree of medical
2 certainty?

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

12 Go ahead and answer it one more time.

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

16 (Discussion off the record.)

17 (Record read.)

18 MR. MISHKIND: Answer it one more
19 time.

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

22 Q. Thank you.

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

1 damage baby cases.

2 MS. ROLLER: You are doing fine.

3 MR. MISHKIND: Go ahead and ask your
4 question.

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

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

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

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

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

1 MR. MISHKIND: Objection. If you
2 know.

3 A. No, not that I know of.

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

8 MR. MISHKIND: Objection.

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

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

20 MR. MISHKIND: Objection. Asked and
21 answered.

22 A. No.

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

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

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

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

12 MR. MISHKIND: Objection.

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

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

18 A. Yes.

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

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

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

1 assistant and Dr. Gurd?

2 A. No.

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

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

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

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

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

6 MR. MISHKIND: Objection.

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

14 Q. Where did you apply cognitive
15 impairment?

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

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

20 A. Yes.

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

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

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

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

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

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

18 MR. MISHKIND: Objection.

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

21 Q. Outside of his parental experience --

22 A. No.

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

25 A. No.

1 Q. -- to assess Jacob's impairment?

2 A. No.

3 Q. We have already discussed some of
4 Dr. Friedman's assessments and your opinions of
5 those assessments, so I won't go over those.

6 Do you have any other, than your
7 observation, professional certification and
8 training in evaluating the level of mental
9 impairment for a boy in Jacob's situation?

10 A. It's my education and experience. I
11 don't have any professional qualifications.

12 Q. Why is it that in preparing a life
13 care plan you consult the subject's health care
14 providers?

15 A. Because I am not a doctor and I need
16 to have them either confirm or inform me as to
17 what they think his future medical needs are
18 going to be.

19 Q. And that would, in this case, apply
20 to both of the impairments you applied in this
21 plan, his motor function and his cognitive
22 function?

23 A. I only asked the doctor about his
24 motor function. I did ask Dr. Friedman about
25 his cognitive function and he said he might be a

1 little delayed, but that's as far as we took it.

2 In terms of services, I didn't pursue that.

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

5 A. That's not their area of expertise.

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

8 MR. MISHKIND: Objection.

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

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

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

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

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

25 Q. You can't offer any opinions as to

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

4 MR. MISHKIND: Objection. Asked and
5 answered.

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

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

16 A. Yes.

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

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

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

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

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

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

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

19 A. Definitely.

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

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

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

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

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

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

20 A. Yes.

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

24 A. No.

25 Q. My understanding in forming that

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

4 A. Yes.

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

7 A. Yes.

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

12 A. No.

13 Q. So those would be the two
14 impairments?

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

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

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

25 (Discussion off the record.)

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

4 A. Yes.

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

13 A. Yes.

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

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

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

23 A. I believe we have.

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

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

3 A. Correct.

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

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

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

14 A. Yes.

15 Q. Why is that?

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

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

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

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

1 report?

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

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

16 A. That's right.

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

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

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

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

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

6 MR. MISHKIND: Objection. Go ahead.

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

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

15 MR. MISHKIND: Objection.

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

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

23 A. Yes.

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

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

3 A. I don't believe so.

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

7 A. Did I say that?

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

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

14 Q. It says medical report.

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

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

20 A. I believe I have seen it, yes.

21 Q. Or were they narrative summaries?

22 A. I believe I also saw the office
23 notes.

24 Q. If you did see those --

25 A. Some of those I received later and

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

3 MR. SKALL: Did we mark the
4 additional --

5 MR. MISHKIND: It's all in there.

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

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

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

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

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

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

3 A. Yes.

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

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

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

13 A. Yes.

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

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

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

25 A. Yes.

1 Q. Do you have anywhere an itemization
2 of the amounts that have been charged or the
3 time spent for the services?

4 A. I don't have it.

5 Q. Where could I find it?

6 A. Our billing office would have it.

7 Q. Do you have any idea what the charges
8 have been for your review on this case to date?

9 A. No idea.

10 Q. If we asked you to obtain a copy of
11 the charges for the services you provided to
12 date, could you do that and give it to
13 Mr. Mishkind?

14 A. Yes.

15 MR. SKALL: I'm going to request that
16 as a matter of record at this point.

17 MR. MISHKIND: Send me a letter.

18 Q. Do you have any idea how many hours
19 you have spent without referencing your notes
20 and records?

21 A. No.

22 Q. Not even an approximation?

23 A. No.

24 Q. Is most of your work over the past
25 three years preparing life care plans in

1 conjunction with litigation?

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

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

11 A. Now, 100 percent.

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

16 A. Yes.

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

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

1 Q. Does your company, VoCare Services,
2 offer case management in that situation?

3 A. Yes.

4 Q. Has VoCare had an occasion to work as
5 case manager of one of the life care plans
6 originally prepared for litigation?

7 A. Yes.

8 Q. How many times is that?

9 A. I don't know.

10 Q. Do you have a case list of litigation
11 files that you are working on currently?

12 A. Yes.

13 Q. Where do we obtain that case list?

14 A. I don't know that you have a right to
15 it. Isn't that confidential? Nobody has ever
16 asked me for that before and I don't think I can
17 give those names out.

18 MR. MISHKIND: He can make a request
19 and then we will deal with that as to whether or
20 not it needs to be disclosed.

21 Q. You do have such an accumulation of
22 case lists?

23 A. Cases I'm working on now or forever?

24 Q. How about over the last five years.

25 A. No.

1 Q. What period of time do you have case
2 listing for?

3 A. Just what I'm working on now while
4 pending trial.

5 Q. Your current work and what is
6 pending?

7 MR. MISHKIND: Off the record.

8 (Discussion off the record.)

9 EXAMINATION OF CAROLINE WOLFE, CRC, M.Ed, LPC
10 BY MS. ROLLER:

11 Q. Caroline, in your black binder which
12 we marked as Exhibit B, there is a document.
13 Can you just tell me -- it's in red ink -- what
14 is the date, because it's obliterated?

15 A. 4-2-03.

16 Q. Are those notes in red ink from your
17 latest visit with Jacob and Kelly Fiktus?

18 A. Yes.

19 Q. And would it be fair for me to
20 understand that the red, the notes in red ink in
21 other parts of your file are from that same
22 period?

23 A. That's right.

24 Q. Reader Rabbit is a computer program
25 that Jacob uses?

1 A. Yes.

2 Q. Tell me what it is.

3 A. It's a computer program that assists
4 children in learning letters and reading skills.

5 Q. You have the word Jump Start in red
6 there.

7 A. I think that's another computer
8 program and I'm not sure what that one does.

9 Q. That he is using?

10 A. Yes.

11 Q. Is it fair for me to understand that
12 you have assumed for your opinions and your
13 report that how Jacob is now, both mentally and
14 physically, is how he will be as an adult?

15 MR. MISHKIND: Objection.

16 A. No. But I don't believe he is going
17 to be significantly different as an adult. I
18 don't believe he is going to be able to do a
19 physically demanding job as an adult, if he
20 needs to wear orthosis, he needs physical
21 therapy every year.

22 Q. But to the extent that the jobs that
23 Jacob would be able to do now, assuming he was
24 an adult, based on his condition, that is what
25 your report reflects?

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

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

12 A. Yes.

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

16 A. Yes.

17 MS. ROLLER: Thank you.

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

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

24 A. No.

25 Q. Can you tell me as you sit here today

1 how Jacob's motor function will be at age 18?

2 A. I think it will be impaired. I can't
3 tell you how much.

4 Q. Can you tell me how his mental
5 capacity will be at age 18?

6 A. I expect he will still be within the
7 average range as people think he is now, because
8 intelligence doesn't change.

9 Q. Tell me one more time why again your
10 evaluation involves consulting patient's
11 treating physicians and other medical providers.

12 A. Because they are in a better position
13 than I am to know exactly what types of medical
14 interventions he is going to need.

15 Q. Tell me one more time just so I'm
16 clear, what your report regards as impairments.

17 A. He has mobility impairments because
18 of problems with his legs, he has balance
19 impairments, he has fine motor impairments, and
20 his intelligence is probably a little bit
21 decreased over what his family's is.

22 Q. And what about each of those
23 conditions does your report account for as
24 permanent and without change as to Jacob's
25 prognosis?

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

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

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

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

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

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

20 A. No.

21 Q. Is there a form that you typically
22 use?

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

1 I don't even remember who I started with.

2 MR. SKALL: I guess I'm done.

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

6 MR. MISHKIND: Sure. Absolutely.

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

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

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

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

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

23 A. I haven't seen it.

24 MS. ROLLER: It's dated Jan 27th,
25 2003.

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

4 - - - - -

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

8 - - - - -

9
10 - - - - -

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

12 (Signature not waived.)

13 - - - - -

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1 AFFIDAVIT

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

5	PAGE	LINE	REQUESTED CHANGE
6	61	14	above should be "about"
7	68	17	" " " "

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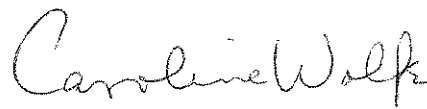
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19


CAROLINE WOLFE, CRC,
M.Ed, LPC

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

22

23 Notary Public

24

25 My commission expires .

1 AFFIDAVIT

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

5 PAGE LINE REQUESTED CHANGE

6

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18 CAROLINE WOLFE, CRC,
M.Ed, LPC

19

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

22

23 Notary Public

24

25 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, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

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