

**In The Matter Of:**  
*Heafy v.*  
*Fernandez & Damout*

---

*Keith Benoff, Ph.D.*  
*May 2, 2017*

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*Thomas G. Oakes Associates*  
*535 Route 38 East, Ste. 330*  
*Cherry Tree Corporate Center*  
*Cherry Hill, NJ 08002*  
*National Toll-Free Scheduling Line: 1.877.625.3777*



**Thomas G. Oakes Associates**  
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Original File 5-2-17 - Heafy v Fernandez - Keith Benoff.txt

Min-U-Script® with Word Index

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. BER-L-8100-14

COLIN P. HEAFY and SIOBHAN AMADEI-HEAFY, his wife,  
CASSANDRA HEAFY, an infant  
by her Guardian ad Litem,  
SIOBHAN AMADEI-HEAFY and  
SIOBHAN AMADEI-HEAFY,  
Individually,

Plaintiffs,

vs.

RAMAN A. FERNANDEZ, ALEX  
DAMOUT, PAULA A. COYNE and  
JOHN DOE 1 through X, (X  
being a number as yet  
undetermined) being persons:  
or corporations whose  
identities are presently  
unknown,

Defendants.

VIDEOTAPED DEPOSITION OF: KEITH R. BENOFF, PH.D.  
TUESDAY, MAY 2, 2017

THOMAS G. OAKES ASSOCIATES  
Cherry Tree Corporate Center  
535 Route 38 East - Suite 330  
Cherry Hill, New Jersey 08002  
856-869-3433

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3 WITNESS  
4 K. BENOFF  
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9 Benoff 1 neuropsychological evaluation  
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11 (Exhibits retained by counsel)  
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I N D E X

EXHIBITS

DESCRIPTION

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Videotaped deposition of KEITH R. BENOFF,  
PH.D., taken in the above-entitled matter before LORI  
JONES, a Certified Court Reporter, (License No.  
30XI00161900), taken at the offices of VISCOMI & LYONS,  
360 Mt. Kemble Avenue, Morristown, New Jersey on  
Tuesday, May 2, 2017, commencing at 10:17 a.m.

APPEARANCES:

BRESLIN & BRESLIN, P.A.  
BY: E. CARTER CORRISTON, JR., ESQ.  
41 Main Street  
Hackensack, New Jersey 07601  
201-342-4014  
Attorney for Plaintiffs

VISCOMI & LYONS  
BY: SARABRAJ S. THAPAR, ESQ.  
360 Mt. Kemble Avenue  
Morristown, New Jersey 07962  
973-538-2930  
Attorney for Defendant

ALSO PRESENT:  
SETH BLISSENBACH, Videographer

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THE VIDEOGRAPHER: We are now on the record.  
This is the video deposition of Dr. Keith Benoff, Ph.D.,  
in the matter of Heafy versus Fernandez and Damout,  
which is filed in the State of New Jersey, Bergen  
County. Our court reporter, Lori Jones and myself, Seth  
Blissenbach, both represent Thomas Oakes & Associates  
out of Cherry Hill, New Jersey. Today's date is May  
2nd, 2017, the approximate time is 10:19 a.m. At this  
time all attorneys present in the room will identify  
themselves and their interest in the case.

MR. CORRISTON: For the Plaintiff, E.  
Carter Corriston, Jr., Breslin & Breslin, 41 Main  
Street, Hackensack, New Jersey.

MR. THAPAR: Sarab Thapar of the law office  
of Viscomi & Lyons on behalf of defense.

THE VIDEOGRAPHER: Court reporter will now  
swear in the witness and we can proceed.

KEITH R. BENOFF, PH.D.,  
700 Palisade Avenue, Englewood Cliffs, New Jersey,  
having been first duly sworn, was examined and testifies  
as follows:

EXAMINATION

BY MR. THAPAR:

Q. Good morning, Doctor.

A. Morning.

<p style="text-align: right;">Page 5</p> <p>1 Q. Doctor, please introduce yourself to the court 2 and jury by giving us your name and professional 3 address. 4 A. My name is Keith Benoff. I'm a neuropsychologist 5 and my office is at 700 Palisade Avenue in Englewood 6 Cliffs, New Jersey. 7 Q. Now, Doctor, you are being asked here today to 8 testify related to your examination of the Plaintiff, do 9 you understand that? 10 A. Yes, I do. 11 Q. And you examined her on behalf of our office and 12 supplied us with three reports? 13 A. That is correct. 14 Q. And do you understand that you have taken an oath 15 to tell the truth and answer all the questions that are 16 presented by either me or the attorney representing the 17 Plaintiff? 18 A. Yes, I do. 19 Q. Now, the first thing I want you to do is tell the 20 jury what is your profession? 21 A. I'm a neuropsychologist. That means it's my job 22 to evaluate someone in terms of their cognitive 23 functioning, things like intellectual memory, language 24 skills but also to look at their psychological state. 25 Q. So how is that different than, let's say, a</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Are you licensed in the State of New Jersey? 2 A. I am. 3 Q. And are you part of a clinical practice? 4 A. Yes, I am. 5 Q. What does that practice consist of? 6 A. There are three neurologists and two 7 neuropsychologists in the practice. 8 Q. And do you -- in your practice do you 9 specifically treat patients who have sustained 10 concussions? 11 A. That is certainly part of the patients that I 12 treat, a large portion. 13 Q. How often do you treat these type of patients? 14 A. By treating I mean evaluation. I don't do 15 ongoing therapy with them, that's usually performed by a 16 therapist of sorts like a speech or an occupational 17 therapist but I do evaluation -- neuropsychological 18 evaluations most of the time. 19 Q. Okay. And in a given week how often are you 20 treating these type of patients or, excuse me, 21 evaluating these type of patients? 22 A. It varies but typically I will evaluate about 23 four or five people a week. 24 Q. And how much of your practice encompasses the 25 field of neuropsychology?</p>
<p style="text-align: right;">Page 6</p> <p>1 neurologist? 2 A. A neurologist is a physician, not a psychologist 3 and a neurologist would perform a physical examination 4 whereas I do more of a cognitive and emotional 5 evaluation. 6 Q. Now, Doctor, would you give us the benefit of 7 your educational background, training and professional 8 background? 9 A. Sure. I have a -- my undergraduate degree is 10 from Yeshiva College, I then entered the Ferkauf 11 Graduate School of Psychology where I first obtained a 12 masters as part of my doctoral degree and I completed my 13 doctoral degree in September of 2000. 14 Q. After your doctoral degree, did you go into any 15 sort of private practice? 16 A. Well, before I went into private practice, I 17 worked as a post doctoral fellow at Montefiore Medical 18 Center in the Bronx in their neuropsychology department. 19 Q. What happened after that? 20 A. Upon completing both the doctoral -- post 21 doctoral, excuse me, fellowship and completing all the 22 requirements for licensure, I then entered private 23 practice in New Jersey. 24 Q. And are you currently practicing in New Jersey? 25 A. Yes, I am.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Almost all of it. 2 Q. Do you have any privileges at any hospitals? 3 A. I'm a clinical assistant professor at the Rutgers 4 Medical School and I have that clinical appointment 5 through my position as a neuropsychologist at the 6 Kessler Institute For Rehabilitation. 7 Q. Rutgers Medical School which used to be known as 8 UMDNJ? 9 A. That's correct. 10 Q. Have you ever had the honor of teaching 11 neuropsychology, clinical psychology or abnormal 12 psychology to students? 13 A. Yes. Over the years of both the undergraduate 14 and graduate level I've taught a variety of psychology 15 and statistics classes. 16 Q. Doctor, what professional organizations, if any, 17 are you affiliated with? 18 A. I am members of -- I am a member of the American 19 Psychological Association, the International 20 Neuropsychological Society, the National Academy of 21 Neuropsychology and the New Jersey Psychological 22 Association. 23 Q. Doctor, do you take continuing education courses 24 with respect to your specialty? 25 A. I tend to -- there is no formal requirement in</p>



<p style="text-align: right;">Page 9</p> <p>1 the State of New Jersey yet for psychologists to obtain 2 clinical -- continuing ed courses, that's pending for 3 this coming fall according to legislation, that's still 4 ready being prepared. That being the case, I do try to 5 attend conferences as often as I can but also I 6 regularly read professional journals from a variety of 7 organizations. 8 Q. So although it's not required, you're still doing 9 it on your own? 10 A. Yes, very much so. 11 Q. What areas do you generally focus on? 12 A. I focus on areas ranging from traumatic brain 13 injury to stroke to neurodegenerative disease such as 14 dementia, multiple sclerosis, things of the sort. 15 Q. Doctor, have you ever authored any publications? 16 A. I've authored -- I've authored publications about 17 the assessment of children with visual impairment or 18 limited vision. 19 Q. And have you ever presented to any professional 20 organizations? 21 A. Yes, I've presented on a lecture on the 22 assessment of children from a cognitive domain 23 perspective in terms of visual impairment. I have also 24 presented at a professional conference, something of a 25 more basic research nature in terms of visual processing</p>	<p style="text-align: right;">Page 11</p> <p>1 conclusions right now, I was just asking him generally. 2 MR. CORRISTON: Okay. 3 MR. THAPAR: I wasn't going to go into the 4 conclusion. We can go back on. 5 THE VIDEOGRAPHER: We're back on camera. 6 The time is 10:27. 7 BY MR. THAPAR: 8 Q. Doctor, have you previously been qualified as an 9 expert in the field of neuropsychology in the State of 10 New Jersey? 11 A. Yes, I have. 12 Q. What about specifically Bergen County? 13 A. I have. 14 MR. THAPAR: You know, at this point I'm 15 going to offer Dr. Benoff as an expert in the field of 16 neuropsychology. 17 MR. CORRISTON: I'd like this opportunity to 18 voir dire the doctor briefly. 19 VOIR DIRE EXAMINATION 20 BY MR. CORRISTON: 21 Q. Doctor, you indicated that you're not currently 22 required to take any continuing education course; is 23 that correct? 24 A. It's my understanding that the law officially 25 comes into effect this coming fall.</p>
<p style="text-align: right;">Page 10</p> <p>1 in children with Duchenne muscular dystrophy. 2 Q. Doctor, you do independent medical examinations 3 otherwise known as IMEs, correct? 4 A. That is correct. 5 Q. And do you do them on behalf of both plaintiffs 6 and defendants? 7 A. I do. 8 Q. And do you author reports on behalf of both 9 parties? 10 A. Yes. 11 Q. So in this case you're doing an examination of 12 the Plaintiff and as part of the court rules, we're 13 allowed to have an expert examine the Plaintiff and 14 produce a report. We asked you to review the records, 15 examine the Plaintiff and then provide us with a report, 16 did you do that in this case? 17 A. Yes, I did. 18 Q. And were you able to come to a conclusion or come 19 to an opinion whether Plaintiff actually sustained any 20 certain injuries from this accident? 21 A. Yes. 22 MR. CORRISTON: Objection. 23 THE VIDEOGRAPHER: Going off camera, time is 24 10:26. 25 MR. THAPAR: I wasn't going into the</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. You are not board certified, correct? 2 A. I am in the process of obtaining complete board 3 certification, my credentials are being reviewed. 4 Q. Is that a no? 5 A. Yes. 6 Q. Yes, it's a no, you're not board certified? 7 A. Not at the moment. 8 Q. And board certification would require you to take 9 continuing education courses, would it not? 10 A. I believe it would depend on the board but, yes, 11 it is typically a component of board certification. 12 Q. And when did you become board eligible? 13 A. I became board eligible -- again, it depends a 14 little bit on the board, they have different 15 requirements in terms of when you had accumulated enough 16 post doctoral hours. I didn't really pursue it earlier 17 in my career simply because the overwhelming majority of 18 neuropsychologists did not pursue board certification 19 until relatively recently. 20 Q. So, Doctor, the answer is you don't know when you 21 became board eligible? 22 A. That's correct, I didn't -- 23 Q. What board are you applying to? 24 A. The American Board of Professional Psychology. 25 Q. And, Doctor, you indicated that you do plaintiffs</p>

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1 and defense work; is that correct?

2 A. Yes.

3 Q. And you've previously testified that almost 99

4 percent of your work is for defense, correct?

5 A. That is correct.

6 Q. When was the last time you did an exam for -- on

7 behalf of a plaintiff?

8 A. I don't actually know because I don't keep track

9 of whether I'm hired by a plaintiff or a defense. To me

10 if I'm coming in as an independent medical evaluation,

11 it doesn't matter who hired me.

12 Q. So the answer is you don't know.

13 A. That is correct.

14 Q. Doctor, if you could please restrain your answers

15 to my questions and not go off on what you want to say.

16 If an answer is yes or no or a simple question, if you

17 can please provide that, thank you.

18 Doctor, what percentage of your work is medical

19 legal?

20 A. It's about 50 percent.

21 Q. And when you say 50 percent, is that time or

22 income?

23 A. Time.

24 Q. And what percentage of it is income?

25 A. I have income that comes from different sources,

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1 I don't really divide up how much I'm deriving from

2 individual types of patients.

3 Q. So you don't know.

4 A. No, I don't.

5 Q. Okay. But it obviously is profitable or you

6 wouldn't do it.

7 A. That is correct.

8 Q. Now, Doctor, when was the last time you authored

9 a report for defendant that indicated that a plaintiff

10 suffered a related injury regarding a traumatic brain

11 injury and had permanent injuries?

12 A. I can't answer that, I don't know.

13 Q. Doctor, you've been asked that question on

14 several previous occasions, correct?

15 A. Yes.

16 Q. And you've never -- strike that. Going back at

17 least four years you've been asked that question.

18 A. It could be.

19 Q. And you've never -- knowing that you're in the

20 medical legal and testifying before a judge and a jury

21 today, you've never looked that up to give a judge and a

22 jury an honest opinion of what you find in your

23 patients?

24 A. I don't think it's relevant so I haven't looked

25 it up.

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1 Q. Okay. Well, you may not think it's relevant but

2 you were, in fact, ordered by a court to present such

3 documents, were you not?

4 A. I made it clear to the court --

5 Q. Yes or no, were you or were not ordered by a

6 court to present such documents?

7 A. There was an order.

8 Q. And that order you specifically -- well, strike

9 that. Counsel on your behalf specifically told the

10 court no such reports exist, is that true or untrue?

11 A. He may have said that but I didn't tell him that.

12 Q. So you're telling this court -- you're telling

13 this court that another officer of the court, an

14 attorney, purged himself within a court?

15 MR. THAPAR: Objection.

16 THE VIDEOGRAPHER: We're going off camera.

17 The time is 10:32.

18 MR. THAPAR: Objection to the fact that

19 it's, number one, hearsay because it's a nontestifying

20 witness. We have to call in that -- whoever that

21 attorney was to come testify as to why he said that and,

22 number two, the relevance of it. We don't know anything

23 about this. We don't know why the expert -- why the

24 attorney said that, we have no knowledge about this so

25 based on that, I'm holding my objection and if you'd

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1 like to proceed, then that's fine, we can deal with it

2 later on.

3 MR. CORRISTON: That's fair, thank you.

4 THE VIDEOGRAPHER: We're back on camera.

5 The time is 10:33.

6 BY MR. CORRISTON:

7 Q. So, Doctor, you are aware there was a court order

8 and that an attorney on your behalf said that no such

9 reports exist?

10 A. Yes.

11 Q. And, Doctor, you've testified in multiple trials

12 and depositions on behalf of defendants; is that

13 correct?

14 A. Yes.

15 Q. And, Doctor, would it be true to say that in none

16 of those occasions for the defense have you ever

17 testified that a person suffered permanent injuries as a

18 result of a mild traumatic brain injury?

19 A. Yes.

20 Q. Doctor, you indicated that you've authored some

21 authoritative publications and you've made

22 presentations; is that correct?

23 A. I didn't characterize it as authoritative.

24 Q. My apologies. You authored literature and made

25 presentations.



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1 A. Yes.  
2 Q. Have you ever made a presentation on mild  
3 traumatic brain injury?  
4 A. No, I haven't.  
5 Q. Have you ever authored anything that was  
6 published on mild traumatic brain injury?  
7 A. No.  
8 Q. Have you ever worked with any professional sports  
9 organizations regarding neuropsychology?  
10 A. No.  
11 Q. Have you ever worked with any youth organizations  
12 regarding neuropsychology?  
13 A. No.  
14 Q. Thank you. I have nothing further.  
15 MR. THAPAR: Any objection?  
16 MR. CORRISTON: No objection.  
17 EXAMINATION  
18 BY MR. THAPAR:  
19 Q. Doctor, I'm going to ask some questions regarding  
20 Plaintiff, Cassandra Heafy, and when I do that, I'm  
21 going to ask you a question that calls for an opinion.  
22 Do you agree to give your testimony within a reasonable  
23 degree of medical certainty?  
24 A. Yes.  
25 Q. Doctor, you were retained by our office to do a

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1 neuropsychological evaluation of Plaintiff; is that  
2 correct?  
3 A. Yes, I was.  
4 Q. I have three reports in front of me, is that how  
5 many reports you authored?  
6 A. Yes.  
7 Q. And do you have those reports in front of you  
8 today?  
9 A. I do.  
10 Q. Now, feel free to refer back to them at any point  
11 for any question that either myself or the other  
12 attorney may ask. Were you paid for your time to review  
13 the records and prepare these reports?  
14 A. Yes.  
15 Q. And are you, in fact, being paid to be here  
16 today?  
17 A. Yes.  
18 Q. How much are you being paid to be here?  
19 A. The fee for half a day of testimony is \$4,500.  
20 Q. Now, with regard to the Plaintiff, when did you  
21 first meet her?  
22 A. September 19th of 2016.  
23 Q. And did the Plaintiff fill out a patient  
24 information sheet when she presented to you?  
25 A. Yes, she did.

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1 Q. What is the point of that patient information  
2 sheet?  
3 A. The patient information sheet is presented  
4 primarily to get consent to do the evaluation.  
5 Q. And, now, after that you were given some  
6 information and you took a history from the Plaintiff?  
7 A. That is correct.  
8 Q. Did she tell you how the accident occurred?  
9 A. She did.  
10 Q. What happened -- well, what did she tell you how  
11 the accident occurred?  
12 A. Ms. Heafy reported --  
13 MR. CORRISTON: Excuse me, Doctor, just for  
14 the record, could you tell us what report you're  
15 referring to if it's by date and if you are referring to  
16 a page.  
17 THE WITNESS: Okay.  
18 MR. CORRISTON: Thank you.  
19 THE WITNESS: I am referring to my September  
20 19th, 2016 report and I'm starting at page five. Ms.  
21 Heafy told me that she was a front seat passenger riding  
22 to school and that upon impact she blacked out and saw  
23 stars though she did not lose consciousness. She  
24 recalled that she was sitting and waiting for emergency  
25 responders who eventually did respond and she was taken

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1 to Valley Hospital for evaluation.  
2 BY MR. THAPAR:  
3 Q. And so after the accident just briefly what  
4 happened?  
5 A. It's my understanding that she was taken to the  
6 hospital to follow up on some symptoms that she was  
7 experiencing, she was evaluated at the hospital and  
8 discharged.  
9 Q. Okay. Now, she told you she experienced severe  
10 daily headaches; is that correct?  
11 A. When I asked her about what she was experiencing  
12 during the initial period after the accident, the first  
13 month or two, she told me that she was experiencing  
14 severe daily headaches, she was having some pain in the  
15 neck, some sensitivity to light, intermittent confusion,  
16 difficulty with reading and comprehension, memory and  
17 concentration.  
18 Q. Okay. Now, we are going to come back to some of  
19 these complaints she had in a little bit. Did you also  
20 take a medical history from the Plaintiff?  
21 A. I did.  
22 Q. Was it positive for anything of note?  
23 A. Her history was positive -- what she reported to  
24 me was that she had a history of asthma.  
25 Q. Did that come into play for any of your

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1 conclusions?  
2 A. No, it didn't.  
3 Q. Now, did you also take a social history from the  
4 Plaintiff?  
5 A. I did.  
6 Q. And was there anything of significance from that?  
7 A. She told me that upon graduation from high school  
8 she was an average student, she told me that she went on  
9 to attend Ramapo College though she had plans to  
10 transfer, she had not yet transferred to another  
11 university. She told me that she sleeps -- she goes to  
12 bed by 11, might take sometime to go to sleep, she wakes  
13 up by 10:30 in the morning. She told me she drives  
14 without any difficulty, she's physically active, and she  
15 reported having normal activities around the home and  
16 responsibilities and she denied a history of anxiety or  
17 depression being consistently present before or after  
18 the accident of 12-3-12 though she did have periods of  
19 anxiety beforehand.  
20 Q. Okay. Was she experiencing any nightmares or  
21 flashbacks?  
22 A. No, she denied having nightmares and flashbacks.  
23 Q. Was there any significance of that?  
24 A. Well, it just means that sleep is not disturbed  
25 by any emotional difficulties or when driving that, you

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1 know, when facing a similar kind of situation to a motor  
2 vehicle accident, she's not having an anxious reaction.  
3 Q. Okay. Now, did you review records in preparation  
4 of authoring this report?  
5 A. Yes, I did.  
6 Q. Let's start with the most recent record to the or  
7 most proximate as far as time goes record there is to  
8 the date of the accident, which would be the hospital  
9 record; is that correct?  
10 A. Yes.  
11 Q. Now, did the Plaintiff go to the hospital after  
12 the accident?  
13 A. She was taken to the hospital.  
14 Q. What did she complain about at the hospital?  
15 A. She reported having a headache.  
16 Q. Did she have any other complaints?  
17 A. She denied having loss of consciousness or  
18 dizziness.  
19 Q. So the only complaint at the hospital was  
20 headache?  
21 A. To my knowledge, yes.  
22 Q. And how was she doing as far as her mental status  
23 or cognitive exam?  
24 A. She was characterized as awake, alert,  
25 interactive and speaking normally.

Page 23

1 Q. How was she doing psychiatrically?  
2 A. She was characterized as cooperative and there  
3 was no mention of any anxiety or other kinds of  
4 symptoms.  
5 Q. Was she discharged at this time?  
6 A. Yes, she was.  
7 Q. Who was the next doctor she went to?  
8 A. I believe she went to Dr. Bottiglieri about a  
9 week later.  
10 Q. What did she complain of?  
11 A. When she was evaluated by Dr. Bottiglieri, she  
12 reported experiencing headache and dizziness.  
13 Q. Was the headache mild, moderate, severe?  
14 A. She characterized it as mild and improving.  
15 Q. So it was getting better?  
16 A. That's what she said.  
17 Q. Did she have any complaints of loss of balance or  
18 memory disturbance?  
19 A. She denied it.  
20 Q. Was the headache exacerbated by anything? ~~A~~  
21 A. When asked, she said that her studies at school  
22 did not worsen the headaches. ~  
23 Q. Did not worsen the headaches?~  
24 A. Yes.  
25 Q. Was there any significance to that?

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1 A. Yes, in other words, when she was challenging  
2 herself cognitively, presumably she was studying with a  
3 degree of intensity, that did not produce any increase  
4 in headache or other symptoms.  
5 Q. Why is that something of note?  
6 A. Well, often people do experiencing -- who are  
7 experiencing headaches, do have worsening of headaches  
8 when they are cognitively challenging themselves in the  
9 immediate period right after a concussion.  
10 Q. However, she was not experiencing.  
11 A. She said no.  
12 Q. Her record also notes that her mental status  
13 appeared oriented to the three spheres, what does that  
14 mean?  
15 A. That she was not confused with respect to person,  
16 place and time.  
17 Q. Was she having any memory issue at all at the  
18 time?  
19 A. According to Dr. Bottiglieri, memory was intact.  
20 Q. What about her attention or her concentration?  
21 A. He characterized it as normal.  
22 Q. Did she undergo any tests at that point?  
23 A. He did some basic mental -- sort of mental  
24 screening type tasks, things like serial sevens and  
25 following three-step commands and she was able to do



Page 25

1 that without any difficulty.  
2 Q. So how was she doing?  
3 A. He characterized her as performing within normal  
4 limits.  
5 Q. And this is all administered by her own doctor?  
6 A. Yes, I believe that it was the doctor that she  
7 sought out about a week after the accident.  
8 Q. So when Plaintiff told you that she was having  
9 problems with comprehension, reduced memory and  
10 concentration following the accident, was that supported  
11 by her own doctor's records?  
12 A. Well, her doctor's records support headache.  
13 Q. Okay. Was it supported --  
14 A. Headache and dizziness.  
15 Q. All right. So when she was saying problems with  
16 comprehension, reduced memory or concentration, was that  
17 supported by --  
18 A. No, actually it was denied.  
19 Q. So essentially she was telling you one thing and  
20 the doctor's records are saying something else?  
21 A. Yes.  
22 Q. Then she presented again one week later to her  
23 own doctor?  
24 A. On the 18th of December, yes.  
25 Q. How was she doing at that point?

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1 A. She reported that she was feeling well and had no  
2 complaints stating that her symptoms had resolved.  
3 Q. Did the doctor note that she had any restrictions  
4 or limitations at all?  
5 A. He said there are no limitations.  
6 Q. Did the doctor note anything wrong with her at  
7 all during this visit?  
8 A. No.  
9 Q. And how long after the accident is this?  
10 A. About two weeks.  
11 Q. Two weeks after the accident?  
12 A. Roughly.  
13 Q. So now we're two weeks after the accident and the  
14 records you have indicate there was -- that she had no  
15 more complaints at all?  
16 A. Yes.  
17 Q. You then reviewed records by a Dr. Melissa Segal?  
18 A. Yes.  
19 Q. Who is that?  
20 A. I believe she is a primary care provider.  
21 Q. And did reviewing these records help you at all?  
22 A. Yes, it gave a little bit -- excuse me -- more  
23 detail in the way of medical history. Apparently she  
24 was found to have a borderline prolonged QT interval,  
25 which is a cardiac condition that I'm not able to

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1 comment on. She was diagnosed with scoliosis, asthma as  
2 well as symptoms of irritable bowel syndrome that were  
3 associated with anxiety and that was diagnosed during  
4 2008.  
5 Q. Was there any significance of this?  
6 A. Well, it indicates the presence of some anxiety  
7 and physiological symptoms that are common in anxiety  
8 prior to the accident in question.  
9 Q. What does that have to do with this accident?  
10 A. Well, it indicates that anxiety that might have  
11 been present after the accident in question is --  
12 MR. CORRISTON: Objection.  
13 THE VIDEOGRAPHER: Going off camera. The  
14 time is 10:44.  
15 MR. CORRISTON: It's not contained in his  
16 report. I'm going to object to any opinion he's forming  
17 in this basis that's not contained in his report. There  
18 is no mention of this at all in his report.  
19 MR. THAPAR: He reviewed the records.  
20 MR. CORRISTON: No, on his conclusions,  
21 there is nothing in his conclusions that talk about any  
22 prior anxiety contributing at all to her current state.  
23 MR. THAPAR: Okay. I think it's fair  
24 extrapolation so I'll continue with it and we can sort  
25 it out later on.

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1 MR. CORRISTON: I can't stop you.  
2 THE VIDEOGRAPHER: We're back on camera.  
3 The time is 10:45.  
4 BY MR. THAPAR:  
5 Q. Doctor, what did that -- the pre-accident anxiety  
6 have anything to do with this accident?  
7 A. Well, the anxiety she might be experiencing after  
8 the accident has to be understood in the setting of a  
9 pre-existing history of anxiety so it's reasonable to  
10 assume that there was anxiety before and after that may  
11 be unrelated to the accident in question.  
12 Q. Okay. Now, at her -- what is the benefit of  
13 reviewing her primary care physician records?  
14 A. In general the primary care physician is the  
15 person who has met with the patient more often than  
16 anyone else and it can provide some very useful  
17 information.  
18 Q. Does it help you get some background on the  
19 Plaintiff?  
20 A. Certainly.  
21 Q. And help you establish, let's say, a baseline for  
22 the Plaintiff?  
23 A. It's certainly a piece of it.  
24 Q. And does it help you with how the Plaintiff is  
25 doing over time?



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1 A. It does give me a sense of how she is doing at  
2 various points.  
3 Q. Did you note any complaints of, let's say, either  
4 traumatic brain injury or concussion syndromes to her  
5 primary care doctor afterwards?  
6 A. No, actually there is neurological examination  
7 was within normal limits and there was no mention of  
8 symptoms.  
9 Q. Now, at Plaintiff's deposition she stated that  
10 she was experiencing dizziness after the accident, which  
11 she did not experience before the accident. Did you  
12 review any record that contradicted that?  
13 A. It's my understanding that the -- there was a  
14 history of some hypoglycemia, which was associated with  
15 some dizziness.  
16 Q. That was before the accident?  
17 A. Yes.  
18 Q. Now, you then performed a variety of tests on  
19 Plaintiff; is that correct?  
20 A. Yes.  
21 Q. We don't have to go into detail about each test  
22 but generally what were those tests?  
23 A. I evaluated a variety of cognitive demeanors. I  
24 looked at verbal intellectual and reasoning abilities,  
25 nonverbal intellectual and reasoning, visual and verbal

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1 memory, attention and concentration, language skills and  
2 what we call higher executive functions.  
3 Q. Okay. And do you personally administer these  
4 tests?  
5 A. Yes, I do.  
6 Q. So from start to finish?  
7 A. I do the whole evaluation.  
8 Q. Any reason you don't have an assistant or someone  
9 else do the test for you?  
10 A. I prefer to administer the test in addition to  
11 performing the interview because that gives me a chance  
12 to spend more time with the individual I'm evaluating  
13 and get a more complete sense of how they are doing.  
14 Q. Now, how did Plaintiff do on these tests?  
15 A. In general her performance was within the  
16 expected range.  
17 Q. Okay. Can you go do -- can you elaborate on  
18 that?  
19 A. Sure. On tests that measure preinjury function  
20 such as reading ability and general knowledge, her  
21 performance was within the lower half to around the  
22 average, which would indicate that before the onset of  
23 the accident we would expect her abilities to fall  
24 primarily within that lower half of the average range.  
25 Q. Let me just cut you off for one second. Why do

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1 you say that that gives a pre-accident -- I don't  
2 remember the exact word you used but it gives you an  
3 idea of how she was doing pre-accident.  
4 A. Oh, it's well established within the literature  
5 that reading ability, general knowledge are reliable  
6 stable crystalized knowledge kinds of things that don't  
7 change or not affected by concussion.  
8 Q. Okay. So then continue, please.  
9 A. So as a result of that, we would expect that most  
10 of her scores would fall within that area of the average  
11 range. That being said, there is an extensive  
12 literature that indicates that we are not -- we don't  
13 perform uniformly well on every test we take. In other  
14 words, we would expect most of the scores to fall within  
15 that range but we also expect some scores to be higher  
16 and some scores to be lower.  
17 Q. Okay. So now I see that she was below the  
18 fiftieth percentile for some of these tests, what do you  
19 take that to mean?  
20 A. That's where she was expected to perform.  
21 Q. If a person is scoring low on certain tests, does  
22 it mean that they automatically have a traumatic brain  
23 injury?  
24 A. No, not at all.  
25 Q. And why not?

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1 A. Well, again, as I mentioned a moment ago, it is  
2 not uncommon in the normal healthy population, meaning  
3 people that have not had a concussion, to have scores  
4 that would be characterized as atypically low but also  
5 to have scores that would be characterized as atypically  
6 high, basically we have strengths and weaknesses.  
7 Q. Was she atypically high in any areas?  
8 A. Actually yes. She had -- particularly on a  
9 couple of executive function tasks such as number  
10 sequencing and letter sequencing where you had to  
11 connect things in a more complex array as quickly as you  
12 could. Her performance was at the highest end of the  
13 average range or even above the average range.  
14 Q. What do you take that to mean?  
15 A. I take that to mean that in a cognitive function  
16 that is typically affected by concussion in a negative  
17 way was actually not affected by it at all.  
18 Q. So those tests would help you establish whether  
19 her cognitive function was depleted or deteriorated?  
20 A. Well, we would never make an interpretation based  
21 on one or two individual tests but certainly it lends  
22 credence to her performing within her expected range.  
23 Q. But she happened to actually do well in that?  
24 A. She did exceptionally well, yes.  
25 Q. So would it -- so you just kind of mentioned this

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1 but let me ask it this way: Would it be appropriate to  
2 ever take any individual score and come to a diagnostic  
3 conclusion?  
4 A. No. When we do a neuropsychological evaluation,  
5 we administer a battery of tests from which we get a  
6 large collection of scores and we look at the overall  
7 profile of scores.  
8 Q. Is it common to have an individual scoring within  
9 the average percentile and it happens to be low in a  
10 couple specific areas?  
11 A. Oh, absolutely.  
12 Q. Why is that?  
13 A. Because as I mentioned before, it's normal to  
14 have strengths and weaknesses, some things that we excel  
15 at, some things that we're not quite as good at but the  
16 majority of things fall right around what we're expected  
17 to be able to do.  
18 Q. And when I ask if it's common, I mean amongst  
19 people who do not have a traumatic brain injury or post  
20 concussion syndrome.  
21 A. Yes, it is common in the population as a whole.  
22 Q. And so you're just saying that the one area could  
23 just be a weakness.  
24 A. It could well have been a weakness that was  
25 present before the accident.

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1 Q. Now, Doctor, I see in your note that you state  
2 that she was putting forth inconsistent effort during  
3 the exams, what does that mean?  
4 A. Well, it means that on a stand alone objective  
5 measure of performance that her scores consistently fell  
6 below the cutoff and that could be as a result of a  
7 number of reasons but what it means that we do not have  
8 objective evidence that adequate effort was put forth  
9 throughout the evaluation.  
10 Q. And does this go into your analysis?  
11 A. Sure, that also can account for some low test  
12 scores.  
13 Q. Now, besides the tests you performed, were you  
14 able to come to conclusions or form an opinion based on  
15 your observations of the Plaintiff?  
16 A. Well, during the evaluation, during the clinical  
17 interview and the testing session, she evidenced no  
18 difficulties with speech, she was fluent, she was  
19 articulate, she was able to answer questions without any  
20 difficulty. She did not struggle for information in any  
21 particular fashion, she had no difficulty understanding  
22 tasks and completing them when presented.  
23 Q. Was she having any difficulty finding the right  
24 word or putting a sentence together, anything like that?  
25 A. Not at all.

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1 Q. Would those be characteristics of someone with  
2 post concussion syndrome?  
3 A. It's definitely one of the symptoms that can be  
4 associated with it.  
5 Q. Were you able to make any notes of Plaintiff's  
6 demeanor based on her social media or anything else  
7 about her?  
8 MR. CORRISTON: Objection.  
9 THE VIDEOGRAPHER: Going off camera. The  
10 time is 10:53.  
11 MR. CORRISTON: I'm going to object to  
12 anything with regard to social media. The report was --  
13 and with regard to social media was rendered well after  
14 discovery cutoff date and in addition it was information  
15 that was readily available and the doctor has failed to  
16 indicate any source of where he got that information.  
17 MR. THAPAR: Okay. The social media was  
18 provided with a Certificate of Due Diligence. I don't  
19 believe -- I believe there was a letter objecting to it  
20 but I don't believe any motion was ever filed to bar it.  
21 With that said, I'm going to continue with this -- I'm  
22 not going to very specifics of the social media, just  
23 going into generally how it helped his opinion.  
24 MR. CORRISTON: I understand that. I want  
25 to know although you indicated there was an amendment

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1 with a certification, there was nothing attached to the  
2 certification outlining who obtained that information  
3 and how it was obtained. Without that, that  
4 certification is irrelevant. In addition, the social  
5 media has no relevance in this matter because it didn't  
6 change the doctor's opinion and it's not -- nothing  
7 contained in the social media is any claim that the  
8 Plaintiff has made. There is no relevance to it because  
9 she claims she couldn't go away, she didn't claim she  
10 could do various activities, that's not her complaint.  
11 MR. THAPAR: Okay. We can go back on the  
12 record.  
13 THE VIDEOGRAPHER: We're back on camera.  
14 The time is 10:55.  
15 BY MR. THAPAR:  
16 Q. So, Doctor, were you able to make any note of  
17 Plaintiff's demeanor based on her social media?  
18 A. Her social media content is typical for what you  
19 would expect of someone her age.  
20 Q. So did that help you in your analysis at all?  
21 A. Well, it just -- it was corroborative evidence  
22 that there wasn't any meaningful change to what would be  
23 expected for a young adult.  
24 Q. So a question most people have is how do you know  
25 if she's doing better, worse or the same as she was



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1 doing before the accident? There is a term called  
2 baseline, what does that mean?  
3 A. Baseline refers to what was the person's overall  
4 functioning like prior to the occurrence of some event.  
5 Q. So why is it important to have a baseline when  
6 evaluating whether an accident actually caused any  
7 cognitive issues?  
8 A. Because the neuropsychological evaluation  
9 measures someone's ability at one point in time but in  
10 order to know how well a person is functioning relative  
11 to what they were beforehand, you need to have some  
12 understanding as to what their functioning was like  
13 beforehand.  
14 Q. And were you able to establish a baseline for the  
15 Plaintiff?  
16 A. Yes.  
17 Q. How did you do that?  
18 A. Again, as I mentioned, it's with measures such as  
19 reading ability and general knowledge.  
20 Q. Was there anything else that helped you?  
21 A. Well, her school records as well.  
22 Q. So were you able to review her school records?  
23 A. Yes, I was.  
24 Q. Why was it important to review that?  
25 A. School records also give an indication as to what

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1 someone's academic -- you know, sort of general  
2 achievement is like.  
3 Q. Okay. And in this case you were able to compare  
4 her -- the Plaintiff's pre-accident condition to her  
5 post accident condition?  
6 A. Yes.  
7 Q. And you were able to compare her pre-accident  
8 school records to her post accident school records.  
9 A. That is correct.  
10 Q. Okay. Was there anything of note in her school  
11 records that stood out to you?  
12 A. Yes, there was. Particularly when you look at --  
13 when you look at her tenth grade records, that would be,  
14 if I'm not mistaken, that's the year of the actual  
15 accident. If you look at the first marking period of  
16 the year, which is prior to the accident in December,  
17 her grades ranged from a 73 in chemistry or actually  
18 looks like -- yes, a 73 in chemistry to -- among the  
19 academic subjects, to an 82 in English. When you look  
20 at marking period three, there is significant  
21 improvement in English, in Spanish, U.S. history and a  
22 smaller degree of improvement in geometry. When you  
23 look at marking period four, by the end of year there is  
24 improvement in English, Spanish, U.S. history, geometry  
25 and chemistry.

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1 Q. So from the first marking period, which predated  
2 this accident, to the fourth marking period, which was a  
3 couple months or a few months after this accident, was  
4 she doing better, worse or the same?  
5 A. Well, the fourth marking period I assume would be  
6 the end of the academic year so it's probably, if I had  
7 to guess, closer to about five months after the accident  
8 in question. That being the case, there was clear  
9 improvement from before the accident to after the  
10 accident.  
11 Q. So she was actually doing better?  
12 A. Yes.  
13 Q. And what do you take away from this analysis?  
14 A. Well, what that demonstrates to me is even as  
15 early as the third marking period but corroborated by  
16 the fourth marking period, there was no significant  
17 impact that the injury sustained had on her academic  
18 abilities.  
19 Q. So let's go to your conclusions that you have.  
20 Your first conclusion is that you found that Plaintiff  
21 at worse sustained a mild traumatic brain injury or  
22 concussion from this accident; is that correct?  
23 A. Yes, it is.  
24 Q. How did you come to that conclusion?  
25 A. Well, the diagnostic criteria for a concussion

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1 would be either a brief loss or alteration of  
2 consciousness. you need not have a loss of consciousness  
3 to be diagnosed with a concussion. And also there is no  
4 abnormal imaging of the brain and neurological  
5 examination is within normal limits.  
6 Q. Okay. So how did you come to a conclusion that  
7 there was some sort of concussion?  
8 A. She reported feeling dizziness and headache,  
9 which are typical post concussive symptoms that one  
10 would often experience right after an accident, a head  
11 injury.  
12 Q. So is it based solely on what she's saying or is  
13 there some sort of other objective test that you are  
14 using to diagnose that?  
15 A. There is no clinically used diagnostic test that  
16 a hospital or some other individual would administer on  
17 a consistent basis immediately after this kind of  
18 incident so it's based on symptom report.  
19 Q. Okay. So it's based solely on what she's saying?  
20 A. Yes.  
21 Q. Okay. And so in giving the Plaintiff the benefit  
22 of the doubt, you said that your opinion was that she at  
23 worse sustained a concussion.  
24 A. Yes.  
25 Q. Did she -- did it appear that she ever recovered



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1 from this?

2 A. Well, her performance on cognitive functioning

3 when I tested her was overwhelmingly within the expected

4 range and if we look back at the medical records, as

5 early as two weeks after the accident, she stated that

6 she had made a recovery from the symptoms she was

7 experiencing.

8 Q. So is it possible -- is it not just possible, is

9 it probable that she recovered within two weeks?

10 A. It's entirely possible.

11 Q. Possible or probable?

12 MR. CORRISTON: Objection.

13 THE VIDEOGRAPHER: We're going off camera.

14 The time is 11 a.m.

15 MR. CORRISTON: Asked and answered.

16 MR. THAPAR: Okay.

17 THE VIDEOGRAPHER: We're back on camera.

18 The time is 11:01.

19 BY MR. THAPAR:

20 Q. Doctor, I know it's possible, would you say it's

21 also probable?

22 A. Yes.

23 Q. And, Doctor, what did you conclude overall from

24 all the tests that you performed?

25 A. That she has in a general sense made an excellent

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1 recovery from any cognitive difficulties that might have

2 been present.

3 Q. And now from your review of all the records, did

4 the Plaintiff's life change in any fashion as a result

5 of this accident?

6 A. Not meaningful, no.

7 Q. What about driving?

8 A. She reported to me when I evaluated her, that

9 she's driving without difficulty.

10 Q. Was she -- are you aware when she obtained her

11 driver's license?

12 A. I believe according to the social media records,

13 that it was about a week or so afterward.

14 Q. After this accident?

15 A. After the accident.

16 Q. As far as high school, did that change as a

17 result of this accident?

18 A. Well, certainly academically as discussed before,

19 her performance improved in that year afterward, it

20 didn't decline.

21 Q. Sports wise, did that change?

22 A. She reported being physically active when I

23 interviewed her.

24 Q. What about playing on any organized teams?

25 A. She, I believe, does participate on team sports.

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1 Q. At least she did in high school.

2 A. Yes.

3 Q. What about social life, did that change?

4 A. There is no evidence of it from the social media

5 reviewed.

6 Q. So did you find any way that her life has changed

7 because of this accident?

8 A. No.

9 Q. So within a reasonable degree of

10 neuropsychological certainty, did the Plaintiff suffer

11 from any cognitive issues as a direct result of this

12 accident?

13 A. No.

14 Q. Thank you, Doctor.

15 EXAMINATION

16 BY MR. CORRISTON:

17 Q. Doctor, what do you usually charge or what's the

18 reimbursement rate you receive when you do a neuropsych

19 examination for a private patient?

20 A. It will vary. I actually don't keep track of

21 what the rate of reimbursement is, it varies from

22 company to company. When I see patients at Kessler and

23 in the office, I only see Medicare and I'm not certain

24 as to what the current Medicare rate is.

25 Q. Would it be fair to say that the rate in which

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1 you received in this case for an examination of Ms.

2 Heafy and a report was substantially greater than your

3 reimbursement rate for private patients?

4 A. Yes, it is.

5 Q. And, Doctor, how many times have you testified

6 either in a deposition or in court on behalf of

7 defendants in the last 24 months?

8 A. I don't keep a record of exactly how many times

9 but I can estimate.

10 Q. Please do.

11 A. Including both deposition and courtroom

12 testimony?

13 Q. Yes, please.

14 A. I believe it's been about seven or eight times.

15 Q. In the last two years?

16 A. Yeah.

17 Q. Now, Doctor, you would agree with me that when

18 you're rendering your reports, the three reports that

19 you authored, the wording and the language you use is

20 important because people are going to read these and

21 rely on these.

22 A. I assume that about all reports that I write.

23 Q. And you use specific words and specific terms at

24 specific times to give specific opinions.

25 A. For all reports no matter what the source.

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1 Q. And you use those words carefully?  
2 A. Yes.  
3 Q. And they are chosen carefully.  
4 A. Yes.  
5 Q. And they are chosen with a purpose.  
6 A. Yes.  
7 Q. And would you agree that you found that Ms. Heafy  
8 suffered a mild traumatic brain injury as a result of  
9 this accident?  
10 A. Yes, she meets the criteria.  
11 Q. And are you aware of the severity of the impact?  
12 A. I don't have any specifics of the impact, I only  
13 had the hospital records and what she reported to me in  
14 the clinical interview.  
15 Q. Do you know if anybody else was injured in the  
16 accident?  
17 MR. THAPAR: Objection.  
18 THE VIDEOGRAPHER: We're going off camera.  
19 The time is 11:05.  
20 MR. THAPAR: My objection is to the  
21 relevance of anyone else being injured in this. I don't  
22 believe it's relevant to this case at all.  
23 MR. CORRISTON: And my response would that  
24 just be in certain documents and whether or not you're  
25 going to intend to introduce certain documents it would

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1 cover some relevance.  
2 MR. THAPAR: Do you know --  
3 MR. CORRISTON: Trial strategy.  
4 MR. THAPAR: Okay. I wasn't sure if you --  
5 all right, we can go back on.  
6 THE VIDEOGRAPHER: We're back on camera.  
7 Time is 11:06.  
8 THE WITNESS: I don't know if anyone else  
9 was injured.  
10 BY MR. CORRISTON:  
11 Q. Thank you. Doctor, did you review Ms. Heafy's  
12 deposition?  
13 A. No, I did not.  
14 Q. Did you review her Answers to Interrogatories?  
15 A. I scanned it, yes.  
16 Q. Doctor, the test that you performed, how long  
17 from beginning to end does it take?  
18 A. It varies differently person to person simply  
19 because different people require different amounts or  
20 different breaks of different lengths. Some people  
21 prefer to go straight through without any breaks. I  
22 offer the option as to whatever people prefer, typically  
23 would be about half a day.  
24 Q. So it requires great effort.  
25 A. No, I wouldn't say it requires great effort, it

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1 requires effort for blocks of time with the  
2 understanding that you will ask for breaks as needed.  
3 Q. And in your report you didn't report anywhere  
4 where Ms. Heafy was in any way uncooperative.  
5 A. Right.  
6 Q. She fulfilled all your requirements as you  
7 requested them.  
8 A. She cooperated with the evaluation.  
9 Q. And you said she -- there was an issue of effort,  
10 correct?  
11 A. Correct.  
12 Q. How old was she at the time?  
13 A. When I evaluated her, she was 19.  
14 Q. And, Doctor, isn't it true that many people  
15 undergoing this test as the day wears on, there is some  
16 fatigue that sets in?  
17 A. Yes.  
18 Q. And that can affect effort?  
19 A. It could.  
20 Q. In fact, Doctor, you've authored multiple reports  
21 to multiple defense exams where you cited effort as  
22 something that was lacking at some point during your  
23 examination.  
24 A. Yes.  
25 Q. So it's not uncommon.

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1 A. Not uncommon only because I'm interpreting the  
2 standardized test according to the guidelines.  
3 Q. I understand but it's not an uncommon finding.  
4 A. Correct.  
5 Q. And did that in any way affect your ability to  
6 come to a conclusion?  
7 A. Well, if there is evidence of inadequate  
8 effort --  
9 Q. In this case.  
10 A. Yes. In this case if there is evidence of  
11 inadequate effort, one has to consider that the low  
12 scores are the consequence of effort rather than as a  
13 consequence of true ability.  
14 Q. But doesn't the test take that into consideration  
15 that's why there is multiple things that you do to  
16 compensate for that?  
17 A. Well, but her scores were below the cutoff on all  
18 of the measures of that test.  
19 Q. What do you mean by that?  
20 A. Her scores, there were multiple scores on that  
21 word memory test that were below the cut for adequate  
22 effort.  
23 Q. And you wouldn't expect a 19-year-old college  
24 student to fully understand and appreciate the type of  
25 test you're doing considering you have a Ph.D. and



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1 you've had multiple years of education, correct?  
2 A. I'm not sure --  
3 Q. Let me rephrase it. She's not an expert in these  
4 tests, is she?  
5 A. The assumption is that no layperson is.  
6 Q. And that this is not something that somebody  
7 undergoes on a routine basis.  
8 A. That is correct.  
9 Q. And, Doctor, there is a percentage of people who  
10 suffer permanent injuries as a result of mild traumatic  
11 brain injuries based on literature; is that correct?  
12 A. Yes.  
13 Q. And, Doctor, some studies indicate that's up to  
14 15 percent of people.  
15 A. Some of the older studies do indicate that, yes.  
16 Q. By the way, Doctor, in those studies do you know  
17 how many people in any of those studies were 14 years of  
18 age when they suffered the injury?  
19 A. Typically those studies are done on adults but  
20 there definitely is literature on children but it's  
21 typically -- most research studies are done on adults.  
22 Q. So it would be fair to say most of that research  
23 is done on people not Cassandra Heafy's age?  
24 A. Yes.  
25 Q. And, Doctor, would you agree with me that in the

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1 last five years, seven years there has been more focus  
2 on mild traumatic brain injuries?  
3 A. Yes, that's true there has been a greater focus.  
4 Q. Especially in children.  
5 A. I would characterize it for both children and  
6 adults.  
7 Q. Were you -- are you -- strike that. You said  
8 you're a member of the New Jersey Neuropsychic  
9 Association; is that correct?  
10 A. Yes.  
11 Q. Do you know if that organization takes any  
12 position with regard to youth sports and head injuries?  
13 A. I believe like most neuropsychologically or  
14 psychologically oriented organizations we've become  
15 increasingly -- by "we" I mean the membership are  
16 increasingly concerned about the possibility of  
17 difficulties after head injury.  
18 Q. Doctor, do you have anybody in your family that  
19 plays soccer?  
20 MR. THAPAR: Objection.  
21 THE VIDEOGRAPHER: We're going off camera.  
22 The time is 11:11.  
23 MR. THAPAR: Going into his personal life, I  
24 mean, if you want to ask generally if he knows about  
25 soccer injuries or something like that that's fine but I

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1 mean.  
2 MR. CORRISTON: I'll continue and you can  
3 make that objection.  
4 THE VIDEOGRAPHER: We're back on camera.  
5 The time is 11:12.  
6 THE WITNESS: I have nephews that play  
7 soccer.  
8 BY MR. CORRISTON:  
9 Q. And are they -- are you aware of whether or not  
10 they've been advised that heading is no longer permitted  
11 in youth soccer?  
12 A. I don't know, I haven't spoken with him.  
13 Q. Are you aware of that?  
14 A. No, I do not keep up to date on regulations of  
15 individual leagues.  
16 Q. Were you aware of whether or not that  
17 recommendation came from any medical organization?  
18 A. I believe it is recommended by either the  
19 American Academy of Pediatrics or the American Congress  
20 of Rehabilitation Medicine. There are some  
21 organizations that definitely recommend not heading  
22 balls.  
23 Q. Would it be fair to say that the literature also  
24 supports the younger you are, the more susceptible you  
25 are to mild traumatic brain injury?

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1 A. There is that idea in the literature.  
2 Q. And you would -- Cassandra you are aware was 14  
3 at the time of the accident.  
4 A. Yes.  
5 Q. Do you know what you were paid for your exam and  
6 all your reports in this case?  
7 A. I can --  
8 Q. The total amount?  
9 A. I can look at the records. The bill for the  
10 initial evaluation and review of records came to \$5,195.  
11 For the first review of additional records, which was  
12 the school records, there was a fee of \$315 and I'm not  
13 sure about the most recent one, I'd have to look through  
14 here. For the last one it was \$126.  
15 Q. So, Doctor, by my abbreviated math, you've been  
16 paid almost \$10,000 for this case including your  
17 testimony today.  
18 A. In that vicinity, yes.  
19 Q. And, Doctor, you know you're not an advocate for  
20 anybody, correct, you are supposed to be giving an  
21 independent medical opinion.  
22 A. I do. Can I clarify my answer just to be  
23 certain --  
24 Q. Yes.  
25 A. -- that I'm clear? What I meant before is my



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<p>1 practice gets paid that amount, I personally do not get 2 paid that amount. 3 Q. But you share in that amount. 4 A. Yes. 5 Q. How much is your share of that? 6 A. I earned a percentage of what I generate after 7 expenses. 8 Q. And how much approximately would that be in this 9 case? 10 A. Approximately 35 percent. 11 Q. So approximately \$3500? 12 A. Yeah. 13 Q. To you personally? 14 A. Yes. 15 Q. And the remainder to the practice? 16 A. That is correct. 17 Q. And that would go to pay for the overhead so you 18 wouldn't have to pay for overhead as well in your 19 regular practice. 20 A. That is correct. 21 Q. Thank you. Now, Doctor, you noted all these 22 grades with regards to Ms. Heafy and her condition going 23 into the second after Sophomore year, junior year and 24 senior year, correct? 25 A. Yes.</p>	<p>1 A. If you compare those -- 2 Q. Doctor, yes or no, is it down? 3 A. For those two points in time. 4 Q. Thank you. Doctor, are you aware of whether or 5 not Ms. Heafy ever complained that as a result of this 6 accident she couldn't drive? 7 A. No. 8 Q. Did she ever complain she couldn't go on 9 vacation? 10 A. Not to my knowledge. 11 Q. Did she ever complain of not being able to engage 12 in social activities? 13 A. Not to my knowledge. 14 Q. By the way, Doctor, how many of your private 15 patients do you go on their Facebook page and review? 16 A. I don't review anyone's Facebook pages online. 17 Q. How many of your private patients have you asked 18 for them to supply you with their Facebook pages or any 19 social media page? 20 A. I don't ask anyone for their Facebook pages. 21 Q. Doctor, you indicated before that neuropsychology 22 purpose with regard to incidents like this is to give 23 some type of diagnosis with regard to mild traumatic 24 brain injury; is that correct? 25 A. No, not necessarily a diagnosis. The goal was to</p>
Page 54	Page 56
<p>1 Q. You would agree that the grades in her freshman 2 year are actually higher? 3 A. Yes. 4 Q. And you would agree that she's struggled in 5 college as well. 6 A. Her grades were -- yes, they were somewhat lower 7 in college than they were in high school. 8 Q. In fact, her grade point average freshman year 9 was almost an 85. 10 A. Yes. 11 Q. Did she ever obtain an 85 average again all 12 through high school? 13 A. I'd have to check. Let's see, she obtained for 14 tenth grade it looks like it was 79.17 and for 11th 15 grade it appears -- my copy isn't very perfect but it 16 looks like 77.9 and it looks like 76.67 for 12th grade. 17 Q. So, in fact, from before the accident till after 18 the accident her grades went down. 19 A. Well, I don't -- 20 Q. Yes or no? 21 A. It depends on what window you look at. 22 Q. I'm looking at freshman year through senior year, 23 she went from an 85 to a 76.67. 24 A. She went from 84.99 to 76.67, yes. 25 Q. That's down is it not, yes or no?</p>	<p>1 get a sense for -- the ultimate goal that matters most 2 of all is what is a person's functioning like. 3 Q. And, Doctor, you don't use CAT scans or MRIs as 4 you indicated before, would it be fair to say that they 5 are not always effective in a mild traumatic brain 6 injury case? 7 A. I would only use imaging studies as a way of 8 trying to classify the type of injury. 9 Q. And it's true to say that many times mild 10 traumatic brain injuries don't appear on diagnostic 11 testing? 12 A. No, by definition a mild traumatic brain injury 13 is not going to have abnormal imaging. 14 Q. You are aware of the recent studies in the NFL? 15 A. I've seen some recent studies relating to the 16 NFL. 17 Q. And, in fact, they have to do autopsies on these 18 players who have brain injuries, do they not, to 19 determine the extent and severity of their condition? 20 A. The standard of practice if you are doing 21 research that is authoritative is regardless of the 22 source of a problem, you would look at autopsy. 23 Q. And you had no baseline test for Ms. Heafy, did 24 you, to compare to her current status? 25 A. I had no actual test administered before the</p>

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1 accident.  
2 Q. And, in fact, she didn't have any tests nor an  
3 extensive neuropsychic exam after the accident either,  
4 did she?  
5 A. Not until much later.  
6 Q. And you indicated before with regard to Dr.  
7 Bottiglieri's examination, that was only for  
8 approximately three weeks after the accident, correct?  
9 A. Yes.  
10 Q. Doctor, would it be fair to say that Ms. Heafy  
11 going into the test that you administered, it would be  
12 extremely difficult for her to manipulate her responses  
13 to come up to a conclusion that would be false?  
14 A. I'm not sure I understand the question.  
15 Q. Sure. What part didn't you understand just so we  
16 can be clear?  
17 A. I'm just not sure precisely what you are asking  
18 and I don't want to mislead.  
19 Q. The average person would not be able to  
20 manipulate the results in the test you performed.  
21 A. Not easily, no.  
22 Q. Especially someone 19 years of age.  
23 A. I would say any adult.  
24 Q. When we reclassify Ms. Heafy as an adult.  
25 A. She's about 18.

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1 Q. That's your classification.  
2 A. Well, when I tested her, yes, so she's an adult.  
3 She would sign herself and her parents wouldn't sign her  
4 in.  
5 Q. I understand but being an adult in the eyes of  
6 the law and being an adult in the real world are two  
7 different things, correct, you would agree with that?  
8 A. To a degree, yes.  
9 Q. Some people can be geniuses at 14 and some people  
10 at 21 could have deficiencies.  
11 A. Life experience has as much to do with it as  
12 ability.  
13 Q. Do you know what Ms. Heafy's complaints were at  
14 the time she gave her deposition, her major complaint  
15 was?  
16 A. I didn't review the deposition transcript so I  
17 can't say.  
18 Q. Doctor, if you could turn to your report, the  
19 first report, as long as I can find it, and page 11.  
20 A. Yes.  
21 Q. Starting with the word "reduced," could you read  
22 that to the jury, please?  
23 A. "Reduced performance was found in general on  
24 tasks measuring memory and those particularly sensitive  
25 to visual attention/concentration."

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1 Q. What does that mean?  
2 A. What it meant was that not on tasks on the  
3 overwhelming majority of tasks measuring executive  
4 function which would look at abstract reasoning, it  
5 would look visual and verbal, it would look at phonemic  
6 fluency, semantic fluency, shifting between verbal sets,  
7 shifting between visual and mental sets, hypothesis  
8 generation and testing, on those tasks her performance  
9 was within the expected range. It was just on these  
10 specific relatively small number of tasks that she  
11 obtained reduced scores.  
12 Q. And what are those tasks that we're talking  
13 about?  
14 A. We're talking about tasks that measure visual  
15 attention and concentration such as the computerized  
16 test of vigilance that I administered where you are  
17 supposed to focus in and do a specific task for 15  
18 minutes and on tasks of -- also on some tasks of memory.  
19 Q. Doctor, could you turn to page nine of your  
20 report?  
21 A. Uh-huh.  
22 Q. Last paragraph.  
23 A. Yes.  
24 Q. Could you read that sentence?  
25 A. "Current test results demonstrated mostly intact

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1 cognitive --"  
2 Q. Stop there. You used the word "mostly".  
3 A. Yes.  
4 Q. Your word, correct?  
5 A. Yes.  
6 Q. Continue.  
7 A. "Ms. Heafy produced scores in the lower half of  
8 the average range on tasks measuring general knowledge  
9 and single word reading, which given her educational  
10 achievements was consistent with premorbid cognitive  
11 abilities falling within the average range. In this  
12 setting in task performance was obtained on tasks  
13 measuring verbal abstract categorization, expressive  
14 vocabulary --"  
15 Q. I want to end there, I wanted you to read the  
16 sentence. You know what a period is, right?  
17 A. You asked me to read one sentence but then you  
18 said continue with the next one so I continued with the  
19 next one.  
20 Q. I didn't ask you to continue with anything, I  
21 said continue. So, Doctor, you used the word "mostly"  
22 there, correct?  
23 A. Yes.  
24 Q. You didn't say completely.  
25 A. Correct.



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1 Q. Doctor, again, turn to page 11 of your report.  
2 A. Yes.  
3 Q. The final paragraph "in conclusion."  
4 A. "In conclusion --"  
5 Q. Just wait, I'm just directing you to the  
6 paragraph, not asking you to do anything yet.  
7 A. I'm there.  
8 Q. After the word -- two words "mental processing"  
9 and the sixth or seventh line down starting with "as  
10 well," could you read that to the jury, please?  
11 A. "As well as efficiency of verbal expression and  
12 visual mental processing, which is consistent with a  
13 good overall recovery from the accident of 12-3-12."  
14 Q. Now, you used the word "good," correct?  
15 A. Yes.  
16 Q. You could have used a myriad of words there,  
17 correct?  
18 A. Right.  
19 Q. You didn't use "full," did you?  
20 A. No, I didn't.  
21 Q. Now, have you rendered reports where you've used  
22 different descriptive words to indicate what her  
23 recovery is?  
24 A. Yes.  
25 Q. Just give me a moment. Doctor, you yourself in

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1 this testimony use the word "overwhelmingly," correct?  
2 A. Yes.  
3 Q. You did not use that word in your report.  
4 A. Okay.  
5 Q. You do render reports where you have used the  
6 word "overwhelmingly."  
7 A. Okay.  
8 Q. Is that true?  
9 A. Sure.  
10 Q. And there is a difference between the word  
11 "overwhelmingly" and "good."  
12 A. That doesn't mean that I'm implying anything for  
13 any given or specific case.  
14 Q. Well, you're rendering a report that says a  
15 person had a good recovery, not a full, not  
16 overwhelmingly, not an exceptional, not an excellent,  
17 good, correct?  
18 A. Yes.  
19 Q. And you know people are relying on these reports.  
20 A. Yes.  
21 Q. That you may not even have the opportunity to  
22 testify in a case and somebody may rely on that report.  
23 A. Yes.  
24 Q. So those words need to be accurate and they need  
25 to be correct, especially when you are drawing your

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1 conclusions.  
2 A. Okay.  
3 Q. So when you report with regard to Ms. Heafy, you  
4 used the words "mostly" and "good." In your testimony  
5 here today you used "overwhelmingly" and "excellent," do  
6 you recall using those words today?  
7 A. Yes, I do.  
8 Q. Why did you change the words?  
9 A. It's just the word that I thought of, the  
10 adjective I thought of at that moment. I do not mean  
11 anything by it.  
12 Q. Well, this is a medical legal document, do you  
13 understand that?  
14 A. Yes.  
15 Q. And when you say something, people take that as  
16 something they are going to rely upon.  
17 A. As you said twice.  
18 Q. And if you said in your report made a fair  
19 recovery, that would mean something better than good,  
20 overwhelmingly or excellent, would it not?  
21 A. There are different shades of gray, yes.  
22 Q. And that's really what we're dealing with here  
23 are different shades of gray, are we not, that Ms. Heafy  
24 claims that she's had a permanent injury as a result of  
25 a mild traumatic brain injury and you claim she did not.

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1 A. I am commenting that based upon the preponderance  
2 of evidence, some of which is the test data, that there  
3 is no conclusive evidence of permanent cognitive  
4 impairments.  
5 Q. And you admit in reports previously to this in  
6 other cases you used the word "overwhelmingly" to  
7 describe a person's condition as a result of you  
8 examining them, overwhelmingly intact.  
9 A. I may have.  
10 Q. As opposed to you don't -- do you agree with me  
11 the word "mostly" and "overwhelmingly" are two different  
12 words that have two different meanings?  
13 A. They could but not necessarily.  
14 Q. Well, if I said -- strike that. You don't  
15 believe if someone is mostly sure versus overwhelmingly  
16 sure, there is a difference in that of their opinion?  
17 A. I would treat it the same way. If someone is not  
18 certain, then they are not certain. If mostly implies  
19 the majority of something, overwhelmingly implies the  
20 majority of something, I can't parse out, nothing is  
21 that precise.  
22 Q. But that's the purpose of these -- your testimony  
23 is to parse out, is it not?  
24 A. The purpose of my testimony is to comment on  
25 someone's overall abilities with a reasonable degree of



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1 certainty, not an absolute degree of certainty. It's  
2 impossible to exactly quantify things in the manner in  
3 which that you are classifying them.  
4 Q. When you say "exactly," do you mean mostly,  
5 exactly or somewhat?  
6 A. I mean exactly.  
7 Q. And you would agree that a good outcome is a  
8 different conclusion than an excellent outcome?  
9 A. At most minimally.  
10 Q. So if someone is saying I'm an excellent student  
11 versus a good student, you would find that to be  
12 minimally different?  
13 A. Yes.  
14 Q. So in your report you didn't choose those words  
15 "mostly" and "good" on purpose, they are just adjectives  
16 you happen to use at the moment?  
17 A. That is correct.  
18 Q. And you could have used excellent or  
19 overwhelmingly?  
20 A. Yes.  
21 Q. And you chose not to?  
22 A. I did not consciously choose one way or the  
23 other.  
24 Q. Knowing that people are going to rely and this  
25 jury is going to rely on what you wrote.

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1 A. Yes.  
2 Q. Could you tell me what other words in your three  
3 reports you didn't consciously choose to make a  
4 difference?  
5 MR. THAPAR: Objection.  
6 THE VIDEOGRAPHER: We're going off camera.  
7 Time is 11:32.  
8 MR. THAPAR: That's just argumentative at  
9 this point. You want him to read the whole report and  
10 then start going through each word that he said?  
11 MR. CORRISTON: Sure.  
12 MR. THAPAR: I mean, this is going to take  
13 an hour to just go through each report and then -- I  
14 mean, do you have a specific question of any word that  
15 you don't --  
16 MR. CORRISTON: I'll rephrase the question.  
17 MR. THAPAR: Okay.  
18 (Benoff I, neuropsychological evaluation,  
19 was marked for identification.)  
20 THE VIDEOGRAPHER: We're back on camera.  
21 The time is 11:34.  
22 BY MR. CORRISTON:  
23 Q. Doctor, let me rephrase the question. Are there  
24 any other words in any of the other three reports you'd  
25 like to change or amend at this time?

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1 A. Nothing specific that I could think of offhand.  
2 Q. So the only two words that you would use  
3 interchangeably in your report at this point in time are  
4 "good" and "mostly" and you'd say that's tantamount to  
5 overwhelmingly and excellent?  
6 A. Again, not having spent hours analyzing every  
7 individual word, yes, I would have to say that.  
8 Q. Okay. Doctor, I'm going to show you what's been  
9 marked Benoff I.  
10 A. Okay. I don't know what I'm looking at here.  
11 Q. Look at the form, do you recognize the form of  
12 the report?  
13 A. It's a neuropsychological report.  
14 Q. And the last page, is that your signature?  
15 A. Yes, it is.  
16 Q. The name has been redacted.  
17 A. Okay.  
18 Q. Go to page nine, please. Your conclusion?  
19 A. Yes.  
20 Q. Could you read the first line?  
21 A. "In conclusion to a reasonable degree of  
22 neuropsychological."  
23 Q. Comma.  
24 A. No, that's not what I said, "neuropsychological  
25 probability comma." Do you want me to continue beyond

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1 the first line?  
2 Q. Yes.  
3 A. "Based upon overwhelmingly intact performance on  
4 task measuring --"  
5 Q. Stop there. "Overwhelmingly intact," correct?  
6 A. Yes.  
7 Q. You used the word "mostly" with Ms. Heafy.  
8 A. Okay.  
9 Q. Skip down and where the blackout is of the  
10 person's name.  
11 A. Yes.  
12 Q. Could you read after that?  
13 A. "Has made an excellent overall recovery from the  
14 motor vehicle accident of 9-13-12."  
15 Q. Stop there. You used the word "excellent" not  
16 "good," correct?  
17 A. Yes, I did.  
18 Q. Thank you, Doctor. That's it.  
19 Doctor, how many times in the last two years have  
20 you given an opinion in a medical legal setting for a  
21 defendant that a plaintiff has suffered a permanent  
22 injury as a result of a mild traumatic brain injury?  
23 A. As I said in the past, I don't keep track of this  
24 and I don't know.  
25 Q. Doctor, knowing that you are going to be asked

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1 that question every time you testify, didn't you think  
2 maybe it was prudent at sometime in the four years that  
3 you do allocate when you do and do not do that?  
4 A. I don't believe -- I don't know when I was first  
5 asked that question.  
6 Q. Well, I'll submit to you that I have a deposition  
7 from at least four-years ago where you were asked that  
8 question.  
9 A. When I comment on an individual, I'm commenting  
10 on that individual relative to the population as a  
11 whole. I do not cross reference different individuals  
12 with different accidents in different circumstances with  
13 different treatment at different ages, different  
14 genders, there are too many variables there. I treat  
15 each case individually and I evaluate that person  
16 relative to his or her premorbid abilities.  
17 Q. But this jury is counting on your voracity, your  
18 truthfulness, your independence, you understand that?  
19 A. I do.  
20 Q. And you understand that part of that independence  
21 is getting up here and saying I have, in fact, found  
22 people to have mild traumatic brain injury with  
23 permanency in the past as opposed to every person I've  
24 ever examined has never had that, suffered that  
25 condition.

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1 A. As I've said, I have found sequelae. I just do  
2 not keep track of individual names.  
3 Q. And would it be fair to say you have not rendered  
4 a report on behalf of a plaintiff in any case in at  
5 least the last five years?  
6 A. I don't know exactly when I have rendered a  
7 report about a plaintiff, on behalf of a plaintiff.  
8 Q. Thank you, Doctor, I have nothing further.  
9 EXAMINATION  
10 BY MR. THAPAR:  
11 Q. Doctor, once again, what does it mean that  
12 Plaintiff met the criteria that she had a concussion?  
13 A. The commonly assumed criteria about concussion,  
14 and there are different levels of concussion, grades  
15 one, two and three, one being the mildest, three being  
16 the most severe. A grade one concussion would be a  
17 situation where there is a fleeting less than 15 minute  
18 roughly period of confusion, there is no loss of  
19 consciousness and the symptoms resolve as I said within  
20 15 minutes. A grade two would be where it may take  
21 longer than 15 minutes for the symptoms to resolve but,  
22 again, there is no abnormal imaging, there is no loss of  
23 consciousness. With a grade three concussion, there may  
24 be some degree of loss of consciousness but it's not a  
25 protracted period of loss of consciousness.

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1 Q. So which grade did she meet?  
2 A. Based on there being no documented loss of  
3 consciousness, it would be a grade one or two depending  
4 on how quickly the symptoms resolved.  
5 Q. So this is completely self-reporting.  
6 A. That is the nature of the diagnosis at the  
7 moment.  
8 Q. So you were concluding that she had met the  
9 criteria for a conclusion based on what she's saying?  
10 A. That is the way we diagnose concussion.  
11 Q. How common is it to sustain a concussion?  
12 A. Many people have sustained even a brief period of  
13 altered -- and may not be loss but it could be altered  
14 consciousness. Many people have. I have, I know many  
15 others have over their life span.  
16 Q. Now, in the Plaintiff's freshman year let's  
17 assume that her grade was 85, which we stated during  
18 cross-examination, how was her first marking period of  
19 sophomore year, though, before the accident?  
20 MR. CORRISTON: Objection.  
21 THE VIDEOGRAPHER: We're going off camera.  
22 The time is 11:40.  
23 MR. CORRISTON: Asked and answered. He went  
24 through this extensively in direct examination.  
25 MR. THAPAR: I'm just laying the foundation

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1 for what I'm going to ask next.  
2 MR. CORRISTON: Okay. I'm still going to  
3 object obviously.  
4 MR. THAPAR: That's fine.  
5 THE VIDEOGRAPHER: We're back on camera.  
6 Time is 11:41.  
7 BY MR. THAPAR:  
8 Q. Now, Doctor, what was brought out during cross-  
9 examination is the Plaintiff may have had an 85 grade in  
10 her freshman year but how was she doing in the first  
11 marking period of her sophomore year?  
12 A. In the first marking period, she among the more  
13 academic subjects, meaning things not including physical  
14 education, she -- there was only one grade above a 79  
15 and that was English, which was an 82.  
16 Q. So she was struggling before the accident.  
17 A. Clearly.  
18 Q. And so what is a more accurate depiction of how  
19 she was doing as a sophomore -- how she was doing after  
20 the accident? Is it what she was doing her freshman  
21 year or her first marking period of her sophomore year?  
22 A. As mentioned before, the large majority of people  
23 who suffer a concussion experience a recovery and a  
24 return to baseline within the months right after. So if  
25 I'm looking at the most precise measure before and



1 after, it would be just prior to the accident to the  
2 months after the accident.  
3 Q. Now, Doctor, have you experienced students who  
4 have come in and do well one year and then another grade  
5 it's just harder for them?  
6 A. Certainly, that's not uncommon at all and what  
7 actually is uncommon is over time after a concussion for  
8 things to progressively worsen, that's unusual for  
9 concussion.  
10 Q. Okay. But is it also possible that maybe  
11 sophomore year was just harder than freshman year for  
12 the Plaintiff?  
13 A. It's entirely possible and it's also possible --  
14 MR. CORRISTON: Objection.  
15 THE VIDEOGRAPHER: We're going off camera.  
16 The time is 11:43.  
17 MR. CORRISTON: The word "possible" is not  
18 legally or foundational in this opinion, it has to be  
19 probable. Anything is possible, I could be president,  
20 not probable. I used to drive a truck --  
21 THE WITNESS: We might be. We might prefer  
22 that even.  
23 MR. CORRISTON: Possibilities are not a  
24 relevant term in this setting.  
25 MR. THAPAR: Okay, I'll rephrase it.

1 THE VIDEOGRAPHER: We're back on camera.  
2 The time is 11:44.  
3 BY MR. THAPAR:  
4 Q. Now, Doctor, could it be one explanation for why  
5 her grades were worse her sophomore year than her  
6 freshman year just that sophomore year was harder for  
7 her?  
8 A. It's certainly possible. It could also be the  
9 nature of the teachers that she had, maybe she was  
10 having a difficult time connecting and learning from  
11 certain teachers. There are a lot of variables that go  
12 into people's grades.  
13 Q. Maybe chemistry is just harder.  
14 A. That's also true.  
15 Q. You were going to say something before you were  
16 cut off on whether her grades went down, do you recall?  
17 A. Yes.  
18 Q. What were you going to say?  
19 A. Well, what I was commenting is that when there  
20 are cognitive effects from a concussion, the typical  
21 pattern is to recover but if there is no recovery, the  
22 typical pattern is to stay level. Concussion does not  
23 result in a progressive worsening over time.  
24 Q. Now, Doctor, is it common for a person to have  
25 done well in high school and then struggle in college?

1 A. I can't say to what degree it is common but I've  
2 certainly heard it happen.  
3 Q. Could it be factors besides a post concussion  
4 syndrome that caused a person not to do well in college?  
5 A. Certainly.  
6 Q. Generally speaking, if a person puts less effort  
7 into the test that you administered and gets -- and  
8 purposefully gets answers wrong, would that have an  
9 affect on the results?  
10 A. It definitely can.  
11 Q. Will it reduce the results?  
12 A. Usually not in whole but it's not unusual for it  
13 to happen in part.  
14 Q. Now, what did you mean when you -- there was a  
15 big discussion of the semantics of good versus  
16 excellent. When you wrote the word "good", what did  
17 you -- good recovery, what did you mean by that?  
18 A. What I meant that there was no clear cut evidence  
19 of her having any long-term difficulties as a result of  
20 the accident.  
21 Q. Okay. And what did you -- so what was your  
22 understanding of using the term "good"?  
23 A. That it reflects a -- if not perfect, then a  
24 virtually perfect recovery.  
25 Q. And did you intend for there to be a difference

1 by using the word "good" instead of "excellent"?  
2 A. No, I did not intend it.  
3 Q. And when you said "mostly" instead of  
4 "overwhelmingly," did you intend for there to be a  
5 difference when you wrote it?  
6 A. There was nothing intended.  
7 Q. So it was just your choice of words?  
8 A. It was just the choice of words at that moment.  
9 Q. But your report stays the same, your report means  
10 the same thing.  
11 A. Yes, it does.  
12 MR. THAPAR: I have no further questions.  
13 EXAMINATION  
14 BY MR. CORRISTON:  
15 Q. Just briefly, Doctor. You have no evidence and  
16 nothing in the report that indicates that Ms. Heafy at  
17 any point in time tried to manipulate the results, do  
18 you?  
19 A. No, no, I wouldn't say that.  
20 Q. That she wasn't being honest, she wasn't  
21 cooperative, she wasn't giving some effort although  
22 there were points in time where her effort diminished?  
23 A. No, there was no evidence of that.  
24 Q. And, Doctor, you would agree that people with  
25 issues that may have residual effects from a mild



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1 traumatic brain injury may be required to put forth more  
2 effort to get the same or better grades?  
3 A. Yes.  
4 Q. So -- and you don't know as you sit here today  
5 whether or not Ms. Heafy was required in school to give  
6 more effort and take longer time to comprehend what was  
7 going on from a school perspective than she was required  
8 to do so before the accident?  
9 A. No, I can't comment on that.  
10 Q. Thank you.  
11 MR. THAPAR: Thank you, Doctor.  
12 THE VIDEOGRAPHER: The time is 11:47, that  
13 concludes this deposition.  
14 (Whereupon, an adjournment was taken at  
15 11:47 a.m.)  
16  
17  
18  
19  
20  
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22  
23  
24  
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1 C E R T I F I C A T I O N  
2  
3 I, LORI JONES, a certified court reporter of  
4 New Jersey, do hereby certify that prior to the  
5 commencement of the examination, the witness was duly  
6 sworn by me to testify the truth, the whole truth and  
7 nothing but the truth.  
8 I DO FURTHER CERTIFY that the foregoing is a  
9 true and accurate transcript of the testimony as taken  
10 stenographically by and before me at the time, place and  
11 on the date hereinbefore set forth, to the best of my  
12 ability.  
13 I DO FURTHER CERTIFY that I am neither a  
14 relative nor employee nor attorney nor counsel of any of  
15 the parties to the action; and that I am neither a  
16 relative nor employee of such attorney or counsel; and  
17 that I am not financially interested in the action.  
18  
19  
20  
21 LORI JONES, CCR  
22 LICENSE NO. 30Xi00161900  
23  
24  
25

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