COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: CIVIL TERM: PART 13

- -X

JOAN JANCZEWSKI,

Plaintiff,

- against -

INDEX NUMBER:
651108-13

AUTOCAR LA CAPITALE INC, GROUPE AUTOCAR JEANNOIS INC, and JEAN MARK BINETTE,

Defendants.

- -X

Supreme Court
71 Thomas Street
New York, New York 10007

February 8, 2016

BEFORE:

HONORABLE MANUEL J. MENDEZ,
Justice of the Supreme Court

APPEARANCES:

LAW OFFICES OF JAMES J. MCCRORIE PC
Attorney for the Plaintiff
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New York, New York 10018
BY: JAMES J. MCCRORIE, ESQ.
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D O C T O R K I M B U S I C H I O,

called as a witness in behalf of the Plaintiff, having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

COURT OFFICER: In a loud and clear voice, state your name, spelling your first and last for the record, please.

THE WITNESS: My first name is Kim. My last name is Busichio, B-U-S-I-C-H-I-O.

COURT OFFICER: Your business address?

THE WITNESS: 952 Fifth Avenue, Suite 5B, New York, New York, 10075.

MR. McCRORIE: May I proceed, your Honor.

THE COURT: You may proceed.

DIRECT-EXAMINATION

BY MR. McCRORIE:

Q Good afternoon, Dr. Busichio; correct?

A Yes.

Q Dr. Busichio, could you please tell the jury your educational background, graduate school and go into any residencies and fellowships you performed.

And before we do that, are you licensed to practice any particular area in the State of New York?

A Yes, I'm a psychologist in the State of New York.

Q And do you have any type of subspecialty within

psychology?

A Neuropsychology.

Q So please tell the jury your background, your licenses, internship, residency, fellowships, anything that pertains to your background?

A So I graduated my Ph.D., Fairleigh Dickinson University, Hackensack, New Jersey, in clinical psychology.

I went on to do my internship in neuropsychology at NYU Rusk Institute for rehabilitation medicine. That's traumatic brain injury, concussion and cognitive rehabilitation.

Then I went on to do a two-year postdoctoral residency in neuropsychology at the JFK Institute in Edison, New Jersey, and that was one year inpatient and one year outpatient, concussion and cognitive rehabilitation.

Q And are you published?

A Yes.

Q Just, if you could just tell the jury, just give them some more background.

A Sure. So throughout my graduate studies, I did presentations at the International Neuropsychological Society. I did presentations at the APA, which is the American Psychological Association and numerous publications with other coauthors, also.

Q After receiving your Ph.D., can you just tell the jury

your work background?

A Sure.

So after I graduated, I went on to do an internship and then two-year postdoctoral residency. After I completed my two years postdoctoral residency in neuropsychology, I began working at The Center for Cognition and Communication.

Q Before you did that, where did you do the postdoctoral residency in neuropsychology York?

A That was at the Johnson Rehabilitation Institute in Edison, New Jersey. I did a one-year inpatient and one-year outpatient.

Q Is that The Center for Head Injuries within the Johnson Institute?

A Correct, correct.

Q Okay. Did you already discuss Rusk Institute?

A Yes, that's at NYU. The Rusk Institute Rehabilitation is where I did my one-year internship for traumatic brain injury, concussion and cognitive rehabilitation.

Q Did you ever do individual psychotherapy to any degree?

A Yes. My training as a clinical psychologist prior to becoming a neuropsychologist was in training clinical psychology, which is anxiety, depression, posttraumatic

stress disorder, just to name a few of the emotional disorders that I treated.

Q Additionally, in addition to the JFK in Edison, New Jersey, what is Kessler Rehabilitation?

A Kessler Rehabilitation Institute is where I did a lot of my research while going through graduate school. I did a lot of traumatic brain injury research there, caregivers, families, going through the hardships of the brain injury and recovery of brain injury.

Q What was your doctoral dissertation in?

A What I did was that I was also working with chronic fatigue syndrome patients at the time at the VA in East Orange, New Jersey, and dealing with also Gulf War veterans that came back with brain injury and chronic fatigue syndrome.

And I looked at the cognitive deficits related to chronic fatigue syndrome and traumatic brain injury, and I also looked at the subjective, the subjective complaints and the objective performance on cognitive tests.

Q Why don't you tell is there anything else to discuss with the jury before we get into the current employment and practice?

A That's my background; and if you want me to talk about what I've been doing now, I can.

Q Please do.

A Okay. So --

Q After the time period, please.

A 2006 is when I began the clinical practice at the Center for Cognition and Communication. It's an outpatient facility for patients with concussion, traumatic brain injury, postconcussive syndrome and also cognitive rehabilitation and treatment related to injury; and I've been doing that since I've been here since 2004.

Q Does that practice accept motor vehicle accidents and the benefits that are available for a period of time for someone injury understand a motor vehicle accident?

A Yes.

Q Are you being paid for your time away from that practice?

A Yes. I'm being paid for my time away from the practice and all the preparation going into reading all the medical records coming up.

Q What is the hourly rate or rate for the time away from your patients, and then we'll ask you how many patients you have approximately?

A So, for the preparation and then to be here today it was $6,000 total for all of my review and prep.

Q Did you and I meet?

A Yes.

Q Once before this?

A Yes.

Q Have you ever testified ever other than -- is this the first time you're testifying for any client of mine that was injured?

A Of yours, yes.

Q It's not your first time testifying?

A Correct.

Q Did you bring your complete file with you here today?

A Yes.

Q At the appropriate time, we'll mark it as Plaintiff's 51.

We ask that you don't read from anyone else's records that might be within your file.

A Okay.

Q And that only from your physical notes or typed notes, office notes, okay, or testing?

A Yes.

Q Do you understand what I mean by that, though?

A Yes.

Q Is Joan Janzcewski a patient of yours?

A Yes.

Q When did she become a patient of yours?

A December 19th of 2012, I met her for the first time when she came in for a neuropsychological evaluation and treatment, if necessary. She was referred to our center by

her treating neurologist, Dr. Hausknecht.

Q Can you please tell the jury the difference or the distinction between clinical psychology, neuropsychology?

A Okay. So clinical psychology, you really work with emotional sequelae or emotional disorders related to could be an injury or could be just a physiological emotional disturbance.

What neuropsychology is, it's a specialty in treating head injuries so closed head injuries, concussions, mild traumatic brain injuries, traumatic brain injuries and also specifically treatment related to that. So cognitive rehabilitation; and what I mean by that is memory deficits, attention deficits, spacial deficits, processing speed, anything related to the brain and recovery from the head injury.

Q And it is true that there's a spectrum of what is known as brain injury, traumatic brain injury?

A Correct.

Q Concussion being on the lowest end of that?

A Concussion -- well, they're just different. I wouldn't consider it the lowest end of it. I would say concussion is different than a traumatic brain injury as different from -- they're all different.

Q Well, even in that concussive type of injury, there's a spectrum; correct?

A Correct, correct.

Q Can you tell the jury what postconcussion syndrome is?

A So when a patient has a concussion, what postconcussion syndrome is it's the sequelae after a concussion and it's a constellation of symptoms.

So a patient might have behavioral symptoms, emotional symptoms, cognitive symptoms is what I treat for, physical symptoms where they're seeing their a neurologist for or other medical doctors. So it's a constellation of symptoms that they put under the umbrella of postconcussion symptoms.

Q Is it the same constellation of symptoms for every single case?

A No.

Q Just describe that concept?

A Okay. So, for example, physical symptoms might be headaches, dizziness, nausea, light sensitivity, balance problems. These are a lot of the symptoms they're seeing their neurologist for or physiatrist; and with me in terms of cognitive attention problems, memory problems, processing speed problems, spacial skills, speech problems. That's what I treat for.

They also have could have an emotional disorder where they might see a psychologist or psychiatrist for that, and any type of orthopaedic injuries, too.

Q Okay, where is the office located?

A 952 Fifth Avenue, New York, New York.

Q What is that Fifth and what?

A Fifth between 77 and 76th Street.

Q Are you an owner of that facility, an employee or something else?

A An employee.

Q Who is the owner of that facility?

A Dr. Jason Brown.

Q When you see a patient, does Dr. Brown also see the patient?

A Yes. Dr. Brown sees every patient that comes to the center. He's the neurologist, and I'm the neuropsychologist and we work together.

So every time the patient comes in, the patient is interviewed by both Dr. Brown and myself; and then I do all of the evaluation and the treatment.

Q Okay. And just different physicians have different formats to their medical records.

Can you just tell the jury on your neurobehavioral screen, what that means if they see that on the top of --

A So what the neurobehavioral screen is, it's a neuropsychological evaluation that's standardized. So every patient that comes in, we standardize from their age and

education level, and we take a look at all their cognitive symptoms; attention, memory, processing speed, spacial skills, verbal functioning and then we determine if that patient -- Dr. Brown and I both determine if that patient needs -- would require cognitive rehabilitation, if they would benefit from that and that's what we do.

Q What is cognitive rehabilitation?

A What it is is we set up a treatment plan which are exercises specifically based on the evaluation that we give in memory, attention, focus, processing speed, verbal memory; and then we break up memory into verbal memory, nonverbal memory, the specific areas that the patient is having trouble with and then I create exercises for that patient to work on those areas and see the progress throughout treatment.

And, I'll adjust the treatment plan accordingly. So if I think a patient might need something else after two months of treatment, I'll switch the treatment plan depending on that.

Q Can you please -- when did you first see Ms. Janczewski?

A December 19, 2012.

Q And were you aware -- it's on there, but you're aware of when the accident was?

A Yes.

Q For the record, you have to say if you don't mind.

A November 30, 2012.

Q Okay. And you took a history?

A Yes, I did.

Q What was the history as relayed to you?

A So she was a pedestrian crossing the street and struck by a tour bus. She struck her head, had an altered state in consciousness. What I mean by that, she felt dazed and confused at the scene, was taken to the hospital, NYU New York Presbyterian; and then she was evaluated for her head injury at the hospital there.

Q And at that time -- although it may have ruled out -- was there an indication that there was something on an MRI indicating a brain injury?

A An MRI, yes, there was an MRI on 12/20/2012, which showed a decreased size in hippocampal formation likely due to trauma. That's what the report read.

Q Okay. So, in any event, that information was relayed. What is the hippocampal?

A It's part of the area where we -- it's a memory area of our brain, so it's responsible for that.

Q And that was on the left side?

A Yes.

Q In any event, another doctor will talk about that and having ruled that out, but what were the -- what were the

symptoms or what was she complaining to you about on that first visit?

A So Dr. Hausknecht, her treating neurologist, referred her to us for problems in attention, memory --

Q Tell us what she said to you. Dr. Hausknecht will say what he said to her. Just as relayed in your report, please.

A Sure.

So attention, memory, word finding and speech problems at the time that she initially came in.

Q And this is what I would like you to do, Doctor. Could you actually look at your report?

A Sure.

Q And at least reference on the first one, so other than -- did you review your file? Did I ask you to review your file?

A Yes.

Q Try not to go on memory because it's going to be in evidence, at least your note.

Can you please tell us at least that first visit what she have was having issues with?

A So the cognitive complaints were attention, memory, word finding and speech problems. She also reported bodily pain, headaches, dizziness, light sensitivity, changes in smell and taste, difficulty walking, balance problems, hearing and vision difficulty, sleep disturbance and anxiety

and depression.

Q So, is there anything else prior to telling the jury what you did -- we're not going to go through every note or every test; but is there anything else about this first -- take them, if you can, through the time it takes you to do such an evaluation.

I know it's noted on a lot of the other dates, but how long does the neurobehavioral screen take you?

A It does vary from patient to patient depending on the speed; but what typically happens -- I'll take you through the evaluation.

What typically happens the patient comes in. They're interviewed. That interview really varies depending on the patient.

Q Could you go a little slower for the court reporter, please.

A I'm sorry. Some patients remember things about the accident. Some patients have a little bit more of a foggy memory of what happened.

Q Slower.

A So that's when I also requests medical records to look at the accident and thee details. But, we do a clinical interview. We determine what areas they're having trouble with in terms of the cognitive deficits, in their everyday life and what other symptoms they're having; and

then I conduct the neuropsychological evaluation.

So after reviewing the symptoms as she had told us attention, memory, word finding and speech, then we do a cognitive evaluation. I do a cognitive evaluation, get the results from the evaluation, and then score up the evaluation and then write the report and that's the process of what we do.

Q We won't do it on every single note, but when Ms. Janczewski told you she was depressed and anxious since the accident, can you tell the jury what clinically reactive anxiety and depression means?

A Okay. So when a patient, when a patient has reactive anxiety depression, what that means is they are reacting to their life change. Their whole life has been turned upside down.

So, for example, Ms. Janczewski, she's been working at a hedge fund as COO for a long time. This was her life. She could no longer do it anymore so --

Q And at that point, I'm just talking about -- this is one month later -- at that point she couldn't do it?

A At that point she couldn't do it, correct. And that's going to create lot of depression, a lot of anxiety in her life because her routine, she no longer -- that was who she was, her job; and she didn't have that anymore so she's finding out who am I now? Who is this new person that

I don't know? And that's scary for a patient and a lot of times that's a reaction to the head injury.

That's why they call that reactive anxiety depression.

Q Okay. Could you describe whenever the head is hit, something -- I believe it's French coup contrecoup, what does that mean in your field?

A So coup contrecoup is the mechanism the way the brain is jolted inside the skull. I was trying to think of the best term, but I would say jolted.

Your brain sits inside your skull; and when you get struck, your brain moves inside your skull back and forth.

Q In the spinal flood?

A Correct. It moves back and forth, and it can cause microscopic shearing damage, microscopic axonal shearing and tearing.

So, you have you have this jolt back and forth. It's almost like friction. You think about friction of the brain inside the skull going back and forth.

I almost describe it as some people have heard about the baby, the shaken-baby syndrome where the baby is shaken. The baby might not hit their head -- but in this case she did hit her head -- but the baby might not hit their head, but the baby's brain is shaking inside the

Dr. Busichio - Plaintiff - Direct/McCrorie

Q Okay. When you perform a neurobehavioral screen or administer tests to a patient, and in fact to Ms. Janczewski, do you test for effort?

A Yes.

Q And why? And how?

A It is important for me as the treating -- as the treating doctor to be able to know what I am treating. So I want to make sure that I am treating valid cognitive deficits. So what I do is, I always give an effort test somewhere in the evaluation, the patient does not know about the test at all. So if the patient was making it up or trying to act -- more impaired than they are, I would know it because they would fail that test. And they don't know -- it is a memory test, so they think I am giving them a memory test and she did great on the test, so that just shows -- and she did very poor on the other memory tests that I gave her.

So the effort test she did great on, and which she thought was a memory test, and the rest of the test, not so well.

Q And did you continue those tests -- if you do retesting such as in this case -- we will talk about it.

A Yes.

Q But do you let the patient know, or you just do it without letting them know?

A She does not know she is taking an effort test because that would defeat the purpose of why I am giving it. I want her to think it is an memory test and she how she performs on that test, but as the treating doctor, there is a number of ways I can also look at it.

I don't just look at one test. I look at one test and then I also look at scores and the profile. So there is a lot of different ways I can -- if someone does well in certain areas and poor in others, they don't know which test is an effort test. So if they are doing well in certain areas, they are putting forth effort because they are preserved in those areas. The areas that they are impaired on are the areas that they have legitimate cognitive deficits, so there are ways to determine that, also.

Q Is there anything else to discuss before we get past the clinical interview on the first assessment?

A No, we do -- I get the general interview from the patient, what they remember happening from the accident.

Q Called the clinical interview?

A Clinical interview.

And then I also get specifics on the attention and memory problems they are experiencing in their everyday life and then I go on to do the evaluation.

Q And were you aware of what she -- you already said

it, you were aware she was a COO of a hedge fund?

A Yes.

Q Did she describe her duties to you?

A Moving a round a lot of millions of dollars of money. Also overseeing a staff of 40 people, making sure they are doing their jobs.

Q Is there a term executive function in your field?

A Yes.

Q Why don't you tell -- just for the record, put down the names of the tests that you administered to Ms. Janczewski? On the first visit?

A Okay. So it is called the Mindstream Scientific Cognitive Assessment System; the WAIS Four Digit Span, the Raven's Standard Progressive Matrices, the Rey Complex Figure Test, the WAIS 15 items, and then we also did the clinical interview.

So that was part of the list.

Q Did you -- can you place in the record how long approximately the testing takes? You told us what the clinical interview might be, but what was the testing?

A The testing -- that also varies. The clinical interview varies and the testing varies, but I would say sometimes four hours in total, sometimes longer. It could even go longer than that.

Q And then just -- sometimes you -- when I say you,

your company, your place has a progress note which would actually list the amount of time, an hour and fifteen minutes, two hours, but that time limit is not listed on these neurobehavioral screens?

A Correct.

Q Okay.

So could you please tell the jury, using -- before you get to your summary and diagnostic -- initial impression, could you tell the jury what was neuropsychologically significant, either positive or negative on any of the tests? Taking us through each type of function.

A Okay. So what we do is, we do something called the pre morbid intelligence test which again, she does not know what this test is for, either.

Q Like an IQ test?

A It is an estimated IQ test. So I want to know, because a lot of people say you are testing the person after the injury, so how do you know from prior functioning as to how they are functioning now? How do you know the person was any different?

Well there is a test we give, it is an estimated test, gives us a good estimation of where -- it is a stable measure, will not change much with a concussion, may come down a little bit but not come down a

significant amount and she was in the high average range in that test. So that gives me a high average functioning prior, along with her report of what she was doing professionally.

Q And that is when you write 72 to 78th percentile of the population?

A Correct.

Q So that is --

Q That is all normed with her age and education level. So any patient with her age and education level, that is standardized to get a percentile, so she is functioning at the high average range which is consistent with what she was doing professionally, also.

Then we give a series of tests which are -- which will change with the concussion. So if the patient is having cognitive deficits related to a concussion, these tests will pick that up.

And she performed very poorly on the memory test, the executive functioning test, the attention test, process --

Q This is initially, correct?

A This is initially, yes.

The information processing and her overall global cognitive scoring was in the third percentile, which is significantly impaired.

Q Has Ms. Janczewski improved since you have started working with her?

A Yes. Yes, she has.

Q And have you noted all of the improvements in the subsequent exams?

A Yes. We noted all of the improvements and I adjusted the treatment plan so that I could work specifically on those areas and increase the complexity for her, to keep challenging her.

Q Did she stay in the high percentile in certain skills, verbal functions and other things that --

A Yes, she did.

So there is a visual spatial test and a verbal function test. She did in the 63rd percentile and the 61st percentile, which is fine on the initial evaluation. I thought they were intact, they were good, they were preserved functions for her and that is another -- I was describing effort. You would not see that on a person not giving effort. You would not see someone performing very nicely in certain areas, because she does not know what I am testing for.

And so, I did see she performed nicely in those areas. So my treatment plan focused on the areas she needed work with.

Q I will speak about it later on, but did you at

least review the reports, not the -- of the defense neuropsychologist as what she did poorly on and did good on?

A Yes, I did.

Q Did they match up to what your testing did, the standardized testing?

A Yes, they did.

Q What, if anything, did that indicate to you about her effort, the fact that similar areas were similar results, both positive and negative?

A Correct. Again, they are not the exact same percentiles, because it is going to be two separate days but they are within the same what we consider range. So average range, high average, low average and a lot of the tests were very similar across those tests.

And again, a lot of the deficits that I found were similar across different tests. So again, that is another thing with effort. If someone were not performing, they will not be able to consistently perform years later on different -- on a different test, different administrators, too. Different testing centers, also.

Q Even on opening -- and we have talked to the jury, if the words traumatic brain injury are there and post concussion syndrome, as far as -- did you have an impression as to whether or not Ms. Janczewski had a head

injury with some form of post concussion syndrome?

A Yes. She had that, yes.

Q And what if any neuropsychological impression did you have initially?

A That she had the closed head injury with post concussion syndrome, and that she had cognitive deficit related to that.

Q Okay. Did you recommend any type of -- in addition to the testing that you did and the testing is all here, correct?

A Correct.

Q The testing and what she did.

In addition to the tests, did you recommend that she attend any type of cognitive therapy?

A Yes. I recommended a course of cognitive rehabilitation therapy.

Q What does that consist of?

Withdrawn.

What did it consist of?

A Exercises. I -- so I developed a treatment plan based on the evaluation, and these are exercises specifically in the areas that she had trouble with. They are on the computer. They're -- they are different complexities. So there is basic levels, moderate and more complex levels and depending on how she did in each of the

different domains, the memory, the attention, processing speed, I started her out at different levels and then, she benefited from treatment throughout the course of treatment.

Q And did she consistently benefit from the treatment, even through today?

A Correct. Yes.

Q And in fact, even in your notes, you state she could stop it in the near future?

A I did, yes.

Q So could you tell the jury the type of -- initially, and then we will jump to maybe like a year later and a year later but -- after lunch I would think that will happen, but just tell them, you said basically you put them on a computer and what?

For her specifically, what was the plan initially?

A So she had learning and memory problems, both verbal and non verbal.

Q Long-term or short-term?

A Short term memory problems, both the verbal and non verbal and there is areas of words and target words that I put on the screen and she has to remember the pairs of words, also different targets like the orientation of which way I say the arrow goes or the key goes.

So there are different visual exercises I gave her. Attention to detail. There might be a picture septum let us and she has to pick out the details of the picture. These are just examples of some of the exercises that I give. Working memory is being able to manipulate information, so one of the hardest things with concussion is being able to not only remember say a number, but able to say it backwards. Like just being able to manipulate that in your head.

Things that we might even take for granted we could do. Again, that is very hard with very big numbers, but smaller numbers, to try to get her brain to be able to manipulate the information, which is important.

Q On the neurobehavioral scene, it indicates there are two dates. Is this the culmination of assessing her over those 12-19, 2012 and 2-14, 2013?

A Yes. What happened with that date? She came in initially on December 19th of 2012 and we began and did the clinical interview Dr. Brown and I, and we started the evaluation, but she had such severe headache that day that we could not continue the evaluation because I have to not only make sure a patient is giving full effort, giving forth full effort, I have to make sure other things are not interfering with the cognitive performance that day.

So, she had to come back. She had to go back to

her neurologist again to handle the headaches and then she did return back to our office on February 14, 2013 to complete the evaluation.

Q And each time you gave the evaluation, other than specifically giving it for neuropsychological, did you also consider the fact, if she told you on the notes that she was in pain, that she was taking medication, and that she was anxious and stressed through surgeries and other things she was going through?

A Everything is always considered. If I feel at any point that I can't test a patient, we have them come back, which I did in her case. She did come back in February because I wanted to make sure she got a valid indication.

Q She could understand you each time, what you're saying and and what the testing was?

A Yes.

MR. MCCRORIE: ShallI continue, your Honor?

THE COURT: Let's stop it at this point.

MR. MCCRORIE: Thank you.

THE COURT: We will break at this point for lunch. We will reconvene at 2:15.

Remember, do not discuss this case among yourselves or with any one else, and enjoy your lunch and I will see you back at 2:15.

THE COURT OFFICER: All rise, the jury is exiting.

(Whereupon, the jury exited the courtroom.)

THE COURT: You may step down.

We will be on the record.

(Witness exits courtroom)

THE COURT: Mr. McCrorie.

MR. MCCRORIE: I will make a call at lunch. I think I can get witnesses here tomorrow. I think --

THE COURT: In the morning.

MR. MCCRORIE: I will know over the lunchtime.

THE COURT: All right.

So --

MR. MCCRORIE: So briefly, your Honor, I wanted to make the record about Dr. Root.

There were objections to what I was asking to elicit the complaints that Ms. Janczewski made to him as well as the findings he made and the complete history that he took. The representation was -- there were objections. I still wanted to go forward with it, and the representation was I had what I needed and there's -- I was just concerned with an appeal later, that I didn't have the proper basis for him to give the life care plan. And it was represented -- it was

represented there would not be an objection to that.

MR. KAMINSKY: I believe that sufficient basis had been elicited from Dr. Root for him to give an opinion with a reasonable degree of medical certainty on his life care plan.

To the extent it wasn't, I understand Mr. McCrorie would have continued eliciting more information from Dr. Root and so, I have agreed that the defendants acknowledge that Dr. Root's life care plan was presented with a reasonable degree of -- met certain -- because of the information elicited by Mr. McCrorie, as well as additional information that would have been elicited by Mr. McCrorie.

THE COURT: Anything else, Mr. McCrorie?

MR. KAMINSKY: Yes.

MR. MCCRORIE: Oh, no, your Honor.

THE COURT: Mr. Kaminksi.

MR. KAMINSKY: Yes. Your Honor, during the cross of -- during my cross examination of Dr. Root, I asked for a sidebar because I realized that there is an issue that is not yet settled in the law, but it is a very important issue and that is the Affordable Care Act.

The reason I asked for a sidebar is because I didn't just want to question Dr. Root without knowing

how your Honor would rule on that issue. I didn't want to risk a potential mistrial or anything like that.

So as a courtesy to the Court and Mr. McCrorie, I asked for a sidebar to raise this issue and at the sidebar, I asked your Honor if I would be permitted to question Dr. Root about the items in his life care plan.

I would have had asked him whether it would simply be more cost effective for the defendant to provide a policy for the plaintiff -- a policy -- a medical policy for the plaintiff under the Affordable Care Act; what the costs of that policy would be and whether or not the items in the life care plan would be covered under the Affordable Care Act.

It is my position that instead of the plaintiff needing upwards of $1.3 million future value in medical care, the defendant can simply purchase for roughly $25,000 a year, a policy under the Affordable Care Act that could provide all of the necessary care to the plaintiff.

Don't hold me to the $25,000 figure. I am just using it by means of illustration.

THE COURT: Yes.

MR. KAMINSKY: We believe that we could provide all of that coverage to the plaintiff, instead

of paying for it item by item by item.

We know the Affordable Care Act is the law of the land. It is available to her, and I think that we should be permitted to question her on it.

I accept your Honor's ruling that you precluded me from doing that, so I am simply making the record for appellate purposes.

THE COURT: Okay.

MR. MCCRORIE: I believe plaintiff even had that as part of his pretrial -- I think -- part of the pretrial motion in limine. I think it is included in the -- you know, not speaking about disability insurance. I believe Affordable Care is covered in there. Whether it is or is not, it is a collateral source, and it would be up to defendants after the trial to bring in one of the affordable care providers to say this is the cost and that the life care plan and with reasonable certainty guarantee they will pay those items over the course of her life.

I would also like -- just since we have the economist coming tomorrow and health care coverage is one of the losses, I would like to move to preclude any cross examination about what happens after with a -- we have told the defendants we won't make them prove the amounts of her disabilities. The disability coverage.

They might have to prove she is going to get it for -- until the age of 65, but it would be improper. It has not been allowed and there -- if your Honor wants a brief on it, we could do a brief on it as well. I have a specific one ready for each time it is brought up.

MR. KAMINSKY: On that issue, Judge, we have already stipulated as to what the amount of her benefits are and there are some things in the medical records that I think some of the experts have testified to, and there are some statements made by the plaintiff in the medical records that I think clearly open up the door to me bringing out the fact that she is receiving these benefits.

For instance, she gave statements to several of her doctors that she is under emotional distress because of financial concerns. Meaning that she is not receiving her salary any more. But she is receiving $250,000 a year tax free, which is basically the equivalent of the taxable amount of her salary.

So for her to make statement she is under emotional duress for financial issues, and I can point them out in the record, I think that opens up the door for me to point out that no, you're actually receiving these benefits. I have not raised it because I am abiding by the Court's ruling, but if Mr. McCrorie is

going to not stipulate to the fact that she is receiving the benefits and they are a collateral source setoff, then I would like -- your Honor, I would like the opportunity to re-argue that preclusion and I would like to go into the fact that she is receiving the benefits, to challenge her on her claim that she is suffering from duress for financial related issues.

MR. MCCRORIE: I am talking post trial. The disability -- the policy she has is $212,000. Post trial -- any financial distress she has or doesn't, she still has to pay for everything. She is missing 300 minimum, but the person who took her position over -- there is a financial stress on her, Judge, from what she was doing before and he had the full opportunity to cross examine.

MR. KAMINSKY: Yes, I did have a full opportunity to cross examine and I abided by the Court's ruling, but if this is what will be in the medical records, I will put her back on the stand and question her about her financial stress.

MR. MCCRORIE: What medical records? We're -- post trial, there will be a collateral source hearing. And she will be provided -- he can ask whatever he wants post trial. You won't have to subpoena her, she will be here, and she will stipulate

Dr. Busichio - Plaintiff - Direct/McCrorie

these are the amounts I get, $212,000.

THE COURT: Yes.

MR. KAMINSKY: Then, it is --

MR. MCCRORIE: I know. The same concept, but -- I think we are saying the same thing, but not for this trial.

THE COURT: Different -- in different ways. You basically are both saying the same thing. What you're saying is you have no objection to that number being used, but as long as it is used at the collateral source hearing, and not placed before this jury.

MR. MCCRORIE: Yes.

THE COURT: Okay.

MR. KAMINSKY: Well, what I am saying --

THE COURT: That was the ruling and what you're saying.

MR. KAMINSKY: I am abiding by that ruling and what I am saying is I have seen in the medical records where she says a lot of her emotional stress is due to financial issues and if they are due to financial issues, why should I be precluded from letting the jury know? The jury is sitting there thinking she is not getting a dime when in reality we know she is getting 212,000 tax free dollars a year.

Why should there be this misperception in the

Dr. Busichio - Plaintiff - Direct/McCrorie

medical records and this disconnect in the jurors' minds if -- if I am not allowed to ask her about that.

MR. MCCRORIE: It is the same as Social Security Disability which her carrier made her get. If that is all she had, they would not be able to go into it, either.

THE COURT: Okay.

MR. KAMINSKY: Okay. Thank you.

THE COURT: The record is made.

2:15.

MR. MCCRORIE: Yes.

THE COURT: So once we finish with this witness, that will be it for the day?

MR. MCCRORIE: That will be it for the day. I will hopefully find out about this witness for tomorrow.

THE COURT: Let me know so that I can inform the jury.

MR. MCCRORIE: Yes.

MR. KAMINSKY: Judge, one --

THE COURT: Off the record.

(Sidebar off the record.)

(Lunch recess taken.)

(The following was transcribe by Senior Court Reporter Bonnie Piccirillo.)

Dr. Busichio - Plaintiff - Direct/McCrorie

Dr. Busichio-by Plaintiff-Direct

AFTERNOON SESSION

* * * * *

THE COURT: Do we have the witness?

MR. McCRORIE: Yes, Dr. Busichio.

THE COURT: She can come up.

(Whereupon, at this time the witness, Dr. Kim Busichio, having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified as follows:)

COURT OFFICER: All rise, jury is entering.

(Whereupon, at this time the jury then entered the courtroom.)

THE COURT: Good afternoon, everyone. Welcome back. We are continuing with the trial. Still on direct-examination of the witness by the plaintiff.

You may continue.

DIRECT-EXAMINATION

BY MR. McCRORIE: (Continued)

Q Did your cognitive therapy, I think you called it the maintenance therapy progress notes, did they continue through May of 2013?

A Yes, they did.

Q Sometimes it says 3013, but it's 2013?

A Correct.

Q Did there come a time around that time when the

benefits associated with the motor vehicle accident were gone, exhausted?

A Yes.

Q Can you give the jury -- I think when you left -- when we left and took the break, you were going to just give them -- what's the type of cognitive maintenance therapy that was performed on Ms. Janczewski?

A Okay. So what maintenance therapy is, it's different than the regular cognitive rehabilitation.

After a patient has plateaued in therapy, but has benefited from therapy, what we do is put them in a maintenance program. The maintenance program teaches them strategies to get around the deficits that are with them, that are going to remain with them for the remainder of their life.

Q Can you go a little slower.

A What maintenance therapy is we teach strategies to get around the deficits.

So these deficits are going to remain so we teach strategies so they can take in their everyday life and utilize them so they can function better in their everyday life.

Q Was Ms. Janczewski compliant with doing the therapy that was suggested?

A Yes.

Q Did she extend effort during the therapy, as well?

A She did, yes.

Q Did there come a time that -- withdrawn.

Was she also taught things to do on her own, to try to -- almost as home physical therapy, was she taught home exercises to do for the cognitive issues?

A She was. That's what we teach in the maintenance program. So part of maintaining the gain she's made in therapy, we also teach some strategies to get around those deficits that she's going to have to do on her own when she's not in therapy anymore, when we're not following her.

Q Okay. Did that therapy stop, and did she next see you in March of 2014?

A Correct.

Q At that time, did you retest -- do a new neuropsychological screening -- I think you called it -- reevaluation?

A Yes, I did.

Q Did you retest her?

A Yes.

Q And did you say as well as test the effort, the memory and all of those issues?

A I always test the effort on every valuation and always do the -- a full neuropsychological battery, yes.

Q And throughout the course of your treatment, were you

provided with by Dr. Hausknecht or the notes of Dr. Hausknecht, the treating neurologist?

A Yes.

Q Prior to your testimony here today, did you in fact review and even in your treatment the emergency room record, Dr. Hausknecht's record, the MRI reports and things like that?

A Yes, yes, I did. I reviewed everything.

Q The record of a psychiatrist she saw once or twice, Dr. Salkin?

A Correct.

Q And did you in addition to the neuro-psyche behavioral screens, the cognitive therapy and testing that you performed upon Ms. Janczewski, did you rely upon your own interpretation plus the notes and the emergency room and Dr. Hausknecht before rendering a final opinion?

A Yes. Whenever we do an evaluation, we not only take in consideration what she's like in treatment with us, but I always take in consideration all the other therapies that are going on.

So we request records from doctors that are also treating her.

Q Okay. As far as you were informed, did Joan continue to do the home maintenance therapy, whatever?

A Yes.

Q Singling out neuro-psyche. I'm not speaking about

anything physical.

A Correct.

Q Did she then next see you when -- April 2015?

A Correct.

Q Okay, at that time so we don't have to do the notes of each time, did you reevaluate her, retest her?

A Yes.

Q Each time she came, did you note the medications she was on?

A Yes.

Q And were you aware of the treatment she had for the physical ailments outside of the neuropsychological issues?

A I was, yes.

Q So and then did she continue, again, in a maintenance therapy program?

A She did.

Q Same type of tests -- same type of exercises that you told the jury about already?

A Correct.

Q And the purpose of those exercises, do they change depending on the person that you're giving the exercises to?

A They depend on the person and they also depend on her improvement in therapy in each of the different domains that we test. So I go domain by domain. So I see how she's doing in memory, how she's doing in attention.

I have her at different levels depending on the domain that we're working on, and I'll adjust the treatment plan whenever I need necessary to challenge her in different areas to make her -- to benefit from therapy, to improve.

Q In the progress note when it says "goals per the neuropsychological report," sometimes there will be four things for that session, sometimes there's eight, sometimes it goes back to three.

That's what I meant, is it different each time or explain to the jury why that would be different, the goals?

A The treatment that we're working on that day, the goals are -- those are the goals that we're working on that day.

So every progress note will have the treatment goals, and then it will have the results, how she did on all those exercises. Depending on the day, I might be working on something different from her so that's why it might change from day to day, progress note to progress note.

Q And did you continue to note the symptoms that Ms. Janczewski was telling you each time she came before you for the neuro-psyche reevaluation?

A Correct.

Q Would you see her during the time she was doing the

weekly or monthly tests, the maintenance therapy? Would you ever see her then?

A Yes. She would come in and all the tests -- all the rehabilitation is on the computer so we have computerized exercises designed just for each patient on the computer.

So I'll design a program designed just based on the evaluation, based on her deficits; she'll be on her own work station working specifically on those areas that she's having trouble with.

Q At least as per April of 2015, have you seen improvement from the beginning when you first started treating Ms. Janczewski until then?

A Yes.

Q And did you at that time let her know that she could drastically reduce the amount of sessions?

A I did.

Q And did you let her know that there would be an end to the sessions?

A I did.

Q Why is it that the sessions can end?

A The sessions can end because after a patient plateaus in treatment and I feel they no longer are going to get better in those domains anymore, they have plateaued --

Q Will they get worse?

A They're not going to get worse, no. They're not going to get better at that point.

What I want her to do is maintain the gains that she's made in therapy, and then I want to teach strategies to help her when she's not with us anymore, to independently employ those strategies in her everyday life.

So that's what maintenance therapy is. You don't want to just stop the therapy all of a sudden without giving them strategies to utilize in their everyday life to improve their functioning so it's a tapering off that we do.

Q Currently, how often is Joan Janzcewski in maintenance therapy?

A Once monthly it would be maintenance therapy.

Q Is Joan about ready to stop therapy in your opinion as a neuropsychologist?

A Yeah, given the way she's done -- she's come to the maintenance therapy. We've been able to work with her. I would say in the next six months to a year at once a month to taper her down, and then she'd be able to employ those strategies.

Q Would she be welcome back if she were having issues?

A Of course.

Q Can we just go to December 14 of 2015, your evaluation of her then. If you could just let me know when you are there,

Doctor.

A Okay.

Q Okay. Can you tell the jury what -- during your evaluation, what were her complaints then?

A So she continued to complain about short-term memory problems and focussing and word-finding difficulty. She described it as attempting to say something and then getting stuck, just not flowing. It's just not coming out.

Another thing she described to me was she talks to people and she thinks she's saying what she's intending to say, and then she gets an expression from people that she -- obviously, it came out wrong. So she might have said something that she didn't mean to say so she's not expressing herself the way that she wanted to express herself. She says it takes slower.

So it takes her longer to think about what she wants to say. Then a minute goes by, it comes out or after she wanted to say it and it's not in the right context anymore. Her conversation, she said it affects her daily conversations.

Trouble reading, she has a lot of trouble reading. She does get headaches so there's a lot of also pain and other symptoms going on besides the cognitive symptoms.

She said she can't enjoy the moment anymore.

A lot of that has to do with the pain that she's experiencing.

She says she's withdrawn now, socially withdrawn. She doesn't like to go out anymore. She used to be very social. She stays in.

She tries to watch a TV program and can't remember the episode before so she can't sequentially continue on the TV program. She has to go back and she has to watch it again. She doesn't even get to the TV program that she wanted to get to because she has to go back.

Q Did she say she also has pain while doing --

A She has significant pain. That's a big reason why she can't -- she quote/unquote said, "I can't enjoy a moment anymore."

Everything is about the pain. She experiences pain.

And, then she has her family to help her with certain things. She relies on her sister a lot to help her. She did tell me that. She has a good family support in that way.

Q Neuropsychologically or psychologically, what affect does persistent pain have on someone's ability to concentrate and focus?

A So just like I talked about headaches before, that initial evaluation she came into and she had to come back

two months later to even finish the evaluation. Headaches, pain, that could all interfere with your ability to focus.

If you have persistent pain, just think about anytime we have gotten hurt even our leg or arm, our head, anything; we can't focus until we start feeling better.

So just imagine someone having that persistent chronic pain all the time, never going away.

Q Prior to rendering your opinions, did you take into consideration the totality of medication, number of body parts that are injured and complaints of persistent pain for the last three and a half years?

A Yes.

Q Do you have an opinion with a reasonable degree of -- withdrawn.

On each time, did you note the medications she had been taking?

A Yes.

Q I'm going to ask for all of your opinions and I'm going to ask that they be stated, if you can so state with a reasonable degree of certainty in the field of neuropsychology; okay?

A Okay.

Q Whether I ask that or not, please state your opinions that way unless you can't, then you'll tell the record; okay?

Do you have an opinion with a reasonable degree of

certainty in the field of neuropsychology as to whether or not Ms. Janczewski suffered a postconcussion syndrome?

A Yes.

Q What is your opinion, and then tell the jury the basis thereof leaving nothing out, please.

A Postconcussion syndrome as I described before --

Q What is the opinion?

A Yes, she does have postconcussion syndrome.

Q And the basis?

A So she does have postconcussion syndrome and postconcussion syndrome is the constellation of symptoms. There's the behavioral, the emotional, the cognitive, physical symptoms related to that so it's under the umbrella of postconcussion; and this is a consequence of the concussion that she sustained.

So, yes, she does have that.

Q And I'd like to you assume that before the jury and previously she testified she was dazed, it was surreal, remembers the hit, being on her knees and that the defendant also described her as stunned and dazed after the accident.

A Yes.

Q Does your opinion change if the emergency room states that there was no loss of consciousness; although, it does say head trauma?

A No, it doesn't change.

Dr. Busichio-by Plaintiff-Direct

Q Do you have an opinion within a reasonable degree of certainty in the field of neuropsychology as to whether she suffered a cognitive impairment to any degree as a result of the accident?

A Yes.

Q What is your opinion, and then the basis thereof, please?

A My opinion is she did suffer cognitive impairment. That's stable and permanent now. She has these residual deficits that will not go away. She will have them for the remainder of her life.

She will have to learn to get around them so she's going to have to learn to compensate, and that's what she did in treatment with us. We taught her strategy and to utilize independently so that she could function better in her everyday life.

Q How would you rate that kind of impairment? Mild, moderate, something else?

A I would say moderate cognitive impairment, yes.

Q Do you have an opinion with a reasonable degree of certainty in the field of neuropsychology, understanding that you're calling it moderate which is lower, do you have an opinion as to whether or not Joan can return in as an executive, in an executive functioning level given the totality of what she has gone through?

MR. KAMINSKY: Objection.

THE COURT: Overruled.

A She cannot.

Q When I say "what she's gone through," what she is currently undergoing in terms of both orthopaedic and neuropsychological sequelae; so do you have an opinion?

A Yes, she cannot return.

Q What is the basis? And this is regardless of whether or not her employer will take her back --

A Sure, right.

Q Can you please state the basis for your opinion?

A Yes. So --

Q With a reasonable degree of certainty?

A So taking a look at the totality of everything she's experiencing, the postconcussion syndrome, the cognitive impairments that she sustained, she wouldn't be able to do -- she wouldn't be able to focus, learn new information on a daily basis with the high demands that she had. She wouldn't be able to do that.

Q On the short-term memory, how is it that someone can remember everything they did, everything they loved to do?

A It doesn't affect -- when you have a concussion, your long-term memory or things that you've done on an everyday basis for a long time is not affected.

So she'll be able to tell you what she did at

her job. She'll be able to go in detail what she did at her job, and that's very common. She'll be able to tell you years, the last twenty years everything she did.

The problem with a concussion is anything after the concussion. So any new learning, any new information, it's going to be difficult for her to process that information.

So that's what happens after a concussion. All the old stuff is intact. That's not going to change. It's all the new learning.

Q Is that the result of the postconcussion syndrome?

A Correct, yes.

Q Do you have an opinion with a reasonable degree of certainty in the field of neuropsychology as to whether or not Joan suffered from a reactive anxiety and depression?

A She did, yes.

Q Can you please state -- you've already defined that before lunch. Can you state the basis -- withdrawn.

Is she still suffering from reactive anxiety and depression?

A She is.

Q Are you aware that her employment ended?

A Correct.

Q Can you please tell the jury the basis for your opinion as to that?

Dr. Busichio-by Plaintiff-Cross

MR. KAMINSKY: Objection.

THE COURT: Overruled.

A So reactive anxiety and depression as I spoke before is a reaction to what happened to you.

So this was her life. This was her job. She went everyday. She loved doing it. This was what made her who she was. All of a sudden it's taken away from her. She no longer has the job. She's reacting to that. It's a life change. It's been completely turned upside down; and what happens when you have a concussion, you have to learn about your new self.

You're no longer the person you used to be and you have to learn who you are now, and that is scary for a lot of people. I mean, you went your whole life being a certain way, and now you can't function that way anymore. So you have to relearn different ways to be and then find out who you are.

MR. McCRORIE: I have nothing further. Thank you, Dr. Busichio.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. KAMINSKY:

Q How are you, Doctor?

A How are you?

Q Doctor, we've never met?

A Correct.

Q My name is Alan Kaminsky. How are you?

A Good. How are you?

Q Just so you know, I represent the defendant in this case and I'm going to ask you some questions.

You said you have testified in court so you understand that it's my job to ask you questions on behalf of the party your patient is bringing the lawsuit against.

So you're familiar with that; correct?

A Correct.

Q Prior to testifying today, did you meet with Mr. McCrorie?

A Yes.

Q When was that?

A The date? I don't remember the exact date.

Q There's not an issue with your short-term memory; is there?

A No. I meet with a lot of people on a daily basis.

Q I couldn't resist.

A I don't have my calendar with me.

Q It's okay. It's okay. I don't need an exact date. When did you meet with him approximately?

A Maybe a week and a half ago, something like that.

Q Where did that meeting take place?

A Where did it take place? At the office.

Q At whose office?

A At our office.

Q He came to your office?

A Correct, correct.

Q How long was he at your office?

A Not long.

Q About?

A Maybe a half hour, something like that.

Q Did you go over the types of questions he would be asking you during the case?

A No. I had asked for the medical records, things that I didn't have so I could prepare for the case.

Q So now I'm confused.

You did or you did not have the medical records before you wrote your report?

A Right, so I did have the medical records, but what I asked for was the complete set in case there was a page or something missing, yes.

Q Fine. So he -- instead of sending them by Federal Express, whatever, he personally brought them over to your office?

A He personally brought them over at the time, too, but I had to have a few additional e-mails, too.

Q Did you have a chance to talk to him about the case at all?

A Yes.

Q And did he give you any idea the types of questions he would be asking you today?

A He told me he would ask me about my background and told me he'd ask me about my tests.

Q Did I hear you say that when someone has a concussion and suffering from the concussion, I think you used the word -- this is pretty much a quote: "All the old stuff is intact," correct? That's what you just said?

A The long-term memory, yeah.

Q Now, maybe it's me, but when I see football players or people that suffered real concussions, they don't remember things --

MR. McCRORIE: Objection.

THE COURT: Rephrase your question.

MR. KAMINSKY: Sure.

Q Isn't it true that people have real concussions, they do have problems --

MR. McCRORIE: Objection.

THE COURT: Rephrase your question.

MR. KAMINSKY: Yes.

Q In your practice, is it fair for me to say that people with concussions do show long-term memory problems; true or false? True or false?

A It's a case-by-case basis. There is people that

do. There is people that do.

Q And those people would arguably have serious issues; correct?

A They might have severe TBI.

Q They may. So the fact that in this case you already told us that the plaintiff does not have problems with the old stuff. We can rule out that fact; correct?

A Yes, it's not a severe TBI; correct.

Q It's not a severe TBI?

A It's a concussion, yeah.

Q Okay. So, let me see if I understand.

She no longer has a severe traumatic -- TBI means traumatic brain injury?

A Correct.

Q She does not have a severe traumatic brain injury. Now you're using the word "concussion," correct?

A I was always using the word "concussion."

Q But isn't it true in order to have postconcussion syndrome, first you have to have a concussion?

A Correct.

Q Okay, so now let's go to the emergency room records, which I assume you had a chance to take a look at; correct?

A I did.

Q Now, the emergency room records, they show, do they not --

Dr. Busichio-by Plaintiff-Cross

MR. KAMINSKY: Jason, could I have the emergency room records? Are they here?

I have them. I have them.

Q In the emergency room they asked her if she lost consciousness; correct?

A Correct.

Q In the emergency room she denied losing consciousness; true?

A True.

Q In the emergency room they asked her if she felt dizzy and she said no; correct?

A Correct.

Q They asked her if she felt like she was going to vomit and she said no; correct?

A Correct.

Q They asked her if she had blurred vision and she said no; correct?

A Correct.

Q They asked her if she felt problems with her bowels and she said no; correct?

A Correct.

Q They did a neurological examination, and they found it to be within normal limits; correct?

A They did a neurological; not a neuropsychological. It's different. Yes, they did a neurological.

Dr. Busichio-by Plaintiff-Cross

Q I respect your subspecialty. We'll get to that in a movement.

They did a neurological examination, and they found it to be within normal limits; correct? Correct?

A Correct.

Q In other words, a person in the emergency room from a neurological standpoint -- another doctor has told us a neurological standpoint means the brain, okay. So from the perspective of a neurological assessment, she was found to be within normal limits; correct?

A Oriented by three.

Q Okay, okay. And then they did a further examination. They didn't just do what's your name, where are you, what day is it. They did a more detailed neurological examination in the hospital; did they not?

A They did CT scans.

Q Well, we'll get to the CT scans in a minute.

Two different doctors did neurological examinations; correct?

A Correct.

Q And one was more detailed than the other; true?

A Correct.

Q And both, both found from a neurological standpoint that she was within normal limits, and there was no evidence of a brain injury; true?

A Correct.

Q In fact, did they not write those exact words, "no brain injury?"

A I didn't see that.

Q Okay, I'll show it to you.

MR. KAMINSKY: May I approach, your Honor?

THE COURT: You may.

(Shown to the witness)

A "No evidence of traumatic brain injury," but that's the CT scan. That's what I was referring to before.

Q Okay. Just so we're on the same page, the neurological examinations were within normal limits; correct?

A The neurological examinations and that was the CT scan you're referring to.

Q One step at a time. Both neurological examinations were within normal limits; correct?

A Correct.

Q And that's a good thing; correct?

A That's a good thing when you're in the hospital.

Q Not losing consciousness; that's a good thing, correct?

A That's a good thing not losing consciousness, correct.

Q Not being dizzy; correct?

A Correct.

Q Not feeling like you're going to vomit, not having

blurred vision, knowing where you are, able to communicate, not being dizzy; those are all good things, correct?

A Of course.

Q And as a precaution, would you agree with me the CAT scan was taken for precautionary purposes?

A A CT scan is only given when there's a concern.

Q And as a concern, they did a CAT scan of her brain?

A Correct.

Q And it says the following:

"No intercranial hemorrhage, no mass lesion, no acute infarction, no evidence of traumatic brain injury;" correct?

A Correct.

Q And those are all good things; correct?

A That's a good thing.

Q Okay, so the hospital was comfortable enough, were they not, to believe that she did not have a traumatic brain injury, that she didn't lose consciousness, that she was alert, that she was able to communicate and they ultimately discharged her; correct?

A Correct.

Q And just so we know the chain of events, you first came into the picture through a referral by Dr. Hausknecht; correct?

A Correct.

Q And Dr. Hausknecht first came into the picture through

a referral by Mr. McCrorie; correct?

A I don't know.

Q Okay.

MR. McCRORIE: Objection.

THE COURT: Overruled.

Q Similarly, have you seen the ambulance call report?

A Yes.

Q And the ambulance call report also says that she's alert, also says that she denied loss of consciousness and things like that; true?

A Correct.

Q Okay, so you have the ambulance people who responded, you have the triage nurse, you have the physician's assistant, you have the neurologist and you have the radiologist all basically in agreement that she did not suffer a concussion, let alone a traumatic brain injury; true?

A No. She didn't suffer a traumatic brain injury. She suffered a concussion.

Q In your opinion --

A They didn't say she didn't suffer a concussion.

Q Did they say she suffered a concussion?

A They said she didn't suffer a traumatic brain injury.

Q Can you show me anywhere in the emergency room reports where it says she suffered a concussion?

A I didn't say that it said a concussion.

Q Okay, then --

A I said that they didn't say that she didn't suffer a concussion.

Q Then we're in agreement, it doesn't say it; true?

A I don't know. I'd have to look through it. They might have said concussion, because they wouldn't have done a CT scan unless they thought she did have a concussion.

Q Or they wanted to rule out a concussion?

A Rule out a severe bleeding, a severe injury.

Q All right, that's fine.

Let's go over -- I want to read to you the following -- did you read the plaintiff's deposition before testifying?

A No.

Q Did you read her trial testimony before testifying?

A No.

Q Before you gave your tests -- and just so we're clear, obviously, she was not under your care before this; correct?

A No, no, not before the first time I saw her.

Q Of course, so you don't have a baseline; correct?

A Yes, I do. I have a baseline.

Q You have a baseline of average people in the United States that you did comparisons against; correct?

A Correct, I have a baseline --

Dr. Busichio-by Plaintiff-Cross

Q Your baseline is average results of similarly educated people from across the country; true?

A High average, she was in the high average range before.

(Continued on the next page)

Q So when you gave your percentiles of her results, you were comparing her to people in the high average realm, correct?

A Her age and education level, yes.

Q So you were not comparing her to 100 random people?

A No.

Q You were comparing her to 100 educated, very intelligent people. Correct?

A Correct.

Q Okay. Just so we know what we are talking about, because when you say she is in the 20th percentile, there is a difference between being in the 20th percentile of every one across the country or in the 20th percentile of highly educated people, correct?

A Correct.

Q Okay. So -- just so we are clear, because you didn't say this on direct examination, your results were only comparing her against highly educated people, true?

A No. Her --

Q Okay. I -- then I withdraw the question.

A Okay.

Q Let me get back to -- I asked you if you read her deposition and you said no.

A Correct.

Q Do you know if anywhere in her multi-hour deposition she expressed the inability to answer any question?

A Do I know? I didn't read her deposition.

Q Okay. You know she has in testified in court and she is in the middle of cross examination?

MR. MCCRORIE: Objection. She is not in the middle of cross. He stopped his questioning.

MR. KAMINSKY: You know what? I stand corrected.

MR. MCCRORIE: Objection.

MR. KAMINSKY: You are correct.

She may be called back. I reserved my right to call her back.

MR. MCCRORIE: I still object.

Q She has testified in this court case. Don't you think it would have been helpful to you in analyzing her ability to answer questions, remember things, articulate herself, long-term memory, short-term memory, don't you think it would have been helpful to at least read her trial testimony so that you have the most up to date information about her condition as the jury does, yes or no?

A Not if I have treated her over three years and I know her very well.

Q Your answer is no?

A I don't feel like I need to know her any more than I do.

Q I am not asking you what you feel. I don't mean to be disrespectful, but please try to answer my questions, okay? I am not asking you what you felt you needed to do. I am asking you if you read her trial testimony.

A I did not. I said that --

Q So I want to read to you from her deposition, okay and this is on page 117, line 19.

QUESTION: What were your duties as a chief operating officer?

ANSWER: I was responsible for all non-investment activity of the fund. I implemented the strategies that the general partner deemed appropriate for the portfolio. Say, for example, he wanted to trade congestion contracts and do congestion trading. I needed to sign us up to become members of various exchanges. I needed to make sure that we could capture the trades and see if we needed any proprietary software to bring that in house and then, I had to make certain that the whole office was set up so that Compliance could do real time checking up with positions, Accounting could capture it and the general partner could monitor it on a real-time basis.

I also had to negotiate the investment

contracts with the new trader coming on board, to make the new strategies and draft them.

I was also responsible for cash management. I had to make sure that our money was always working, so I had to leave just enough in the checking account which really doesn't earn any interest, to cover overhead expenses and any private placement funding that we needed to do for our investments and then send the rest of it to the brokers to make sure that we were always working with the money.

I wired millions of dollars each day between bank and brokerage accounts.

I was also responsible for opening up domestic and international banking brokerage accounts and also keeping up the relationships with those entities. I would have to open up letters of credit when they were needed.

I also handled the human resource aspect of the fund. I hired, I trained and I also fired individuals.

I also would delegate tasks and supervise the various departments such as Accounting, IT, Compliance and Operations. I also handled what they call investor services. We had an outside fund administrator called SS&C Technologies and they would

handle the subscription and redemptions of the investors and I would liaise with them on a daily basis.

They also handled our anti money-laundering policy and I would work with them at month end to produce the month end statements to investors, because we had to report to our investors on a monthly basis.

I was also responsible for registering the firm with the SEC and getting us registered, which encompassed composing the compliance manual, anti money-laundering manual, disaster recovery manual and then, on an ongoing basis, to make sure that we were complying. I would have to keep up with all the forms that were required to be done, all the reporting that needed to be done with the SEC.

I also handled the relationship with our outside legal counsel. I would make sure that our subscription documents and our private placement memo were always current.

I would also negotiate lease agreements and also vendor agreements. I also made sure and handled our corporate of governance to make sure our minutes were produced, and would accurately draft the minutes. I also worked on our year end audit.

We had an outside auditor come in to audit a

whole years worth of work. It was BDO Seidman, S-e-i-d-m-a-n and I would work with them to come up with the audit.

I also handled facilities management and you know, any buildouts that were required, because sometimes we would need to change the configuration of the floor. Sometimes we would bring in a team of five people who needed to be quartered off. We would work with the general contractor to come in, you know, and fix up the area; to take down walls, put up walls and also worked with the building management to make sure that we were in code."

You never read that, correct?

THE WITNESS: I never read that.

Q Does that sound like someone in your professional opinion, that has long-term memory loss, yes or no?

A She does not have long-term memory loss.

Q So we can agree on that, she doesn't -- because clearly, she is able to describe in detail what her job responsibilities were, correct?

A Correct.

Q By the way, she describes herself -- just so you know during the course of the trial, she described herself as the face of the case company. Okay. Very important responsibility, can we agree on that?

THE COURT: Definitely.

Q I mean, if you're the face of a company that is handling a billion dollars in assets, that is a lot of stress, is it not?

A That is a lot of responsibility.

Q It is a lot of responsibility. I would imagine it is a lot of stress, correct?

A Everyone handles stress differently.

Q We all handle stress differently, but I want you to imagine that you're the face of a hedge fund handling billions of dollars worth of investment.

That is a lot of stress, can we agree on that?

A It could be for people.

Q Could be, correct?

A Could be.

Q And dealing with investors, that could be stressful too, correct?

A Could be.

Q Especially if investors are not happy, correct?

A It could be.

Q That could -- especially if investors lost a lot of money, true?

MR. MCCRORIE: Objection to this line of questioning.

THE COURT: Overruled.

Q That could be stressful?

A It could be stressful, yes.

Q What about investors who had to declare bankruptcy? Could that be stressful?

A Sure.

Q If you're the face of the company and somebody lost millions and millions of dollars and they are coming in to complain to you, is that stressful?

A It sure could be.

Q What if somebody was the victim of a Ponzi scam? Could that be stressful?

MR. MCCRORIE: Objection.

THE COURT: Overruled.

A It could be.

Q Now, during the entire course of your treatment of the plaintiff, did she ever mention to you any of the things that were happening at Platinum?

A Like you --

Q Yes?

A Things that you're just saying right now?

Q Just things I am throwing out there?

A No. We focused on her treatment.

Q Did she ever mention to you that they are were dealing with a Ponzi scheme?

MR. MCCRORIE: Objection.

THE COURT: Overruled.

A She was not working at the time.

Q I am asking --

A So --

Q While she was working? Before the incident happened?

A Right.

Q Then she came under your care?

A Correct.

Q Did you ever discuss the conditions at work before the accident happened?

A No, just what her job responsibilities were.

Q Did she ever mention to you anything about a Ponzi scheme?

A No.

Q Did she ever mention to you anything about investors' lawsuits and all of this money being lost? Anything like that?

A No.

Q Did she ever mention to you that they invested tens of millions of dollars with a convicted felon?

MR. MCCRORIE: Just a continued objection, your Honor.

THE COURT: Overruled.

A No.

Q Do you think those things could be stressful on somebody?

A Could be.

Q But those were never discussed, correct?

A No, not with me.

Q As you sit here today, I -- you don't know what I am talking about, do you?

A I don't know what you're talking about in terms of that.

Q We will leave it --

A I know what I am talking about in terms of my treatment.

Q I respect that, but I am asking if you know what I am talking about.

A No.

Q In addition to the CAT scan of her brain, they also did an MRI of her brain on December 4, 2012. Correct?

A Correct.

Q And would you agree with me that the results of that MRI are as follows: There is no symmetric or asymmetric cerebral atrophy, correct?

A Correct.

Q And that is a good thing, correct?

A Yes.

Q There is no evidence of small vessel or demyelinating disease. Correct?

A Correct.

Q There is no acute focal infarct. Correct?

A Correct.

Q No hemorrhage? And then it goes on and on and on and then it gives an impression that says "normal MRI of the brain", correct?

A Correct.

Q So a normal MRI of the brain, we can all agree alternately when all is said and done the radiologist said normal MRI of the brain?

A Correct.

Q So we have a normal MRI of the brain.

We have a normal CAT scan of the brain, correct?

A Correct.

Q Now, let's talk about the tests that you did. Now, basically, what you do is, there are some -- I will call them pre packaged tests that people in your profession administer to people, correct?

A They are cognitive rehabilitation training programs that I individualize to the patient, yes.

Q You don't create the test, you?

A Correct.

Q You administer the test?

A Correct.

Q And the same test is basically administered to everyone so you can draw comparisons, correct?

A That depends. I could switch tests depending on what the referral question is.

Q I understand that you can switch tests, but the tests that are administered are the same, correct?

A The actual tests are the same test.

Q The test --

A I am.

A I am not creating the test. The tests were there.

Q You're not inventing a test?

A Correct.

Q You're simply taking a pre designed test --

A Correct.

Q -- that gets administered and then this way, a doctor such as yourself can take the results, look at the results of everybody's and say boom, 46th percentile or 90th percentile or whatever.

A Everything is relative to her. Not to everyone else, just to her.

Q Well, if you will put her in a percentile, it is her relative to everybody else that you're comparing?

A Her peers. Her peers. Correct.

Q And again, her peers in this case are for instance, if somebody takes the SAT and they score 50 percent, then that means they scored higher than half of the people taking the test, and lower than half of the people taking the test?

A Correct.

Q Okay. But here, she was only compared to -- as opposed to 100 people that took the SAT and applied only to Ivy League schools, correct? You get a different result?

A She was compared to college graduates at 47 years old.

Q Okay. Fine. Thank you. That sets that baseline for us. But my question is, you don't have a baseline of her from before the test?

A I do. I talked about it before.

Q No. You never treated her before, so you don't know?

A I talked about the estimated range that we put her in which is the high average range, and the test that I used to do it.

Q So you took the liberty of putting her in the high average range, correct?

A The test scored it that way.

Q Okay. Just trying to make sure we are speaking

the same language.

A Okay.

Q I apologize.

A It's okay.

Q Let's go over your test. First of all, how many times have you seen her altogether?

A I have to count. I mean, she has been there since 2012, so -- and she is -- last time I saw her was December -- let me see -- no.

January 11, 2016.

Q But if I have all of your records and I may not, you did not see her at all in 2014?

A I saw her for an evaluation the one time, yes.

Q So a whole year went by and you only saw her that one time, correct?

A Correct.

Q Was the purpose of seeing her just last month because of the pendency of this lawsuit, or it just happened that way?

A Why she came for testing, or for evaluation?

Q Yes.

A She has been coming to treatment all of 2015.

Q Now, you did -- these tests that you administered, you administered Mindstream Scientific Cognitive Assessment, the WAIS Four Digit Span?

A Correct.

Q Raven Standard Progressive Matrices Test, Rey Complex Figure Test, Rey 15 Items and a clinical interview.

That is what you did, correct?

A Correct.

Q Intellectual function. The pre morbid intelligence is estimated to be within the 72 to 78th percentile and so, the following results are interpreted in relation to this level of estimated intellectual capacities.

So you went into this assuming that before the incident happened, she would be somewhere in the 72nd to 78th percentile of college educated people, correct?

A At least that much, yes.

Q So you -- you began your assessment of her believing that before this incident happened, she was in a very high percentile compared to other people also in a very high category, correct?

A She -- she --

Q Yes or no?

A All I do is look at her. So she was in the high average range prior to the accident. Correct. If that is what we are talking about.

Q So prior to the accident, you put her --

A Correct.

Q -- in a high average range amongst -- above average intelligent people, correct?

A Correct.

Q So we are starting at a very high level correct?

A Correct.

Q Okay. Fine.

As far as the Raven's Standard Progressive Matrices Test, could you explain what that test does?

A Yes. What it is, it is a booklet, a booklet that she goes through and it is like -- there is patterns and she has got to complete the pattern, so it is a visio-spatial test where it is a perceptual reasoning test.

Q So for instance, Doctor, is this it?

A No.

Q Is it in your raw data?

A Yes.

Q Could you show me the page?

A Sure. Well, I have the score sheet. It is a booklet that I give her.

Q Did you bring the raw data with you?

A I have her answers, yes.

Q Could I see it?

A Sure.

Q Just so I understand what we are talking about,

when we talk about raw data, the raw data is the actual test itself and her answers to the test and then you kind of like a teacher to a student, you grade it, correct?

A Correct.

Q And also, just so the jury is clear, when you administer these tests --

(Document handed to counsel)

MR. KAMINSKY: Thank you, officer.

Q This is -- what am I looking at?

A Her answers to the booklet.

MR. MCCRORIE: And all of that was exchanged.

Q Do you have the booklet?

A No.

Q So we don't know the questions that she was asked. We just know the answers and how you grade it?

A Right. It is a booklet. You can look at -- look for the booklet. I mean, it is a booklet. I can't bring the booklet here because we need it at the center, so I can't bring the booklet to court.

Q You could, but you didn't?

A Yes. Correct, but -- I don't want to take it out of our center.

Q I understand you only have one book. It is a prized possession or --

A No, it is not that it is one book, it is just

that I don't take my testing kits out of the center.

Q In other words, if I wanted to cross examine you and say you asked her the following question and she gave the following answer, I can't do that because you didn't bring the book with you?

A No. I can probably look it up on the Internet for you if you want me to and see if I could find it. It is there. I can do it.

Q If we do that --

MR. MCCRORIE: Erlanger has the same books.

MR. KAMINSKY: Except he is not testifying right now.

MR. MCCRORIE: Understood.

MR. KAMINSKY: This is your witness who you paid a lot of money.

THE WITNESS: I could find it for you if you want me to.

Q Now, some of them, we do have the equivalent of a book because part of the test is drawing pictures, correct?

A It is drawing a complex figure, correct.

Q So for instance, you show her something like this, right?

A Correct.

Q You show her a picture a bunch of stick figure like drawings and then you say draw what you just saw,

correct?

A Correct. Copy it. Copy it.

Q And so, this would be -- Doctor, you say Joan, take a look at this picture. And how long does she get to look at this picture?

A She copies it, so she has it right next to her. She just copies the picture.

Q And she draws this?

MR. MCCRORIE: Let me see.

THE WITNESS: Correct.

Q So are you testing her memory or her artistic ability with this drawing?

A That is not a memory -- that -- the copy right there has nothing to do with memory.

Q Well, then, how did she score on drawing?

A She was in the 11th percentile.

Q So -- 11th percentile. So she is not a very good drawer, can we agree on that?

A I can't see from here. Well, there is some attention to detail probably -- I can't -- again, I can't see it. You have to bring it up to me.

MR. KAMINSKY: May I approach?

THE COURT: You may.

(Document handed to the witness)

THE WITNESS: Some attention to detail, like

I said.

Q Attention to detail.

So from this -- Doctor, from this to this?

A Yes.

Q That helps you make a professional determination that she suffers from post concussion syndrome, correct? This is part of your analysis?

A No, not one test.

Q I said -- I said --

A It is a constellation of tests. It is a constellation.

Q You didn't hear me?

A That is part of the test.

Q Now you heard me. So part of the test in determining that this woman sitting here suffers from --

MR. MCCRORIE: The witness is over there.

You're asking a question -- because you're not doing a summation, so please.

MR. KAMINSKY: I just pointed to your client.

MR. MCCRORIE: I am asking him not to address the jury during the question.

THE COURT: The question, please.

MR. KAMINSKY: Sure.

Q Part of your conclusion that the plaintiff suffers from some form of a brain injury is because you showed her

this picture and she responded with that drawing.

That is part of your professional conclusion, true?

A Part of the testing.

Q Yes, part of the testing. I just want the jury to get an understanding of this elaborate testing that is done. So I wanted to show them that, okay?

A Sure.

Q What was that test called?

A The Rey Complex figure.

Q So earlier, before, I said the tests administered were Mindstream Scientific Cognitive Assessment System; the WAIS Four Digit Span, Raven's Standard Progressive Matrices, Rey Complex Figure Test, Rey 15 Items and which one was that?

A The Rey 15 Items.

Q Which one did I just show the jury?

A The Rey Complex Figure.

Q So 1, 2, 3, 4, 5. So you married five different tests, this being one of them?

A No, not five different tests. The Mindstream has about 25 tests in it.

Q But you categories them into five different things. Did I read your report correctly?

A I said we gave the computerized tests but that

has like 25 tests in it.

Q I get there are subsets?

A That is what I listed.

Q So this counts on the listing -- this is one out of five?

A On the listing.

Q Yes. So 20 percent of your determination that she has a traumatic brain injury, memory problems, things like that, is because you showed her this and she drew that (indicating)?

A Not 20 percent. I said there is a bunch of other tests.

Q Whatever it is, 1 percent, 2 percent, whatever it, it is a part?

A It is a part.

Q Let's look at the other tests and see what they consist of.

Again, Doctor, could you tell me, could you see from here or --

A That is the Rey 15 Items. Wait. No. Let me see. That is the scoring of the complex figure.

Q So --

A If you turn the page --

Q I get it. You look to see where she crosses lines, and if they matched up, you gave different points?

A I had to score that by hand. Yes.

Q So what you did is, you took is this drawing and for every line she crossed the right way, for every cross, every large rectangle, every diagonal cross and every horizontal midline, every small rectangle, every small segment, every triangle, you would give her points or no points?

A Correct.

Q And then you would add it up and -- as you pointed out, she did not do very well on this drawing part?

A Correct.

Q Okay.

Now, in your neurological evaluation you did a summary, correct?

A Yes.

Q And you wrote in the summary there is no history of alteration of awareness or of post traumatic amnesia. Records do not support symptoms of dizziness, nausea or double vision within the initial aftermath of the incident, true?

A I didn't write that. That was not me.

MR. MCCRORIE: I can't see what you're reading from, Alan.

MR. KAMINSKY: Withdrawn. Terrible mistake.

Dr. Busichio - Plaintiff - Cross/Kaminsky

MR. MCCRORIE: That is your doctor.

MR. KAMINSKY: My mistake. I just read you my doctor's findings, so I am sorry. I take that back.

THE WITNESS: Completely the opposite --

MR. KAMINSKY: I take it back. We will deal with my doctor when I call him as a witness. I apologize and I apologize.

Q What is the Mindstream Test that you administered?

A It is a computerized testing, again normed for the age and education level like I talked about before and it tests all of the domains of attention, memory processing speed, verbal functioning, spatial skills, motor skills, all of the areas and then, not only did it test the domains it breaks down each of the domains in specific subcategories so it will test the verbal memory, initial acquisition, encoding, retrieval --

Q Thank you and as a result of those tests, she scored below the first percentile?

A On some of the subtests.

Q In other words, you can't do any worse than she?

A When she first came, on some of the subtests, correct.

Q She was so bad, I imagine when she walked out of the house she would not know how to get back home that is how bad she was, correct?

MR. MCCRORIE: Objection.

THE COURT: Rephrase it.

Q Sure, if you're in the bottom less than 1 percent with memory, I would imagine that your memory is so bad that when you walk out of the house and you you get in the car and drive someplace, you don't even remember how to get home, true?

A And this test --

Q True or false?

A No, because she didn't do less than the first percentile on all of the areas of memory, just on that test. There is other areas of my testing that I did that I can show you is that she didn't perform like that.

Q Another area of the test, the Phase III Stroop Interference subtest but why don't you tell us what the Phase III test is?

A So what that is is, there is three different components of the Stroop and one of them is, the patient first has to -- there is different boxes that come up on the screen; a red box, a green box and a blue box and she is asked to press when she sees the green, the blue, the red and then asked to look at a word on the screen that says red, blue, green in the ink that it is written in and she is asked to identify that and what the interference part is, she is asked to look at the word, say it is

written in red, but the ink is blue, so she has to be able to inhibit the automatic response of saying red because that is what it says and be able to look and say oh, wait, that is in blue ink and press the blue.

So she has to inhibit her automatic response which is read the word red and say wait, hold on, it is blue.

(Whereupon, the following was transcribed by Senior Court Reporter Bonnie Piccirillo.)

Dr. Busichio-by Plaintiff-Cross

Q So it's kind of like what they do on that show. I imagine, since you're in the profession, you watch that show Brain Game?

A Some of these games -- I mean, some of these shows I watch. Not all of them.

Q They show you a red box with the word blue and everybody says red, that kind of thing?

A I don't know if it's exactly that, no, because I don't remember that part.

Q But that's kind of what you did here; correct?

A Again, I don't want to say kind of, because I haven't seen that part, but the way I explained it is exactly what I have.

Q Then I'll accept that.

Now, you did a test of problem solving. Now, problem solving, I would imagine is important.

You have to be able to solve problems; correct?

A Correct, sure.

Q And she scored in the 58th percentile; correct?

A Correct.

Q So, as far as solving problems, she did very well?

A Correct.

Q So, right now we're going to go through the rest, but right now we can conclude she's very good at solving problems; but she's not so good at drawing pictures, true?

A Right now we talked about memory. She's not so good in memory and she's good at problem solving on this test, yes.

Q Then you did something called -- part of this test was called -- one of the subsets was something called Catch Game; right?

A Correct.

Q That is a task, you write:

"A task that requires participants to position a small paddle beneath a falling object."

A Correct.

Q So let me see if I understand.

She's in your office and you say to her, Here's a paddle and I want you to place it under a falling object?

A No.

Q Okay.

A It's on the computer, and what it is --

Q It's on the computer.

A What it is is the computer generates the exercise; and what it is, there's a paddle that falls on the computer screen. Not in the room.

Q Yes, okay.

A And it falls and she's got to use the mouse button, and she's got to catch the falling paddle.

Q And she didn't do too well on that?

A She did not.

Q So she's not very good on the Catch Game?

MR. McCRORIE: The date you're talking about here, Alan, is the first one; correct?

MR. KAMINSKY: Yes, this is page three of the report.

MR. McCRORIE: From December of 2012?

MR. KAMINSKY: Hold on, Jim. Yes.

Q So, then you did something called verbal functioning, also part of the Mindstreams series of tests; and this is an assessment that involves components of picture recognition in confrontation?

A Correct.

Q So, again, is this on a computer?

A Yes.

Q So you show her a bunch of pictures and ask her what she's looking at?

A So the computer generates pictures for her, and she's asked to identify what that picture is; and then the computer generates pictures and then she's asked to rhyme -- what word rhymes with that picture.

Q Okay, so that test, she was in the 61st percentile?

A Correct.

Q Again, skewed against college-educated people only?

A Normed against college education and 47 year-old

people.

Q I'm using the word wrong. She was normed.

So the people she was normed against, 61 percent meaning she scored better than 61 percent of that population?

A She was in the top 61 percent of the population for college-aged 47 years olds.

THE COURT: We'll take a break at this point.

Let's take five minutes.

Do not discuss this case among yourselves or with anyone else. Take five minutes.

COURT OFFICER: All rise, jury exiting.

(Whereupon, at this time the jury then left the courtroom.)

(Whereupon, at this time a short recess was taken.)

(Continued on the next page)

Dr. Busichio-by Plaintiff-Cross

(Whereupon, at this time the witness, Dr. Kim Busichio, having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified as follows:)

COURT OFFICER: Jury entering.

(Whereupon, at this time the jury then entered the courtroom.)

THE COURT: You may have a seat. You may continue with the cross-examination of the witness.

CROSS-EXAMINATION

BY MR. KAMINSKY: (Continued)

Q Thank you, Doctor, for allowing me to review the file materials.

I want to go back to the Mindstreams reports. When you give tests, you can choose from hundreds of tests; correct?

A Yes.

Q In your field there are probably thousands of tests; correct?

A Correct.

Q And there's also something called the DSM; correct?

A Yes.

Q And the DSM is -- tell me -- I'll tell you what, instead of my telling the jury, why don't you tell the jury what that is?

A The DSM is the Diagnostic Systems Manual. It is a psychiatric manual for mental disorders. So any type of emotional disorder, like we were talking about before anxiety, depression, posttraumatic stress; they'll give you diagnoses for all of that.

So a psychiatrist uses that to diagnose. Psychologists can use that, too, to diagnosis.

Q So, basically, you can take all sorts of psychiatric disorders from the mildest to the most severe and a doctor such as you who is examining someone says they have this symptom, they have that symptom and they have this symptom and based upon the diagnostic statistical medicine, those symptoms equal this condition; correct?

A Right, it's the psychiatric part of it, yes.

Q And so you could write down, for instance, a person suffers from bipolar disorder?

A Correct.

Q And then any other doctor that looks at that diagnosis knows that you've made that diagnosis based upon the DSM?

A Correct.

Q Because --

A If you're assessing for emotional.

Q Yes, because everyone relies on the DSM. It's the common thread in your field so that everyone is using the same criteria to make diagnoses.

Dr. Busichio-by Plaintiff-Cross

You can't have one psychologist or one psychiatrist independently saying something and a hundred other saying something else. Everybody agrees we're going to abide by the criteria of the DSM?

A No.

Q Well --

A The DSM, not everyone agrees on abiding by that. The DSM is used if you're diagnosing an emotional disorder.

In neuropsychology you don't necessarily have to use the DSM because you're dealing with cognitive issues.

Q Okay, fair enough. It's more of a psychiatric --

A Correct.

Q And so things that I mentioned, you know, anxiety, depression, all those things are listed in the DSM because they will tell if a person shows signs of fatigue or a person shows signs of this or whatever it may be, then you see what condition they have based upon those symptoms; correct?

A Well, that's --

Q I'm simplifying it --

A Well, it shouldn't be simplified because a clinician doesn't just use a manual to diagnose. They use their clinical impression and the diagnostic manual.

Q Yes, of course. You have to make the clinical impression if the person has fatigue or the person has whatever it is?

A Has the symptoms.

Q And then once you determine the symptoms, you look at the DSM and see what the diagnosis is?

A Correct.

Q Okay, that's all I'm trying to say.

A Yeah.

Q Now, one of the things in the DSM that tells doctors such as you and other treating psychiatrists and psychologists is something called secondary gain; correct?

A Correct.

Q And could you tell the jury what is secondary gain?

A Secondary gain is if someone exaggerates symptoms for financial reasons or some other reason.

Q So, for instance -- I believe they site this as an exact example -- if someone is in a lawsuit seeking the recovery of money, you have to give consideration to secondary gain; correct?

A You do give consideration.

Q You've answered my question.

A Yes.

Q In fact, it is such a common phenomenon that it is actually noted in the DSM, which is the most important publication in your field; true?

MR. McCRORIE: Objection to "common phenomenon."

THE COURT: Overruled.

A I wouldn't say it's the most important in my --

Q I didn't say --

A As a psychiatrist in psychology, if you're dealing with emotional disorders, yes, you would use the DSM to diagnose.

Neuropsychologists, when you're dealing with concussions, head injuries, you don't necessarily have to use the DSM to diagnose that.

Q I understand. I understand.

So did you or did you not give any consideration to this concept of secondary gain; yes or no?

A I test for effort. That's why I test for effort.

Q So your answer is yes, you did?

A Yes, of course.

Q Okay, fine.

Let's go back to the test -- before I go onto the new test, let's go back to the test you talked about on the computer where she has to catch a falling object, okay?

When did you administer that test?

A On February 14, 2013. The exact date you're saying?

Q No, I don't need exact.

So, roughly, less than three months after her accident?

A Correct.

Dr. Busichio-by Plaintiff-Cross

Q Now a lot of that is not just memory, but a lot of it is hand-eye coordination; true?

A It's all ruled out, yeah. Every test has it's own --

Q Yes, I understand.

But would you agree with me that someone who has a torn shoulder and a fractured nose and injuries to their neck might not be as quick catching a falling object on a computer as someone who does not have those physical injuries? You either agree with me or you don't?

A If someone has a physical injury --

Q I'm asking you if you agree with me or you don't?

A Well, if someone has a physical injury, it could affect that. It could affect that.

Q So you agree with me?

A It could affect that.

Q So, for instance, you compared her ability to have a paddle and catch this thing that was falling on a computer screen, you compared her not only -- normed her -- I'm going to use your term -- you normed her --

MR. McCRORIE: The witness is over there, Alan.

THE COURT: Overruled.

MR. McCRORIE: Objection.

Q Did you norm her against people not only with the same education, but did you norm her --

Dr. Busichio-by Plaintiff-Cross

MR. McCRORIE: Object to him to addressing the jury during the questioning.

THE COURT: He's asking a question of the witness.

MR. McCRORIE: I understand, your Honor, but he's looking at the jury.

THE COURT: It doesn't matter. Overruled.

Q Did you norm her against people with the same physical injuries; yes or no?

A Okay. I didn't --

Q It's a yes or no question?

A I didn't include the motor skills --

Q Thank you.

A -- in the evaluation because of that.

Q Thank you.

A Because of that, I didn't include it.

Q Thank you. Let's go on now to the Mindstreams Assessment Report.

"Testing battery. Global --" let me know when you have it.

A The Mindstreams one?

Q This is what I'm looking at?

(Showing)

A The first one, okay. Okay.

Q Okay.

"Testing Battery. Global Assessment Battery.

Tests included Go-NoGo, verbal memory, problem solving, stroop interference, non-verbal memory, finger tapping, catch game, stage info proc --" What is proc? Procedure? "Visual spacial processing and verbal functioning;" correct?

A Correct.

Q Those were the tests you administered?

A Those were some of the tests.

Q And you gave a global cognitive score of 71.4; correct?

A I have the second Mindstreams out so I have to go back to the first Mindstreams.

Q No problem.

A Correct, they gave her a global of 71, yes.

Q So was sophistically compared to a group of cognitively healthy group of individuals of similar ages and education, performance on the current testing session was --" and you wrote down "below average in the following cognitive domains" and you wrote down the word "none;" correct?

A Where are you referring to right now?

Q The front page?

A Front page of what?

Q Mindstreams Assessment Report. Below where it says "Global Cognitive Score."

A Correct. Yeah, I see. Yes, yes. The computer printed out below average in the following cognitive

domains, none.

Q Okay, and then it wrote above average in the following cognitive domains, visual spacial and verbal function; correct?

A Correct.

Q And a global cognitive score of 71, is that the summary of all the tests that were administered under that Mindstreams test?

A So the global cognitive 71 is a composite score of everything.

Q So can we agree, can we agree -- just on this, the summary of everything is pretty, pretty good?

A No, I can't agree with that.

Q Okay.

Then you go down into different subsets. Let's go to page 7 of 7.

And then it asks you for -- this is for the technician to fill out; right?

A For test supervisor.

Q Yes, it says for the testing of February-13-14, 1:46 p.m.. It's a questionnaire for the supervisor. Would that be you?

A Correct.

Q It says:

"How difficult was the test for the subject?"

And it's a scale of 1 to 5. 1 being easy; 5 being

hard.

"How difficult was the test for the subject?" You wrote 3.

A Right, that's a questionnaire at the end of the test that I put in, yes.

Q So you said 3 being average; correct?

A Correct.

Q And then "How did the subject find the tests easy to use?" You wrote "Average."

"Did the subject find the tests easy to understand?" You wrote down 3, which is average.

"How well do you think the subject performed?"

And you wrote down "average" and then you were asked for any particular comments and you didn't write any.

Did I read that correctly?

A Correct.

Q So as far as that portion of the tests you administered, you felt she was -- on those categories how she found the tests to be --

A She understood instructions, she understood the test administration. That's what that's about.

Q Did you give her the testing administration a year earlier, or did you give her the testing administration before she took the test?

A What do you mean a year earlier?

Dr. Busichio-by Plaintiff-Cross

Q Well, is this something she had to rely on her long-term memory or is this something --

A No, this is the day I gave her the test.

Q So short-term memory?

A Okay, this is nothing about memory. This --

Q Hold on.

A Nothing about memory at all.

Q Hold on. In order to take a test, you have to understand what you're doing?

A Understand the instructions of the test. So if I gave her instructions, Do you understand the instructions, yes.

Q Hold on. I know you're anxious to speak. I promise you, Mr. McCrorie will ask you whatever he wants. Okay, right now it's my turn, all right. No disrespect, but it's my turn.

Okay. So, in order for her to take the test, you had to give her instructions; correct?

A The computer gives her instructions.

Q Okay, I stand corrected. The computer gave her instructions?

A Correct.

Q And I assume you stood there and you watched; correct?

A She goes through a tutorial to make sure she understands the instructions to get to the regular test.

Q Okay, that's my point. In order to take the test, she

has to be given instructions?

A Correct.

Q And she has to understand the instructions?

A Correct.

Q And she has to have the cognitive ability to understand the instructions to take the test?

A She has to pass the tutorial to take the test; correct.

Q Can we agree that she passed the tutorial?

A Yes, she did.

Q Can we agree that she understood how to take the test?

A She understood how to take the test.

Q Did you have any reason whatsoever to believe that she had such severe cognitive deficits that she couldn't even understand the test that was about to be administered to her?

A I never ever said she had severe cognitive deficits.

Q I never said you did.

A Obviously, no. I wrote no.

Q Thank you. Thank you. You answered my question.

So now we know she was given a series of instructions --

A Correct.

Q -- shortly before taking the test; correct?

A Right, right before the test.

Dr. Busichio-by Plaintiff-Cross

Q And while you're taking the test -- how long does that test take?

A Depends on the patients. It can good for an hour and a half. It can go for -- it just depends.

Q During the course -- let's use an hour and a half.

During the course of the hour and a half, did she ever come to you and say, Doctor, I don't remember the instructions?

A No, she can't move on until she gets the instructions.

Q Okay. So she understood the instructions for the hour and a half; correct?

A She read the instructions, and she went on to the test.

Q Yes.

A Correct.

Q And she knew what she knew -- I don't want to go around in circles.

A She knew the instructions.

Q Okay, fine.

And, again, Doctor, since I don't have the booklet, I ask you to bear with me. See this?

(Showing)

A Yes.

Q I don't know what it is, but would you tell the jury

what this test is?

A Sure. So that test is a test of effort. So remember before I said that I gave her a test of effort? That's called a Rey 15 Items.

So, actually, you don't need the booklet for that because she got almost everyone right on that.

Q This is the Rey 15. This is on the assessments that I mentioned earlier?

A Right.

Q This is one of them.

A Correct.

Q She got 14 out of 15?

A 14 out of 15.

Q And she had to write A, B, C, 1, 2, 3?

A All she needed to get was seven.

Q Roman numeral I, Roman numeral II, Roman numeral III?

A Correct.

Q So she was able to count A, B, C; right?

A She was able to remember A, B, C, 1, 2, 3. Roman numeral I, II, III, square, circle --

Q Okay, I asked you to explain it. You did. Thank you.

So this is what you showed her?

A Correct.

Q And that's what she wrote; correct?

A Correct.

Q Now, we get to another subset. I'm going to show you this page, Digit Span.

A Digit Span.

Q And this is one of the tests you administered to her; right?

A Correct.

Q Basically, the way this test works is you have to follow certain instructions in giving the tests to the person you're giving the test to?

A Exactly.

Q And so you're told, look, there's a series of eight problems here, okay. As soon as somebody gets two in a row wrong, stop. Because if they got two in a row wrong, we can safely assume they're going to get the rest of them wrong?

A Correct.

Q So you didn't even ask her, for instance -- this is the page?

(Showing)

A Yes.

Q So, here, when you're going over the Digit Span and there's eight questions, once she got question 5 wrong, okay, you didn't even ask her question 6, 7, and 8; because you automatically assumed she'd get those wrong, correct?

A No, that's the testing manual.

Q That's --

A Correct.

Q When I say you had to follow instructions, the instructions you're given?

A Correct.

Q Are that if someone gets two in a row wrong, don't even bother asking them the rest because can could assume since each question gets a little harder, once they don't get two in a row right, don't even bother asking them the rest; correct?

A Well, stop, discontinue it.

Q Well, stop, and that's what you did.

So for here, she got question 1 right, question 2 right, question 3 right, question 4 right. She got question 5 wrong; and, therefore, because she got question 5 wrong, you never even asked her question 6, 7 and 8. They would automatically score wrong; correct?

A We just didn't score them.

Q And the same thing this is asking her questions forward when it says 9-7; are you asking her to repeat 9-7?

A Correct.

Q So the computer, I would imagine, says -- flashes 9-7 and then she has to write 9-7; correct?

A So I'll say 9-7 to her, and she has to repeat that to me.

Q This isn't the computer?

A No.

Q It's face-to-face?

A Right.

Q You say, Joan, repeat after me, 9-7?

A Correct.

Q And she says 9-7.

And then you say Joan repeat after me, 5-8-2; and she says 5-8-2. And because she got it right, you kept going and you said 7-2-8-6; she answered correctly. You said 6-4-3-9; she answered correctly. You said 4-2-7-3-1; she answered correctly.

A Incorrectly.

Q Okay. She got -- you gave a score of 1; correct?

A Correct.

Q So you can score it 0, 1 or 2; correct?

A Correct.

Q So zero means she's got it all wrong, 2 means she got it all right, 1 means let's keep going?

A One means she got one of the trials wrong on that trial.

Q Okay, got it. Then you went 5 -- then you went 3-9-2-4-8-7; and she got that one wrong. And then the next one she also wasn't even asked because it was assumed since she couldn't answer that one, she wouldn't be able to answer one with more digits; correct?

A We stopped after she got two wrong of the same

span.

Q Correct. And then the next part is answering questions backwards.

For instance, you said to her 7-3, and she would say to you 3-7; correct?

A Correct.

Q You would say to her 6-2-9, and she would say to you 9-2-6 and so on and so on; correct?

A Correct.

Q Until, ultimately, you said to her 6-5-8-4-3 and she was supposed to read back to you 6 -- I'm sorry. She was supposed to read back to you -- I got that one wrong and I'm looking at it. She was read back to you 4-3-8-5 --

MR. McCRORIE: You still got it wrong.

Q Okay, we can stop asking myself more questions.

A Actually, we never got to that one.

Q Okay.

A She missed the one before that.

Q Okay.

A So that one, I had discontinued by that point.

Q According to your notes -- maybe I'm reading it wrong, which I probably am. 6-5-8-4-3, you put an X next to that; correct?

A This must be a different -- I'm looking at maybe the different -- a different testing, because I have -- are

you looking at? Which date are you looking at, on top of it? Because I've tested her a number of times so --

Q It doesn't have a date.

MR. KAMINSKY: Jim, could you help me here?

MR. McCRORIE: It looks like in the February 2013, in the same packet.

THE WITNESS: Okay.

MR. McCRORIE: Before it guess to the last test.

A Do you want me to take a look at that one?

Q It's okay.

MR. KAMINSKY: Jim, can we agree I read it? After four tries, I read it correctly.

MR. McCRORIE: Yes. You got it wrong twice.

A I agree. It's just a different testing session, okay.

Q So when you talk about these tests, these are the tests; correct?

A These are -- yes, these are the tests.

Q So based upon her ability to say numbers forward, backwards or her ability to cross lines on a drawing or her ability to quickly catch something that's falling on a computer; based upon the results of those tests, are how you reached your diagnosis?

A No.

Q In part, correct?

Dr. Busichio-by Plaintiff-Cross

A No. Those are only three tests out of about twenty-five tests. If you want me to go through the rest of them, I can.

Q No, I don't think the jury wants you to. Thank you for your kind offer.

A You're welcome.

(Continued on the next page)

Q Then just -- then again, you -- over the course of your treatment, if you jump to May 7 of 2013 and I am just picking a date at random, two hours and 45 minutes, your goals were to improve her attention and concentration, increase processing speed, those are some of the goals and again, you did different computer testing and you administered executive functioning tests, and you administered a new visual/spatial analysis test.

They were anagrams from Brain Train, correct?

A Yes. Which note? 5-7, you said of 2015?

Q Yes.

A I will pick that up.

Q Some of these tests were anagrams from I would imagine a publication called Brain Train, correct?

A Brain train, yes. That is one of the -- one of the cognitive --

Q Okay. You don't have to go over everything. I am just picking some stuff here so we get a sense of what the tests are?

A I just want to get to the notes that you are on. 5-17 of 2013.

Q Yes.

A Okay.

Q So patient -- Under Results in Progress. Overall, the patient completed the reasoning logical

deduction with 50 percent accuracy. Overall, the patient completed the task with 68 percent accuracy.

The next one was a moderate complexity test and she completed it with 30 percent accuracy, completed a task that took a long period of time with reasoning and logical deduction with 50 percent accuracy. She completed an -- another task with 70 percent accuracy. That was moderate complexity test.

And again, on 5-14 of 2013, you administered the three-hour examination, with the same goals and she completed the task with 50 percent accuracy and another one with 60 percent accuracy and another one with 55 percent, another one with 30 percent.

And just so we can get a sense, you know, I know there is a lot of tests and I know they are all different, but tests that we used as examples, they are examples, correct?

A Sure.

Q So a lot of stuff is on the computer, a lot of the stuff is face-to-face, with you writing down scores and things like that. And then you gave on that one -- I made reference to you gave an overall score, global score of 71 point something, correct?

A Correct.

Q Do you feel it is your opinion that she has a

cognitive impairment?

A Yes.

Q Would you agree with the following statement: -- and that is based in part on the Mindstream tests that you administered, correct?

A That is part of the testing.

Q I understand it. Do you agree with the following statement?

"The World Health Organization and John Hopkins, based upon research involving thousands of individuals, have invalidated the Mindstream tests in that the World Health Organization and John Hopkins maintain that a mild concussion does not result in chronic cognitive impairment." Would you agree with that or disagree?

A That a mild concussion --

Q Does not result in chronic cognitive impairment?

A What was that, the majority of the cases.

Q Yes.

A What did you say before?

Q I will read it again.

"The World Health Organization and John Hopkins --" you're familiar with both, correct?

A Sure. Sure.

Q Based upon research involving thousands of individuals?

A Okay.

Q " -- maintain that mild concussion does not result in chronic cognitive impairment."

A In the majority of cases, but not every one.

Q So you do agree with the World Health Organization?

A In that concussions resolve. Most of them do not, but some of them do.

Q Most of them we do solve, correct?

A The people we don't see in the center, they have a concussion. They are resolved.

Q You answered my question.

And just so we are clear, the plaintiff was referred to you by a doctor that she was referred to by her attorney.

MR. MCCRORIE: Objection.

A Dr. Hausknecht referred her to me. I don't know how it got to Dr. Hausknecht.

Q Dr. Hausknecht is the one who referred the patient to you?

A Correct.

MR. KAMINSKY: Judge, can I have 30 seconds?

THE COURT: Thirty seconds?

Mr. KAMINSKY: Correct, Judge.

(Pause in proceedings.)

MR. KAMINSKY: I have nothing further.

REDIRECT EXAMINATION

BY MR. MCCRORIE:

Q Assume that the jury has been told that the CAT scan sees bone -- not the inter cranium of the brain. When the CAT scan was done of the head, that says no brain injury, no crack in the skull. That talks about periorbital soft tissue swelling that it can see only if it is looking at bones. Is that head trauma?

A Yes.

Q In the -- and we told you two doctors, one is a PA, one was a doctor that actually disagreed with the physician's assistant that there were actually headaches, but did you see in there she was knocked to the ground when the doctor was looking at her and she had head trauma?

A Yes.

Q Did you see the final diagnosis of contusion to the face, head injury, closed without loss of consciousness?

A Yes.

Q She was diagnosed with a head injury in the emergency room, correct?

A Correct.

Q And you have already told the jury, and you said, you have maintained from the beginning, this is not her

main issue, but it is persistent and were you shown the pictures of -- were you shown the pictures of her in the emergency room hours later -- of the head injury?

A Was I shown any? Probably I have seen them.

Q Do you know a bus hit her?

A I know a bus hit her, yes.

Q I would like you to assume that Ms. Janczewski testified immediately after those seconds when she gets to the back of the bus she does not really remember, that she was in a daze; that the bus driver was talking to her through the window and she could not even hear words. He testified his window was open and he was talking to her. But she was not comprehending it?

A Okay.

Q He testified she was stunned. Is that an altered state of consciousness, of a head injury?

A Yes.

Q Remember Mr. Kaminksi had you read the summary, it is in evidence, and he had you read below average in the following cognitive domains, none?

A Correct.

Q Right above that. I am not saying that there is anything more or less than you said it was, but I want to read you two things he didn't read you from the same exact set of sentences. The first one says, more than one

standard deviation below average in the following cognitive domains: Memory, executive function, attention, information processing speed. That is what you wrote?

A Correct. That is what the computer -- generated, yes.

Q And the global cognitive score of 71.4 was more than one standard deviation below average; not horrible, but not normal?

A Correct.

Q You never said anything other than what it was each time?

A Correct.

Q When you treated Ms. Janczewski, did you treat her in the totality?

A Yes.

Q What effect -- withdrawn.

You said already that part of it is a reactive anxiety and depression to the situation.

A Correct.

Q What effect would it have on a person, going through five surgeries, losing the career they worked for and having the man who did it tell an untruth for three years, risking where you could possibly lose?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Dr. Busichio - Plaintiff - Redirect/McCrorie

Q What effect would it have -- this is a picture of her before, months before?

A Sure.

Q And months before.

(Document shown to the witness)

MR. KAMINSKY: Objection.

Q What effect would it have, the change of her appearance --

MR. KAMINSKY: Beyond cross.

THE COURT: Sustained.

Q You were asked a lot of questions about if she told you about what was going on beforehand with a Ponzi scheme and stuff that was going on since 2010 for years. Okay.

A Yes.

Q Did she ever tell you there were plans to let her go before a bus hit her and caused her to have these injuries and to be on medication?

A No.

Q Again, did she -- she was not in there also complaining about ovarian failure or the fact that her mother died within 11 months? Those things also would have caused her stress?

MR. KAMINSKY: Objection. Move to strike, Judge.

THE COURT: Strike that. Objection sustained.

The jury will disregard the last question.

Q Does the fact that she has post concussion syndrome -- withdrawn, or that you told us on direct, that -- it is in your records, has any of that changed from any of the questions as a result of the cross examination?

A No.

Q It is no better or worse than you said on direct or in your notes?

A That is exactly what I said.

Q The booklets from all of these tests, Dr. Erlanger surely has and can give to Mr. Kaminksi?

A Sure. Absolutely.

Q And they are on the Internet, the standard --

A If Dr. Erlanger does not have them, he can get them for him.

Q Did Joan ever tell you -- he is asking all of the questions about the problems at work -- that she wanted to get hit by a bus that night?

MR. KAMINSKY: Judge, I will stipulate she did not want to come into contact with the bus.

THE COURT: So stipulated.

Q Did you compare the tests, at least the results that Dr. Erlanger did?

A Yes.

Q Was she -- did she do as well in some of the parts and did she do poorly on those few parts that she did poorly on?

A Yes. She had trouble in different domains.

Q Poorly as compared to other people that would have an executive level of functioning?

A Correct.

Q Before?

A Yes.

Q And understanding -- I believe you started to say that when you were doing the test of the dropping with the computer with her, you were asked if at that time she was getting her nose fixed, her shoulder fixed, neck -- they are were about to put hardware into it.

You said that you excluded motor skills on that test?

A Yes.

Q Why is that?

A Any time I think something physical or something is interfering with the ability to perform, I will exclude that from my final impression.

Q And post concussion syndrome. You gave a constellation of symptoms. If someone has headaches and lack of focus and concentration from say medication and

Dr. Busichio - Plaintiff - Recross/Kaminsky

pain, is it sometimes hard to differentiate where it is coming from, meaning -- either a post concussion syndrome or through neck injuries?

A Yes. Well, when you have -- in terms of cognitive testing, if I feel like something is going -- like I did with the headaches that time and I felt it would interfere with my testing, she will come back until she gets that managed with the neurologist.

But when you have a person that is dealing with pain, headaches, persistent, that is going to also affect your attention, your focus, your memory.

So yes, all of that together can impact her.

MR. MCCRORIE: I have nothing further.

MR. KAMINSKY: Just --

THE COURT: Recross.

RECROSS EXAMINATION

BY MR. KAMINSKY:

Q I just want to go back to the CAT scan that was referred to by Mr. McCrorie. It says mild left peri orbital soft tissue swelling. That concerns her eye, correct?

A She was hit right --

Q Yes. And this makes reference to her eye. It is not referenced to her brain, because what the CAT scan definitively says is, no intercranial hemorrhage, no mass

Dr. Busichio - Plaintiff - Recross/Kaminsky

lesion or acute infarction, no evidence of traumatic brain injury. Correct?

A That is what I talked about the coup/contrecoup before.

Q I am asking you if you --

A That is what that says, but she can't --

Q I didn't ask for a but.

A That is what that says, correct.

Q It says no evidence of traumatic brain injury?

A That is what that says.

Q And this was interpreted by a radiologist, correct?

A Correct.

MR. KAMINSKY: Thank you. Nothing further.

THE COURT: You may step down.

Can I see the attorneys?

(Witness excused.)

(Sidebar off the record)

THE COURT: We will adjourn at this point, we will reconvene at 9:30 in the morning when we will continue with this trial. Remember that this Thursday we will only work in the morning and that Friday we are off and we are also going to be off next Monday.

Do not discuss this case among yourselves or with anyone else. Enjoy the rest of your day. See you

Dr. Busichio - Plaintiff - Recross/Kaminsky

tomorrow at 9:30.

THE COURT OFFICER: All rise, the jury is exiting.

(Whereupon, the jury exited the courtroom.)

(Whereupon, the proceedings were adjourned to February 9, 2016, at 9:30 a.m.)