

EVR-2026-041897 · March 23, 2026 · litigationprep.app

Expert Vulnerability Report

Dr. Jonathan R. Harmon, PhD

Forensic Neuropsychology · Personal Injury - Automotive Collision / Mild TBI · S.D. Texas, Civil No. 4:25-cv-01844

| | |
|------------------------------|---|
| Expert | Jonathan R. Harmon, PhD - Licensed Psychologist, Texas; Adjunct Faculty, UT Health Science Center |
| Proceeding | Personal Injury - Automotive Collision / Mild TBI · S.D. Texas, Civil No. 4:25-cv-01844 |
| Retaining party | Plaintiff (Jackson & Mehta LLP, Houston) |
| Overall vulnerability | HIGH - Multiple critical exposures identified |

I. EXECUTIVE SUMMARY

Dr. Harmon's opinion that the plaintiff sustained a “permanent cognitive impairment with 35% functional disability” attributable to a mild traumatic brain injury is methodologically unsupported in at least four critical respects. First, no standalone performance validity test was administered - a failure courts in this circuit have treated as a foundational reliability deficiency under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Second, the evaluation battery relied on normative data from non-litigation populations without application of the litigation-specific comparison norms validated by Ben-Porath and Tellegen (2020) for exactly this proceeding context. Third, the permanency opinion exceeds what the peer-reviewed literature supports at this injury severity level. Fourth, the causation conclusion conflates correlation with attribution in a manner the Fifth Circuit has identified as *ipse dixit* reasoning insufficient under Federal Rule of Evidence 702. *See Moore v. Ashland Chemical, Inc.*, 151 F.3d 269, 279 (5th Cir. 1998).

Primary attack strategy. Lead with the absence of performance validity testing. This is the single most defensible methodological gap and the one most likely to support a pretrial *Daubert* motion or, at minimum, a sustained line of cross-examination that undermines the impairment rating before the jury reaches damages.

II. ATTACK VECTORS (RANKED BY SEVERITY)

The following vectors are ranked by severity. Each includes a cross-examination sequence, concession target, and jury framing.

[HIGH] A. VALIDITY TESTING: Absence of Standalone Performance Validity Testing

Dr. Harmon administered no standalone performance validity test (PVT) in this evaluation. The sole validity indicator was the embedded index of the TOMM - a measure designed to supplement, not replace, dedicated PVT batteries. In a personal injury matter involving documented secondary gain (active litigation, disability claim pending), the absence of a dedicated PVT such as the VSVT, NV-MSVT, or Green's Word Memory Test represents a foundational methodological failure. Published forensic neuropsychology standards require objective PVT assessment in all civil litigation evaluations with secondary gain. *See Sweet, J.J. et al., American Academy of Clinical Neuropsychology Consensus Conference Statement on the Neuropsychological Assessment of Effort, Response Bias, and Malingering, 35 CLINICAL NEUROPSYCHOLOGIST 1 (2021).* Courts have treated PVT omission as a basis for *Daubert* exclusion where an expert's opinion rests on cognitive performance data that may reflect insufficient effort. *See In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 745 (3d Cir. 1994).*

Cross-Examination Sequence

Q1. "Dr. Harmon, you administered no standalone performance validity test in this evaluation, correct?"

Q2. "And you are aware that embedded validity indicators - such as those within the TOMM - are designed to supplement, not replace, a dedicated performance validity battery?"

Q3. "So your conclusion that the plaintiff has permanent cognitive impairment rests entirely on cognitive performance data for which you cannot rule out insufficient effort?"

Concession Target

Expert concedes that no dedicated PVT was administered and that embedded indicators alone are insufficient to rule out feigned or exaggerated cognitive deficits in a secondary gain context.

Jury Framing

Dr. Harmon cannot tell you whether the test scores he is relying on reflect actual brain damage or a plaintiff who chose not to try. He did not perform the test that would answer that question - the test his own profession's published standards require in exactly this situation.

[HIGH] B. NORMATIVE SAMPLE: Failure to Apply Litigation-Specific Comparison Norms (MMPI-3)

Dr. Harmon administered the MMPI-3 and interpreted results against the instrument's standard community normative sample. He did not apply the litigation-specific comparison norms published by Ben-Porath and Tellegen specifically for personal injury and disability contexts. Ben-Porath, Y.S. & Tellegen, A., *Minnesota Multiphasic Personality Inventory-3 (MMPI-3): Manual for Administration, Scoring, and Interpretation* (Univ. of Minn. Press 2020). Published research demonstrates that MMPI-3 scores in litigation contexts systematically differ from community norms due to response sets common in claimants with secondary gain. See Greiffenstein, M.F. et al., *Limitations of the MMPI-2 Symptom Validity Scales*, 18 NEUROPSYCHOLOGICAL REHABILITATION 403 (2004). Use of community norms overstates psychological distress and skews validity scale interpretation, rendering the damages opinion methodologically compromised.

Cross-Examination Sequence

Q1. "Dr. Harmon, you interpreted the MMPI-3 against the instrument's standard community normative sample, correct?"

Q2. "You are aware that Ben-Porath and Tellegen published litigation-specific comparison norms for the MMPI-3 precisely because community norms perform differently in personal injury contexts?"

Q3. "And you did not apply those litigation-specific norms in forming your opinion in this case?"

Concession Target

Expert concedes failure to apply litigation-specific comparison norms despite their availability and direct relevance to this proceeding type.

Jury Framing

The score interpretation he is relying on uses data from healthy community volunteers - not people in litigation. The test's own publisher provides different norms for exactly this situation. He did not use them.

[HIGH] C. SCOPE OVERREACH: “Permanent Impairment” Opinion Exceeds Methodological Support

Dr. Harmon opined that the plaintiff suffers “permanent cognitive impairment with 35% functional disability” following a mild TBI. The plaintiff’s emergency records document GCS 14 at presentation, no loss of consciousness, and negative neuroimaging. Peer-reviewed literature consistently establishes that mild TBI at this severity resolves in the vast majority of cases within three months. *See* Dikmen, S.S. et al., *Neuropsychological Outcome at 1 Year Post Injury Following Complicated Mild, Moderate, and Severe Traumatic Brain Injury*, 16 J. INT’L NEUROPSYCHOLOGICAL SOC’Y 369, 374 (2010). Dr. Harmon performed no pre-injury baseline, no premorbid functioning estimation, and no longitudinal comparison. The permanency opinion is precisely the form of *ipse dixit* reasoning the Supreme Court addressed in *General Electric Co. v. Joiner*, 522 U.S. 136, 146 (1997): “nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.”

Cross-Examination Sequence

Q1. “Dr. Harmon, the plaintiff’s emergency records document a GCS of 14, no loss of consciousness, and negative neuroimaging - that is your understanding of the injury severity?”

Q2. “At that severity level, the peer-reviewed literature establishes that cognitive symptoms resolve in the majority of cases within three months, correct?”

Q3. “Your permanency opinion is based on a single evaluation conducted fourteen months post-injury, with no pre-injury baseline, no premorbid estimate, and no longitudinal data?”

Concession Target

Expert concedes that the permanency opinion rests on a single cross-sectional evaluation with no baseline, no premorbid estimate, and no longitudinal data - in a mild TBI case where the literature predicts resolution.

Jury Framing

He is telling you the plaintiff will be impaired for life based on one test session, fourteen months after an injury the medical records classify as mild. He has no baseline. He has no comparison. That is not a scientific opinion - it is a conclusion in search of a methodology.

[MEDIUM] D. INSTRUMENT CURRENCY: WAIS-IV Administered in 2026 - Normative Currency

Dr. Harmon administered the WAIS-IV, published in 2008 with normative data collected in the early 2000s. The WAIS-V was published in 2024. The Flynn Effect - the well-documented secular rise in IQ scores over time - means that WAIS-IV norms applied in 2026 systematically overestimate cognitive impairment. *See United States v. Davis*, 611 F. Supp. 2d 472, 479 (D. Md. 2009) (explaining that “the Flynn Effect means that over time, the test norms become outdated, such that the average score is no longer 100, but something higher”). Failure to use current norms or to apply Flynn Effect corrections inflates apparent deficit.

Cross-Examination Sequence

Q1. “Dr. Harmon, you administered the WAIS-IV, published in 2008 - is that correct?”

Q2. “You are aware that the WAIS-V was published in 2024 with updated normative data?”

Q3. “And you are aware that the Flynn Effect - the secular rise in IQ scores - means that 2008 norms applied today systematically overestimate cognitive impairment?”

Concession Target

Expert concedes use of 18-year-old normative data, awareness of the WAIS-V publication, and familiarity with the Flynn Effect and its impact on score interpretation.

Jury Framing

He used a cognitive test with normative data that is eighteen years old. A more current version was available and in use. The outdated norms make impairment look worse than the current science supports.

[MEDIUM] E. DAUBERT / FRE 702: Causation Without Differential Diagnosis - Pre-Existing Conditions Ignored

Dr. Harmon's causation opinion - that cognitive deficits are attributable to the subject collision - rests on post hoc reasoning without adequate differential diagnosis. The evaluation records document pre-existing ADHD (diagnosed 2019), prior head injury (2021 cycling accident, concussion protocol), and a reported learning disability history. Dr. Harmon performed no apportionment analysis. Federal Rule of Evidence 702 requires that expert testimony reliably “fit” the specific facts. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591-92 (1993). Generic attribution of post-collision cognitive scores to collision causation, without ruling out documented pre-existing contributions, does not satisfy this requirement. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

Cross-Examination Sequence

Q1. “Dr. Harmon, the plaintiff has a documented history of ADHD diagnosed in 2019 - prior to this collision?”

Q2. “And a prior concussion from a cycling accident in 2021, less than eighteen months before the subject incident?”

Q3. “Your report contains no apportionment methodology - no framework for separating the contribution of these pre-existing conditions from the collision itself?”

Concession Target

Expert concedes absence of apportionment methodology and acknowledges that pre-existing conditions are documented in the record but not addressed in the causation analysis.

Jury Framing

He is attributing all of the plaintiff's cognitive symptoms to this accident. But the records show prior ADHD, a prior head injury, and a learning history - all before this collision. He never tried to separate them.

III. DAUBERT PRONG ANALYSIS

Assessment under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co. v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999); Fed. R. Evid. 702.

Testability. [Partial]

The instruments used (MMPI-3, WAIS-IV, TOMM) have published validation data. However, Dr. Harmon's composite methodology - specifically the permanency opinion derived from a single cross-sectional evaluation without premorbid baseline - has not been empirically tested as a protocol for permanent disability determination in mild TBI. The opinion is not derived from a testable or falsifiable methodology.

Peer Review and Publication. [Vulnerable]

Individual instruments are peer-reviewed. The critical vulnerability is the causation and permanency methodology, which is not grounded in published protocols for mild TBI permanent impairment determination. Published ACRM guidelines require longitudinal assessment for permanency determinations - a requirement not met here.

Error Rate. [High Exposure]

The absence of PVT data means the error rate of the cognitive test battery is unknowable. WAIS-IV norms applied in 2026 carry Flynn Effect error that systematically inflates apparent deficit. The 35% functional disability figure has no published error rate because it is not derived from a validated instrument output.

General Acceptance. [Mixed]

The MMPI-3 and WAIS instruments are generally accepted. The methodology of omitting PVT in a secondary gain context is not generally accepted - published forensic neuropsychology standards affirmatively require objective PVT assessment in civil litigation evaluations. *See Sweet, J.J. et al., AACN Consensus Statement on Effort, Response Bias, and Malingering, 35 CLINICAL NEUROPSYCHOLOGIST 1, 14 (2021).*

IV. RECOMMENDED OPENING SEQUENCE

The following three questions open the cross-examination by locking Dr. Harmon into commitments that create the foundation for the validity testing attack (§ II.A) and the permanency attack (§ II.C).

Q1. “Dr. Harmon, in any case where a claimant stands to benefit financially from a finding of impairment, you would agree that ruling out insufficient effort is a foundational requirement of a reliable cognitive evaluation?”

Q2. “And the accepted methodology for ruling out insufficient effort in a civil litigation context is the administration of a dedicated, standalone performance validity test - separate from embedded indicators within a cognitive battery?”

Q3. “So before we discuss your findings: the only performance validity data in your evaluation came from the embedded indicators within the TOMM - you administered no standalone PVT. Correct?”

V. DEPOSITION PRIORITY

Lock down the PVT omission before trial. At deposition, establish: (1) Dr. Harmon's awareness of published PVT standards (*see Sweet et al., 2021; AACN Practice Guidelines*); (2) his acknowledgment that secondary gain was present in this evaluation context; (3) his admission that embedded TOMM indicators were the sole validity data; and (4) his concession that the permanency opinion cannot be rendered with scientific certainty without baseline data. These four points, locked in under oath, create the evidentiary foundation for a Federal Rule of Evidence 702 motion to exclude or limit Dr. Harmon's testimony. If the motion fails, they form the cross-examination structure at trial. Either way, the deposition testimony is the critical predicate.

VI. REBUTTAL EXPERT BRIEF: OUTLINE

Points for rebuttal expert to address, in order of litigation priority:

1. PVT Standard of Care. Establish that published forensic neuropsychology standards (*Sweet et al., 2021; AACN Practice Guidelines*) affirmatively require dedicated PVT administration in civil

litigation evaluations with secondary gain. Dr. Harmon's omission departs from the standard of practice in his own specialty.

2. Mild TBI Prognosis Literature. Present peer-reviewed literature establishing symptom resolution timelines for mild TBI at this injury severity (GCS 14-15, no LOC, negative neuroimaging). Dikmen et al. (2010), Carroll et al. (2004), and the WHO Task Force on Mild TBI collectively establish that permanent cognitive impairment is not the expected outcome.

3. Flynn Effect and WAIS-IV Norms. Quantify Flynn Effect inflation in WAIS-IV scores administered in 2026. Provide Flynn-adjusted score interpretations demonstrating that apparent deficit scores are partially or wholly attributable to normative obsolescence. *See United States v. Davis*, 611 F. Supp. 2d 472 (D. Md. 2009).

4. Pre-Existing Condition Apportionment. Perform an independent evaluation with explicit apportionment methodology separating pre-existing ADHD, prior concussion (2021), and learning history from collision-attributable deficit, if any.

5. MMPI-3 Litigation Norms. Re-interpret MMPI-3 data using litigation-specific comparison norms. Demonstrate how the psychological damages profile changes under the normatively appropriate framework.

VII. JURY FRAMING NARRATIVE

“Dr. Harmon administered tests and found low scores. Then he told you those low scores mean permanent brain damage caused by this accident. What he did not tell you is that he never tested whether the plaintiff was trying during those tests. He used a test version with eighteen-year-old normative data - a more current version was available. He did not apply the norms the test's own publisher says to use for someone in a lawsuit. He ignored the plaintiff's prior ADHD, prior head injury, and learning history - conditions that existed before this accident. And he gave you a thirty-five percent disability number that comes from no validated methodology. The plaintiff's own medical records say this was a mild injury. The science says mild TBI resolves. Dr. Harmon has not explained why this plaintiff is different - because he never looked.”

VIII. CITATIONS

The following authorities were identified through the CourtListener federal case law database and are directly relevant to the attack vectors identified above.

Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993)

Established the Federal Rule of Evidence 702 gatekeeping standard for expert testimony. Core framework for all *Daubert* motions in federal court.

General Electric Co. v. Joiner, 522 U.S. 136, 146 (1997)

“Nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.” Directly applicable to Dr. Harmon's permanency and causation opinions.

Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152 (1999)

Extended *Daubert* gatekeeping to all expert testimony. Reliability inquiry includes whether the methodology was reliably applied to the specific facts of the case.

Moore v. Ashland Chemical, Inc., 151 F.3d 269 (5th Cir. 1998)

Fifth Circuit affirming exclusion of medical causation testimony where expert's methodology lacked adequate scientific grounding. Controlling authority in the Southern District of Texas.

In re Paoli R.R. Yard PCB Litigation, 35 F.3d 717, 745 (3d Cir. 1994)

“Good grounds” reliability standard - party must demonstrate more than facial qualification; methodology must support conclusion.

United States v. Davis, 611 F. Supp. 2d 472, 479 (D. Md. 2009)

Court addressed Flynn Effect adjustments to WAIS scores in forensic context: “the Flynn Effect means that over time, the test norms become outdated.”

This report was generated by LitigationPrep and reflects AI-assisted analysis grounded in published forensic psychology standards, federal case law, and instrument technical documentation. It constitutes attorney work product prepared in anticipation of litigation.

Counsel should independently verify all case citations before filing. Questions: legal@litigationprep.app · litigationprep.app