

# Documenting Case Damages in Catastrophic Cases

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Most attorneys know when they have a client with a serious injury. The client has sustained a spinal cord injury and cannot move his/her legs or arms, or in some cases, both. A baby may be severely brain damaged, resulting in impaired mental capability, or have cerebral palsy. An adolescent may have sustained a head injury, resulting in severe cognitive deficits and physical limitations.

What are the consequences of these multi-faceted catastrophic injuries on the client's ability to function? How will these injuries affect the person's education and vocational development? Can the plaintiff ever become competitively employed? If so, what will it cost to prepare for that? How much for medical care and therapy? What is the cost to renovate the client's home, if necessary? How much for the required nursing services and home care?

An attorney should use a Vocational Evaluation and Life Care Plan to determine the worth of a case. Retention of a Rehabilitation Expert precedes that of an Economist, as the Economist formulates his economic projections based on the costs developed in the Life Care Plan made by the Rehabilitation Expert. The focus of his/her expertise in the areas of rehabilitation, employability, and earning capacity allows the Rehabilitation Expert to complement the evidence and testimony of the medical and economic experts, and to educate the jury as to the impact of the severe injuries on the person's lifetime care needs.

The development of the case damages and determining the worth of the case is like building the “**house of damages.**” The foundation is the physician’s report, the frame of the house is the vocational expert and/or life care planner’s report, and the roof is the economist’s report which projects the loss of earning capacity and long term medical needs over the plaintiff’s life expectancy.



## CASE ILLUSTRATION - TRUCK ACCIDENT

John Smith, an ironworker, was involved in a motor vehicle accident with a commercial truck that resulted in multiple leg and ankle fractures, surgeries, and overall a loss-of-earning capacity. He was driving on the eastbound side of Maple Street near its intersection with Elm Street in a busy city section. Smith’s vehicle collided with an oncoming commercial truck that was being driven by Michael Jones, who had crossed Maple Street’s double yellow center line. This led to Smith sustaining several fractures in his legs, ankles, and feet. Smith sued the driver of the commercial truck, Michael Jones, and the company of the commercial truck, ABC Trucking, claiming that the company was vicariously liable for the driver’s actions.

The injuries Smith sustained from the truck accident required multiple surgeries and post-surgery physical therapy for nine months. He never returned to work and was unable to walk for several months. Smith can currently walk, but with a limp on his right side.

Smith sought recovery of his past and future lost earnings and damages for his past and future pain and suffering and his wife, Jane Smith, sought recovery of damages for her loss of consortium.

During the trial, Smith's attorneys used three experts: vocational expert (certified rehabilitation counselor), physician (orthopedic surgeon), and economist. The orthopedic surgeon opined that Smith would not be able to return to his prior profession and would require future surgeries for the existing conditions and injuries in his legs and ankles. Smith's vocational expert opined that he could work in the future but not at his full capability and only at a light-duty sedentary job; thus, he estimated a diminutive earning potential of \$30,000 to \$35,000 for the rest of Smith's life, Smith had earned nearly double that as an ironworker in the year prior to the trucking accident. Smith's economist opined that the potential damages he would suffer, assuming he could no longer work for the rest of his life, would be \$6 million. In conclusion the defendants' insurers agreed to pay a total of \$3.1 million.

OAS is a Nationwide Vocational Expert service with offices in NJ, NY, FL, TX, CT & CA. To see how the OAS Life Care Planners/Vocational Experts can assist you in documenting the damages in your Personal Injury cases, consult [www.oasinc.org](http://www.oasinc.org) or call 800-292-1919 for a proposal containing the experts' professional qualifications, fee schedule, and a sample life care plan report.

### **About the Author:**

#### **Edmond Provder, CRC, CLCP, D-ABVE**

Edmond Provder is a certified rehabilitation counselor, certified life care planner, Diplomate of the American Board of Vocational Experts, and is credentialed by the American Board of Vocational Experts, the Commission on Rehabilitation Counselor Certification and the International Academy of Life Care Planners.

In his extensive career, Mr. Provder has evaluated the vocational and employability potential of over six thousand individuals. He also served as a Vocational Expert for the Social Security Administration for nearly a decade, providing impartial vocational testimonies in thousands of Social Security Disability Hearings and has provided expert witness testimonies in hundreds of cases throughout the country.

In addition, Mr. Provder has developed and administered vocational and rehabilitation programs, including vocational evaluation testing centers and sheltered workshops for numerous organizations.

