

Effectively Documenting Loss-of-Earning-Capacity in Brain Injury Cases

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Attorneys and juries often have difficulty comprehending the devastating consequences of a brain injury. The catastrophic or traumatic brain injury in which the disability is obvious and demonstrable is much easier to comprehend than the mild brain injury. You cannot see the residuals of a mild brain injury as easily as you can in the case of an amputated arm. You cannot touch the injury site. Most of the time, there may be no physical (no externally-visible) consequences of the injury. However, the residual cognitive, psychological, behavioral, and emotional impairments may be more severe than even a spinal cord injury. These challenges raise the following questions:



- How can the attorney fully document the impact of a brain injury on a person's ability to function and earn money?
- What techniques can assist the jury in understanding how the brain injury impacts the individual's ability to work?
- What professionals can assist the attorney in better understanding the brain injury case?

Vocational experts have been used by attorneys to **bridge the gap** between medical evidence documenting the disability and economic reports that project damages into the future. Expertise in the areas of rehabilitation, employability, and earning capacity allows the vocational expert to support and enhance testimony of medical and economic experts, and to educate the jury as to the impact of an injury on employability and earning capacity.

An attorney should use a vocational expert/life care planner for three reasons:

- To determine the value of the case,
- To move the case toward settlement by justifying the amount of the demand
- To provide demonstrative evidence for trial

A vocational evaluation (or life care plan in the case of traumatic brain injury) enables the attorney to present the damages to the jury in a clear, concise, and demonstrative manner. The vocational expert/life care planner considers several factors when assessing and planning for a case involving a plaintiff with a brain injury. The first considerations are often the most important and telling. A life care planner can establish the medical, rehabilitation, and psychological needs of the evaluatee, as well as the affect the injury has on the entire family unit.

It is really important to have a life care planner assess an individual with a brain injury *early on*. Progress can be measurable and then compared to subsequent evaluations. Complications can be taken into consideration, and the necessary level of care can be assessed.

Loss-of-Earning-Capacity and Employability due to Brain Injury Example Case

A motor vehicle accident in which a 43-year old male, John Michael, employed by as a mechanic, was struck by a vehicle driven Sam Jones.

Michael suffered traumatic brain injury, bilateral comminuted fractured tibia and fibula and was in a coma for 3 weeks following the accident. He underwent five surgeries to his legs including internal fixation with rods. As a result of the brain injury, Michael has no memory of the accident; he has the mental capacity of a 9-year-old, suffers from short-term memory loss, is impulsive, lacks judgment, and cannot plan or sequence events. He requires constant care and resides with his sister. He is able to speak, after undergoing a course of speech therapy. Michael was earning \$51,000 per year as a mechanic, but after the accident and due to the brain injuries sustained, he was unable to return to work and would remain unable to obtain employment due to his cognitive deficits resulting from the traumatic brain injury.

The jury awarded over \$5,000,000 for Michael based on the breakdown of past and future medical expenses, past and future pain and suffering, home care and therapy, with the past lost earnings estimated at \$180,000 and future impairment of earning capacity at \$1,800,000.

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 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:

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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.