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Narrative

Removing the "Pits" from "Peachy" Cases: Lower Damages by Fighting Life Care Planner Opinions

I. The Life Care Plan

A life care plan is a written plain which accounts for a severely injured individual's needs from the date of injury to life expectancy. It usually includes a variety of products, medical services, vehicles, transportation services, aides, further retraining, home modifications which are anticipated to be needed in the future by the injured party.

The life care plan is designed to measure every possible expense which is necessitated by the accident so that the injured party can be compensated for potential future expenses. The amount is requested at trial more than damages to date, and more than pain and suffering damages. The amount requested is the number maximum number anticipated and is generally calculated with no certainty as to whether the injuries will worsen, improve or resolve. They are also designed to compensate for the current injuries from the accident, and for those complications which presumably arise from such injuries.

Life care planners are a special kind of expert who may have no specialized training. They come from varied life backgrounds often with little or no experience in the medical or injury fields. They can be social worker's accountants, physical therapists, counselors, or economists. Often they are nurses who have no experience in diagnoses or prognoses. Occasionally, medical doctors, osteopathic doctors or chiropractors serve as life care planners.

The life care plan industry was sponsored and originated by the plaintiff's bar. Life care planners require no licensure. Few states have governmentally endorsed certificate programs. Most states are devoid of regulation for the life care planning industry.

There are several companies in the nation that claim they award a certification to life care planners but those "certifications" are not uniform. They have no national or regional board even though some companies claim that their LCP professionals are "board certified".

Life care planners cannot testify to a reasonable degree of medical certainty as they are generally not medical doctors. They are not differential. They may not base their opinions on any real economic or medical data. Rather, they predict future damages on what may happen to the plaintiff, not what has been supported by what is more likely than not going to happen to the injured party.

When approaching a life care planner expert, one must focus an inquiry on the lack of relevant issues reasonably related to the injury caused by the accident or that the facts assumed and opinions reached by the expert is not reliable, and the opinions are not relevant to the injury at hand. The goal is

to strike the life care planner expert, or at least strike some of the opinions of the LCP and to devalue the remaining opinions. Thus, a legal defense to the expert must be tried in almost every LCP case, to strike the expert or to chisel away at the improper or unsupported opinions. For any remaining opinions, a proper defense may allow a defendant to factually attack such opinions by challenging the faulty analysis or assumptions supporting behind those opinions.

II. **Factual Challenges to the Life care plan.**

The first challenge to the LCP is to find out why it is that this expert believes they are an expert. What expertise do they bring to the table? What qualifications do they have? Are they making a diagnosis?

Since most life care planners are not medical professionals, they cannot diagnose. If they cannot make a diagnosis or a prognosis, it is likely that a medical doctor will not be able to support the LCP with every future projected treatment to a reasonable degree of medical certainty. As such, the life care planner is making a forecast. If they are forecasting, they are guessing. In this event, you should challenge the life care planner's opinion on the basis that their forecast is nothing more than speculation. If this expert is not able to meet the standard for medical proof in your state, then how they can submit future costs to the jury when no one is going to testify that such future treatment will happen to aa reasonable degree of medical certainty? While a court may not want to completely strike an expert, they are more likely to strike individual opinions which may not be properly supported. A single stricken assumption or opinion may result in a reduction of hundreds of thousands of dollars from the Life Care Plan.

On the other hand, if you have a life care planner who is not a medical care provider and they do not admit that are forecasting, then each of their opinions must be supported by medical opinion. If that has not happened and if they do not admit that they are speculating or forecasting what is going to happen in the future, then they are essentially practicing medicine without a license. If that occurs, you must challenge the witnesses and his/her lack of expertise. In other words, if the expert is not a doctor, but is asserting medically unsupported opinions, then they should be stricken for lack of expertise and training in the ability to make medical diagnoses and prognoses.

A second challenge to the LCP is figuring out what the life care planner does not know about the Plaintiff's PAST. The life care planner is generally so caught up in what the plaintiff will spend in the future that they are ineffective in finding out what the plaintiff would have spent in the future even without the accident. For example, the plaintiff may have been a diabetic prior to the accident and might have had trouble controlling blood sugar levels. As a result of the past inability to control diabetes, plaintiff may have been likely to need future medical treatment or modifications at home. Plaintiff may have had an upcoming need for dialysis, .or may have had conditions which dramatically lowered expected life span. Life care planners often do not address these issues and that lack of attention to facts or the lack of knowledge may help show the bias or unreliability of the expert.

Seek an admission that the plaintiff might have had certain needs even without the accident and make the point that the accident event is now being blamed for an expense that would have been incurred anyway. Alternatively, the defense can argue that the expert did not even know about the plaintiff's prior problems so how in the world can he/she know about the plaintiff's future problems? If the expert is measuring future need, but not future need caused by the accident, the expert loses his ability to help the plaintiff.

III. Life care planner experts often make mistakes which can be harmful to the plaintiff's case.

Occasionally an expert does not meet with the plaintiff to find out the plaintiff's current plans for treatment, conditions, and thoughts about future treatment plans or modifications. As a result, the plaintiff and life care planner often contradict each other at trial. The life care planner does not talk to the plaintiff's family member or spouse who often have deeper and more realistic views of the plaintiff's abilities, resources, alternatives, surgeries the plaintiff will never agree to, or services the plaintiff has not

needed and is unlikely to avail himself/herself of such services. May times a LCP has included hundreds of thousands of dollars for a future treatment plan which the plaintiff will testify they will NEVER go through (daily shots in the head for headaches, future surgery) or to modifications they don't care about (a $125,000 modification to the front of the house which plaintiff does not want or find attractive for her home, and she has an acceptable alternate route of egress).

Life care planners also often ignore very important issues. They ignore past actual medical expense, past attendant care and service cost, average lifetime cost for brain damaged patients, cerebral palsy, amputees, etc. Large cases normally take longer to go to trial. Years can go by between an LCP and trial. At trial you may have already passed the first 2-3 years of proposed costs set forth in the life care plan. Assume: You have a plaintiff who was injured in 2015. Plaintiff hired a life care planner in 2016. Suit was filed in 2018 and the life care plan was never modified thereafter, or was but the "future" medical proposed between 2015 and 2018 were never changed. The $30k in yearly expenses proposed in 2016 turned out to be an average of $3000 for each of those years. So then the future planned care in 2016-2018 were only 10% of the life care planner's projection. This can be devastating to the life care planner's forecast—yet this happens often. You will then be able to argue that the plan is substantially overvalued and that your proof shows that the appropriate numbers are up to 90% less than the plaintiff represented.

How can a life care planner propose numbers if she/he is not able to identify average cost? How can you rely on someone to give estimates when they cannot even compare their proposal with the national average for medical upkeep for people with the same condition? If plan is substantially more, demand an explanation about why this plaintiff is going to incur so much more in expense than an average person who is NOT involved in a lawsuit. Is defendant paying a premium for those costs just because the life care planner justifying their payment for serving in the lawsuit?

Finally, know who the life care planner has on her/his team. What research did s/he do to support her/his estimate of future cost? How many companies did she contact? How does that compare with the national average and is there any reason your jurisdiction should be so much more than that national average? Did the life care planner talk to all treaters or only that one that the attorney hired to be in the case? If he/she did not speak with a doctor, then how they plaintiff support their conclusion that the expenses are medically necessary? As to the costs projected, what with the actual cost be in the future and what with the plaintiff pay for such treatment in the future, if anything?

IV. Defense Strategies

Remember that most Life Care Planners do not know what they should know to give the opinions they are giving. They rarely know:

For a normal child, adolescent, or adult:

- Average lifetime cost of healthcare
- Average Lifetime cost of Education
- Average Lifetime cost of Shelter
- Average Lifetime cost of transportation equipment
- Average lifetime cost of dental care
- Average lifetime cost of long-term or elder care.

Think about the lack of knowledge in an expert who does not know what the NORMAL average cost of this person this age would be. They cannot tell you, without speculating, whether these costs are going to be higher or lower for this injured person. They have not deducted these average costs from the LCP. The things that the life care planner does not know can really hurt their credibility as a plaintiff expert. Use that. Also inform your own counter expert to use the lack of knowledge of the plaintiff's expert to show why those LCP numbers are so outrageously wrong and cannot be relied upon.

Another defense strategy is to use plaintiff's own medical treaters (or yours if necessary) to poke holes in the life care plan. Doctors are generally more conservative as to whether certain treatment is more likely than not to occur. Often they will agree that it is possible, that that testimony does not meet the standard required. Try to get those treating medical doctors to waffle, limit, dismiss or reject certain assumptions that were made by a life care planner. Generally a medical doctor will not go as far as the life care planner, and will not about what the future medical needs are with great specificity. He might admit that the future treatment is a possibility, a guess or estimate. If that happens, you can show that the life care planner is not supported by evidence, making it again look like she is an advocate or a forecaster (speculator).

Don't forget that the plaintiff has the burden of proof to show that future damages are reasonably certain to be sustained or occur in the future AND that Medical costs are medically reasonable and necessary. Plaintiffs are entitled only to damages sufficient to compensate the plaintiff or to make them whole, not punish the defendant. Do not hesitate to point out the life care planner's real plan of helping the plaintiff's financial recovery, not their medical recovery.

Do not feel there are no 'defenses" to a life care planner. Keep defending, keep fighting and hire your own expert to bring down the damages when appropriate.

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