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## CYBERSECURITY AND DATA PRIVACY



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You Want Me to  
Pay for What?

By June J. Essis and  
Charlene Canada

The time spent investigating the details of a proposed life care plan is well spent—exposing a plan’s flaws can result in a more just outcome for the defense.

# Dissecting the Life Care Plan in Real Life

A life care plan assigns value to future care needs as it relates to a catastrophic injury or a chronic illness. Damages include not only doctor, hospital, and surgical costs, but also a whole range of other costs.

Penelope Caragonne, et al., *Frameworks for Evaluating Life Care Plans*, 32 Health Lawyer 34, 34 (2019). These costs include medication, therapy, home modifications (for example, a wheelchair ramp), equipment repair and replacement, and more. *Id.* In theory, a life care plan is supposed to be an objective evaluation of a given case. Deutsch, P. & Sawyer, H., *A Guide to Rehabilitation*, (1985). However, some of the items that routinely find their way into life care plans can increase damages in unexpected ways.

This article will address some of the ways that plaintiffs may potentially inflate the costs depicted in life care plans. In doing so, it will examine some of the general methodologies of crafting life care plans. It will then emphasize points for

challenging inflated life care plans based on these generally accepted principles.

## Life Care Plan Evaluation

A life care plan can be evaluated in three primary ways: through assessing the author, the report, and the report’s methodology. First, whether the author is qualified to create a life care plan must be assessed. This can potentially involve a challenge to the certification of the life care planner, or at least highlighting the requirements for obtaining a certification. See James Embrey & Aysa Morgan, *What Did This Life Care Plan Just do to my Trucking Case?: Deposition Strategies for Attacking Plaintiff’s Life Care Planner* (Sept. 11, 2019), <https://hallboothsmith.com>. Moreover, as with any other expert, prior life

■ June J. Essis is a partner at Weber Gallagher in Philadelphia. She has more than twenty-eight years of experience litigating a variety of insurance defense and transportation claims throughout Pennsylvania. She has a wealth of experience representing trucking companies and truck drivers in accident-related claims alleging personal injury, catastrophic loss, and property damage. Ms. Essis was a National Director on the DRI Board of Directors from 2016–2019. She is a past chair of the DRI Trucking Law Committee. She is a current executive committee leader of Pennsylvania Association of Defense Counsel (PADC) and the current Chair of the SLC/CLEs for DRI’s 2020 Annual Meeting Steering Committee. Charlene Canada, CRC CLCP, is the founder and CEO of Empower Rehabilitation and Case Management where she provides case management services to elderly, disabled, and chronically ill consumers across the country. Additionally, she is a Certified Life Care Planner who consults and serves as an expert witness for Elevate Services and for Empower.



care plans can and should be obtained to see if the life care planner is formulaic or contrived.

In addition, because life care planners are able to come from such diverse professions, the underlying health-related field of a life care planner can be challenged as any other expert. Paul M. Deutsch Ph.D. & Lori A. Allison, M.A., 9 Damages in Tort Actions §106.03 (2019). For instance, life care planners may come from case management, nursing, psychiatry, and other disciplines. *Id.* Depending on the contents of the life care plan, the background of the planner may be suspect to challenge—in other words, did the life care planner go beyond the scope of his or her expertise or knowledge in creating the plan? Generally, a life care planner must interview outside practitioners for areas of expertise that fall outside of the scope of his or her own expertise.

Second, a life care plan can be challenged based on its contents. There are seven essential components that a life care plan must contain, and if any of these elements are missing, the plan may be challenged. The elements are client interview; record review; corroboration with treating providers; probable relation to indexed event; research; customary, reasonable, and usual costs; and needs included are medically probable. For example, in *Tornatore v. Cohen*, a court approved a life care plan where the expert reviewed legal and medical documents, conducted research and cost analysis, interviewed the plaintiff, and discussed and interviewed the plan with the plaintiff's treatment providers. 162 A.D.3d 1503, 78 N.Y.S.3d 542 (4th Dep't 2018). By contrast, a

life care plan can be appropriately rebutted where aspects of the plan are not corroborated by client interviews, treating provider opinions, and current research.

Another way to rebut the life care plan through its contents is by comparison with a plaintiff's medical or treatment records, both before and after the life care plan. Thomas J. Hurney, Jr. & Stuart P. Miller, *Songs You Know By Heart: Defending Against Life Care Plans*, DRI Medical Liability and Health Care Seminar (March 2017), at 7. For example, if the treatment or other components of the plan do not align with items shown in the plaintiff's chart, this could be a credibility issue for the plan and its creator. Similarly, if the life care plan has been made, and the plaintiff has been thriving without the "necessary" treatment delineated in the plan, this can undercut the plan. *Id.* at 7–8. Relatedly, the plaintiff's treatment records can undercut the credibility of the plan by showing it either failed to take into account or shifted attention from cost-generating pre-existing conditions. *See Israel v. Springs Indus.*, 2006 U.S. Dist. LEXIS 80863, at \*50 (E.D.N.Y. Nov. 3, 2006).

Obviously, the contents of a life care plan in this respect are closely related to its methodology—where a methodology is flawed, such methodology can tend to create a life care plan with flawed content. As noted above, each element in a life care plan must have objective backing. *See Caragonne*, supra, at 8. For example, where a life care plan contained speculative and conjectural predictions about a plaintiff's future ability to be gainfully employed, the court rejected cost predictions related to those line items.

*Bankert by Bankert v. United States*, 937 F. Supp. 1169, 1185 (D. Md. 1996). Likewise, ignoring or downplaying pre-existing conditions is a methodological problem that often results in a life care plan with inaccurate or inflated contents. Failing to consider interconnectedness of aspects of care is a methodological oversight that will also result in life care plan inaccuracies.

Methods of challenging a life care plan are just like those for challenging the materials of any other expert. For example, if expert materials of the defense rebut portions relied upon in the plaintiff's life care plan, this can be used to challenge the weight given to the plaintiff's life care plan. *See Incardone v. Royal Caribbean Cruises, Ltd.*, 2018 U.S. Dist. LEXIS 209109, at \*19 (S.D. Fla. Dec. 11, 2018). Moreover, in certain circumstances, it may make sense to obtain a complete defense life care plan, created using the recognized methodologies, in order to rebut plaintiff's life care plan. *See, e.g., id.; Du-All Safety, LLC v. Superior Court*, 34 Cal. App. 5th 485, 491, 246 Cal. Rptr. 3d 211, 214 (2019) (the defense obtained its own life care planner to rebut the reasonableness of the plaintiff's life care plan).

## Conclusion

A life care plan is very multidimensional. There are many aspects to developing a plan and thus many opportunities to critique one for litigation purposes. We have a responsibility to our clients to understand each piece and to use resources in life care planning appropriately as they can drastically affect the outcomes. 