

# **Transcript of David Ball, Trial Consultant 2012 International Symposium on Life Care Planning Persuasive Life Care Planner Testimony – Serving the Injured Client**

*Editor's Note:* The following is a transcript of the presentation by David Ball, who gave a keynote presentation at the 2012 International Symposium on Life Care Planning in Denver, CO. What follows represents a direct transcript of Mr. Ball's presentation. Information presented are the views of the presenter and do not necessarily reflect the views of the FLCPR, IALCP, IARP, JLCP Editorial Board, or JLCP publisher. The JLCP appreciates feedback from our readers and encourages discussion or rebuttal responses.

Keynote is sponsored by Physician Life Care Planning. Our Platinum Sponsor, so we're very appreciative for that. Our very first presentation will be a video presentation by David Ball who is not physically with us but is going to be presenting to us and you will see him on the screens here. David is the founding partner of Miller, Malekpour and Ball Consulting in North Carolina. He is a nationally known trial consultant, communications expert and best selling author who specializes in focus groups, case analysis, and presentation, advocacy skills, damages, strategies and jury selection. He has taught law students at a number of universities - Duke, North Carolina, Wake Forest and others. He is the 2002 Charles Becton award recipient for excellence in teaching trial advocacy. He really has been a pioneer in adapting methods of film and theatre for use in trial. He comes to this area of practice from a career as a director, playwright and a producer. Some of his work has appeared on Broadway, off-Broadway and in regional theaters, on television and film. At Duke University he was the senior artist in residence and director of undergraduate studies and chair of drama. He has written a number and produced a number of works including "David Ball on Damages" the nation's best-selling trial advocacy book since it was published. So I am going to ask our video people to go ahead, he's up here already.....David Ball.

Good morning to Denver, I think you're in Denver. Are you all in Denver? Some place out there. Thank you all for having me. I semi-apologize for doing this by video but I get a ton of travel requests and as the years have been piling on I'm finding that traveling once or twice a week around the clock, around the years, is a little bit too much of what I can take, or want to take. So, I'm able to do more things like this if I do them by video. So I hope that will be okay with you. I hope we will have a little time at the end for questions and answers. I'll try to leave a little time for that. I'm not certain that we will, but if we don't there is another way that you will be able to ask me questions and I'll provide that as we go. Well, let me do that right now or I might forget. Ahhh, if questions occur to you later or if we don't have time for questions today, or if I don't get to your questions today I'm perfectly happy to answer

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quick questions by email on the topics I talk about today. You won't be imposing on me, these things are useful for me to hear, because it helps my own consulting work if I know what questions you have. So if you have any thing like that my email is ball (b as in boy), a l l @ n c. r r.com. I am a trial consultant, I work with lawyers around the country mostly on personal injury cases, not exclusively, but mostly, about three-quarters of my work. And many of those cases, probably most of those cases involve life care plans. And, I've gotten awfully familiar over the years with the kind of life care planning report and witness that helps us, and some that actually hurt us. So I'm going to try to talk through today some of the principle things that we have learned over the years. The reason in my mind the life care plan transcends the usual importance is because in many cases the LCP provides the anchor figure that provides the foundation that the jurors will think of as the range of economic damages. So it becomes extremely important in light of the overall damages not just the LCP.

Secondly, a well presented LCP places great emphasis on the harms and damages and losses to the client. It's another way for the jury to see how serious the consequences are of whatever happened are to the client and I wish more life care planners would keep that in mind when they are putting together their LCP and I'll show you some ways to do that as I go through this hour.

One of the other things I think is important for you to do is you are responsible for teaching the attorney you are working for what questions to ask, especially as you get into some of the things I am going to be talking about today. Most of the time I find, to my shock, that the LCPer appears at the trial and has never discussed with the attorney what questions the LCPer wants to be asked so that you can best present your case for your client's life and there has been virtually no discussion about ...all of the discussion, if any, has centered on the content of the LCP and that is not a good way to be a good witness or a useful witness to the case and it is certainly not a good way for you to accomplish some of the things that are going to be here so you might want to start if you are not already in the habit of making it clear that you need to spend some time with the attorney well in advance of the trial not just fly in the night before and be ready to do it. It is very much the same thing even when a LCP is just being used for mediation. It is up to you to help the attorney see how to present in the mediation the way that is effective. And I'll be talking about some ways to do that if it's an attorney I've worked with you probably won't have to spend too much time doing that but I can only work with so many attorneys, so don't assume that. But that's why, because the life care figure and the life care content has so much to do with the entire content of the trial, but we need to think beyond just the bottom line figure and it is just one more element in the trial, it's not, it's a crucial and key point.

The second thing is juries have no idea, including, I'm sorry to say, after trials, what constitutes a qualified and reliable LCPer. Credentials do not sway a jury. Credentials are about fourth or fifth on the list of things that persuade a jury. What is on top of the list that persuades a jurist, and this is something you want to make sure you get in front of the jury when you testify is what are the steps a LCPer, not just in this case, but in any case, what are the steps a LCPer must carry out, A, B, C, D, E in order to get from the dispirit elements of the evidence to your conclusions. How do you do your job. When the jurors are able to understand how you do your job. A – how you do your job and then B – see that you've done your job, they are far more likely to believe you then when you just get up and then you talk, oh, I've done this for 23 years now, and I'm a nice person and I have an appointment at this college and that university. That stuff is, I don't want to say meaningless but it's, you know, as some jurist would say, okay everybody has credentials, ah, let's get on with it. The other

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problem is, of course, you are testifying against a LCPPer on the other side who is, or seems as every bit as qualified, and if you are working for plaintiffs, which I do exclusively, you are working against an enormous bias. By virtue of you're working for a plaintiff's attorney. The tort reforms engender denigration of your credibility attaches to you. You're working for somebody that half of the jurors do not trust. When trial starts the plaintiff's attorney is probably the least credible person in the building. And when you come in to help that person's attorney get money that attaches to you. Don't think you can look at a jury and say "Oh no, they really like me." People are really very, very good at looking polite and looking like they like you and looking like they are listening to you.....when they're not! The key you want to do is work out a system that you can say is here are the steps that a LCPPer must go through in order to come to a valid conclusion. These same steps will also help you do an extremely important part of your job, which is to undermine what the defense, what the LCPPer on the other side is saying.

I am going to speak to you as if you all work for the plaintiff. I know it is not true, but since it is the work I do, I will speak from that point of view so that when I say the other side, I mean the defense. The defense will bring in life care planners whose job is to make sure the client does not get the money that the client needs. That's basically the job and the LCPers that get hired the most by the defense are the ones who do the best at making jurors believe that the plaintiff, just like their plan, is outlandish and is asking for too much and doesn't need this stuff and all that sort of thing. Not a profession that I particularly admire, but I know that there needs to be two sides to every case. What you need to be able to do, regardless of what side you are on, is to show not just what is inaccurate or wrong about the other sides LCPPer, you have to show where they did not follow the rules of their own profession in order to come to their conclusion. That's where you nail these people! For example, the very first requirement in doing any kind of analysis, whether it's LCPing or anything else – you must place yourself in a neutral frame of mind. You cannot go in and say I want to make this as much or as little as possible. You have to place yourself in a neutral frame of mind to that you don't care what the outcome is. Well, that's not going to happen with defense LCPers. Some people would say it doesn't happen with plaintiffs LCPers. With plaintiffs LCPers, it does. And you have to demonstrate some of that as you work your way through and mention some items that could have been in the LCP, but you chose against them because you are being neutral about what you are doing. This is not about a shopping spree, this is a careful analysis. That is Step 1.

Step 2 is ...you must gather all the available information. You can always show that the LCPPer working for the defense does not do that. At least I have run into almost none who do. All the available information is everything about the client's need for an enormous amount of time with the family. The client needs an enormous amount of time with the doctors. Means you had better know the products that are out there. The services that are out there, etc., etc., etc. Let me go back to #1. When I say neutral frame of mind, never put into a LCP any service that you sell or profit from yourself. A couple of the best LCPers in the country sort of shot their careers in the foot when they started putting into LCPs their own long term care services that were going to make them a fortune. In other words, they were now in a flat out conflict of interest. Jurors spotted it even when the attorneys didn't mention it to them and their success rate plummeted. So be very careful, if you are in a position where you want to sell those services, don't be the LCPPer in this case. Or at least don't tell the jury that "I provide these services better than anybody else can do that." Nobody believes a LCPPer who is going to get a lot of money because they are selling the very items they say in all neutrality this is what this person needs. Don't do that, it takes you out of the first rule of having no interest,

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no bias, you don't care, you have a neutral frame of mind.

And then there are various other steps. Work them out in your own way to work. Or maybe, work them out as an organization. It would be nice to have a formal, or semi-formal list of steps from the organization that you are with there today. You can always point to that and say this is the standard in the field, or what ever other organizations you people belong to. By the field, I mean specifically a list of steps or rules that a LCP'er must follow and do properly in order to come to their conclusion. And then you need to be prepared to explain to the jury why each rule is important and how these conclusions can go drastically wrong if one of those steps is left out or done badly. If you did that if you have those steps, and possibly you already do, I don't know. If you have those steps, and refer to them to show how your work can build each of these steps and you explain the inaccuracy of the opposition's LCP which is an extremely important thing to do. By reference, either to the omission or the improper application of those steps you turn yourself from a reporter of some research you've done into a major arm and advocacy on behalf of the entire case for your client. So that's an extremely important step to look at.

Secondary what I want to look at and talk about is this: When I'm working on a case I no longer call these things a LCP. We call them a minimum LCP because they do not include every possible thing that would be wonderful for the client's life, instead they represent the minimum level of care, safety and comfort – make sure you get those three words down. The minimum level of care, safety and comfort that is humane to provide the minimum humane level of care, safety and comfort. And then always be prepared to show other things that could have been in your LCP, but as you are operating at a minimum level, the minimum level of humane care, safety and comfort, that's all you have provided. This will not change your LCP. You're not going to go around trying to put less stuff in there for a minimum LCP, you're going to have the same stuff in there that you want to have, except you're going to show the jury that there could have been more, there could have been better. They could have been more comfortable, but you are trying to be on a reasonable minimum level. That allows the jury the leeway, in most venues to add dollars to your LCP that they otherwise do not have. So, for example, you might point out that there is a three thousand dollar wheelchair that at a certain point in the client's life the client can use. And it provides a minimal level of care, safety and comfort to the client. Then point out there is also a \$4,500 wheelchair, a fourteen/fifteen hundred dollars more wheelchair ...it would be somewhat more comfortable, it will be a little bit safer, and it will help more, BUT the \$3,000 one would be enough. I hope that makes sense, because this again becomes an extremely important component of the entire trial, not just of your LCP. Why? Because it allows the juries to think in dollars beyond just what figures you provide. If you don't do that, they more often compromise down on the LCP.

Now we have a couple of measures we'll talk about and I'll explain one of them to you, but let's say you have a LCP of \$5,000,000. What most of the time happens is that the jury will compromise down because there are some of the people who don't want the client to get any money and there are some people who want the client to get plenty of the money...so that's the battle that goes on in deliberations all the time. The \$5,000,000 can become \$3,000,000, can become \$2,000,000. And then it becomes the jury saying something totally inaccurate ...so if we just give a million or two million dollars and they invest it then they'll have plenty of money as time goes along. So it is your job to either make sure you explain this yourself or make sure the attorney has the economist explain it to the jury. That the dollar figure at the bottom of your LCP is the amount of money that once it is invested and uses all of the money from the investment and then uses all of the principle from the investment runs

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out the day the client turns whatever age you are using for life expectancy, the jury must be told that! Otherwise there would again, no matter what the economists say, because most economists don't speak clearly enough for jurors to understand what they're talking about. Juries, for example almost never finish a trial understanding what present day value really means. So you need to make sure in you LCP testimony or have the attorney make sure the economist is clear, pointing his finger on the bottom line of your LCP and says this is the amount of money that will run out on the day that John turns 74 ½ or whatever the life expectancy is. And the consequence to that is it allows the attorney to say at the very point, this is something to teach the attorneys, if they don't already know it. What this means, folks, is if John should live one day past his 74 ½ birthday, and he has more than a 50% chance of doing that, it means the money is going to run out right at the point of his life when he most needs it! And then you want to be prepared to give the figures for an additional five year block beyond the life expectancy figure you are using. You can support this, go online; you can learn how to do this pretty easily. Statistically, if someone's life expectancy is, say 78 years, when that person reaches 78 their life expectancy at that point, is now an additional 5, 6, 7 years. If they get from 78 to 83, say, their life expectancy at 83, is an additional 3 to 4 years, and on and on. So when the LCP stops at just the 50% mark, there is an equal, if not greater than equal chance that that client will run out of money at the point of their lives where they are elderly and most need the money. This must be conveyed to the jury.

And you can call it a minimal LCP because one of the things that has not been included is the additional extra dollars for the life expectancy years that will occur if the client gets to say 78, or to what ever his life expectancy is. I don't know any LCPers that are comfortable doing this whether they think they are stuck with a statutory life expectancy. That is not true in hardly any venues. And it is also possible to testify in any case because there is always \_\_\_?\_\_\_ economic numbers and a nice little place for jurors to put other money to cover the worry of the family, the worry of the client about what would happen if the money would run out. So don't be stopped by the fact that they told me I had to use the statutory life expectancy. The chances are very high, depending on where you are, and even if they do, there are other ways the jury can provide money. Worry becomes an emotional harm and therefore goes to damages and what's the way to take away that worry is to provide money for the additional years. So that's one of the ways you go from it being a LCP to it being a minimum LCP. A lot of LCPers don't like the phrase "Minimum Life Care Plan" and so they miss a very powerful boat and cost the cases a ton of money. That's the second area I wanted to make sure I covered today.

The third is the most effective way to make a jury believe that something is necessary is make sure that the jury understands what happens if the client does not get it. It is not just what wonderful things this will do and the wheelchair will enable her to go from here to there and the treatment of the arm muscle will do such and such a thing. Yes, we want to know the good it will do, it is equally, if not more, important to make sure the jury understands two things. One, what harm it will do if the person does not get it. What bad things will happen in terms of care, safety, comfort - those are your three of your most important words in your business. What happens if Sally does not get the therapy she needs for her muscles in terms of care, safety and comfort. And then be sure you explain how it happens, that harm will happen. It's not enough to say if she doesn't have that therapy her muscles will atrophy. You need to be prepared to talk about the step-by-step mechanisms that happen to muscles when they don't get the exercise they need. That is part of your job.

So the second part of your job is to make sure the attorneys know to ask you that. Why?

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Because jurors think of each item in the LCP is something that is good for the person to have, so we want to raise that level to something that prevents harm, not just as good for them to have, but something that prevents harm, prevents further harm. One of the key areas, oh, by the way, I should say this be very careful with your language and your vocabulary. If I hear one more LCPer refer to something called occupational therapy, I'm going to march up to this stand and pour water on their head and slap them, because the jury hears occupational therapy after they have been told that this person can never work again, then you have just blown your credibility. Make sure you explain what the word occupational means. It doesn't mean teaching a person how to get an occupation, how to get a job. And it is your job to make sure the jurors know what you are talking about, when you ask for money for occupational therapy. Be very careful, any terms of art, if you know what they mean and think the jury does, it can absolutely blow up in your face. I interview jurors after trials all the time and I specifically ask if they pay attention to LCPers over the years, and one of the most common problems, one of the most common things that blew their credibility is asking for occupational therapy for a person who obviously knows he is never going to work again. And you can imagine what those people sit there and think about you from that point on. Here is a person who didn't do her job, or she's dishonest or she a liar. She is a lackey for the lawyer she is working for. So be very careful with your language.

So, for each item or category of items on your list, in your report you show why it is needed, what happens in terms of care, safety, comfort particularly the safety and well-being of the client; well-being is a good phrase to use all the time, essential for the well-being because without it the client's well-being will be harmed. Jurors respond heavily to that word "well-being" as well as safety. Use those words a lot. Show what happens if they don't get it and then third a LCPer who doesn't have a pick-up truck or a van or a trailer should not be allowed to be a LCPer. You want to show and tell you stuff. You want to come in with stuff. You want to have the objects, the masks, the catheters, the braces ...those things right in trial. You may want to try them on, you may want to show how they go on and then you may want to have the attorney pass some of those things around the jury. One of the most effective things I ever see in trial is when the attorney passes around the jury something like a urinary catheter, and some guy has to sit there holding this thing and the jurors suddenly is looking at it hard; and hard at this thing. The fact that he is holding it in his hand, whatever it is, makes it that much more palpable and real. It's not the same as showing a picture in a catalogue or just describing it. IT'S REAL! That helps show the jurors the reality of the harm to the client. And when you explain what will happen, step-by-step, to the client if that is not provided to the client – the backup, in the system, of the liquids or by not having enough money for, say catheters, the infections that result. When that's in their hands and they are hearing that ...that becomes a must have. And the goal is to turn every one of your major categories into a must-have, because there is an all but foolproof target that you want to teach to your attorney that you are working for to use in his or her closing, and it is this... you want the attorney to put up a page reference that you want to give to the attorney (I thought I had it here but I guess I didn't bring it in here with me, but I'll tell you where you can find it ...yes I do). The book that I have called "David Ball on Damages" 3rd Ed., pp 227-228. The attorney can either own the book or borrow the book. It is only two pages of what I'm about to talk about. This is a brilliant argument to use about your LCP. If the LCPer has done what I have just said and they have made it clear why each one of these items is a must-have item, and what happens if the client does not get it. If you have done that and provided the attorney with the proper questions to ask so that you can respond on the stand to that ...what happens if they don't get it and then

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the jurors have actually seen the reality of this and not just pictures in a catalogue. LCPers that bring in pictures in a catalogue are just lazy LCPers. You want to bring stuff there.

I suppose when you are going to talk about the brain institute that they are going to be in for the rest of their lives, you can bring in a picture of the whole institute, but where it's practical to bring in stuff. On pages 227 and 228 there is a wonderful method that I learned from a college professor of mine named Don Keenan. Some of you may know of him or worked with him. And it is this, you want to teach to the attorney. The attorney should put up in front of the jury, in closing, a list of the 8 or 10 or 12 or whatever it is of the main categories, with a dollar figure for each of those main categories and then a total at the bottom. And then in trial, in closing the attorney should say to the jury "Folks, I can't tell you that this figure at the bottom is the amount you have to give, that is up to you, but here's how you decide. You look at each of these items and if there is something on here that you have all decided John does not need just cross out the figure for that category. Or if you think he doesn't need all of it just lower the figure. Whatever you think he doesn't need just remove and then you subtract it from the figure here at the bottom and that is the amount of your Life Care Plan money." Now, if you have done your job to show the consequences of removing any one of those things and if the jury knows that the dollar figure at the bottom is the amount that runs out when John turns say 78 you will almost always, or the attorney will almost always get the full amount of the LCP.

And that's because you've taken out of the realm of being something well, a little more or a little less won't hurt and you have shown exactly how the removal of any thing in your plan will hurt. In other words, you are putting the jurors in the position, and this is a key point, for your profession to understand ...please embrace this point it could be an enormous help to us if you understand and talk about this point ...you do not want your plan for lack of credibility to cause further harm to the client. You want to show that each item is necessary so there aren't going to be any \$300 beach balls in there when you can buy the same one at Walmart for \$5.95. Be careful about that, no bogus stuff. You're going to be careful that if there is something in there that sounds like a luxury you are going to explain why it isn't. For example the swimming pool in the back yard, when the jurors will say he can probably just go to the YMCA and use that swimming pool, because you didn't bother to talk about the humiliation the client will suffer by having to go into the public to do his water therapy. That makes it a necessity, humiliation is a powerful, powerful way to get money. We'll talk about that in a second. So if you do your job of showing the consequences of something in you LCP not being provided by the jury they are far more likely to provide it. And when the attorney does the argument, the Don Keenan argument, that I just talked about, which essentially boils down to this, if there is something that all of you jurors agree that she does not need or should not have, just cross out that dollar figure so that it is subtracted at the bottom and what is left is your figure. They don't do that, because you've taught them what happens if that item goes away. So when someone in deliberation says, "Oh, five million dollars is much too much for life care, for all that 3 million dollars will be plenty. Anybody can get along on 3 million dollars." The jurors who are advocate jurors on our side are going to say "wait a minute, before you drop that 5 million dollars figure you are going to have to specify and tell us what you want to take out of the LCP. And then we can all discuss whether we all want to take it out of the LCP or not. That is a totally different framework for deliberations about the LCP then usually happens.

So remember this is a several step process here. You show the rules and the step process that you take when you do your job and how if you don't follow those rules you can come up with a bad conclusion. You want to show not just how each item works but what happens if

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the client doesn't get it, and the consequences of not getting it. And as much as possible you want to bring stuff in to hold up as you talk about it, the lawyer will pass it around to the jury. Come in loaded down. My mother was an antique dealer when I was growing up and we would go on these trips up in New England and we would come back with a station wagon crammed to the gills. I almost had to ride on the roof like Mitt Romney's dog because the station wagon was so full of stuff. Ummm...I did not mean that as a political comment. Actually, I lied. I did mean it as a political comment. In any case, if you will follow what I just talked about, and I know that some of you already do this and I don't mean to be speaking to you as if you are all naïve people just out of the womb here. I know there is a great deal of experience here in this room. The problem is I can barely see who is here and I don't know if I recognize any faces or not. I do know there is a great deal of experience in the room and some of you may already be doing some of it. However, if you can master what I've just talked about and you've not been doing it all, if you can master that you totally change your contribution to the case from useful to central.

And again, one of the reasons for that is as you talk through, here is this thing that the client needs and if they don't get this thing it is a terrible thing that is going to happen to Sally. The muscles are going to atrophy or what ever it is, you are bringing home the way that nothing else can the seriousness of the harm that the defendant's negligence did to this person. So it goes beyond you sort of being an accountant of the money of what it going to take and beyond what is an analyst and into the realm of not even being too explicit about it of what I have just described of being a fundamental part of this case. To show that when people violate the safety rules of the defendant violated shows what can happen here is not anything that you're going to tell the jury but the lawyer certainly can. That when somebody does what that defendant did in that hospital room or in that intersection or in that manufacturing company or wherever it was, these are the consequences of those violations and you are the one who is going to help make the principle of what made those harms and losses, what made those injuries the problem the client has really come alive to the jury. When you talk about the therapy that's needed to someone's arm so the muscles don't atrophy, you know this, you've seen it. Jurors will look at their own arms, and if you use your own arm when talking about where the muscles are that will atrophy you make this visceral and not just something that is happening in the conscience minds. So you're getting to the jurors on a very powerful level and as a result becoming a major help to the case and not just one more piece of evidence.

There are three other areas that I wish you would all pay attention to when you're describing why the client needs these things. And these are actually more important than things like pain and stuff, well they are as important! The items in your LCP should be designed also, and you should explain why they are designed to help maintain three areas that are crucial to a normal human being's life: One is self-respect. In a lot of ways self-respect is one of the most important things we have. If you don't believe me just do something. Like guys unzip your fly and walk through the mall. Make sure you're wearing underwear so you don't get arrested. But see what it's like when you lose your self-respect. If you've never done it, sit in a wheel chair and have somebody wheel you through a public area. See how hard just that is. Show how the things that are in your LCP will help your client maintain his or her self-respect - whatever that is. Look at the case for things that doctors may have left out. That if they are in your LCP will help your clients maintain their self-respect, and be prepared to talk about why it is so important and what happens when someone cannot maintain their self-respect. It has to do with quality of life. It certainly has to do with the ability to heal. It has to do with the psychological ability of being able to emotionally heal so that they can get on

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with their lives. Self respect is a huge part of what can drive a quality of life issue. And some of those things will attach to the things you have already put into your LCP and you may come up with some other things that if they are in the LCP which will make it more likely your client, or your client's client will live a life in which he or she can maintain their self-respect as a human being. Don't ever under estimate the importance of self-respect. Lack of self-respect will get you killed in some neighborhoods and in some cultures that's how important it is. And there is strong psychological, evolutionary and reptilian brain reason for all of that ..... all you need to know is you want your self-respect, I want mine, and when a person is badly injured one of the things that most harms him is where the self-respect is diminished and there will be things that help his self-respect that will go into your LCP. Especially if you have talked to the right foundation experts such as the psychologist, social worker, the psychiatrist or the doctor to say yes this is important to the patient's self-respect.

The second of these is one you do even more is to talk about the psychological effects and not having it...a lack of mobility whether it means the ability to get from one place to another or even just the ability to life your hand to bring food to your mouth. A lack of mobility is a loss with which jurors empathize more than they empathize with pain. That may sound strange, but it is true. Lack of mobility, lack of self-respect, for that matter, they will empathize more strongly than they will empathize with pain. We sympathize with pain ..."I feel bad that you're in pain"...but I don't ever really feel your pain unless you are my child or something and that when I know one of my children are in the room. Other than that, the reason for that is pain is actually a defense mechanism and that the brain is not wired to be terrified of pain. The brain is wired to be terrified of the thought of the lack of mobility or the lack of self-respect. Beause back in the days when we were evolving as a species, if you lost your mobility the tribe left you behind and that was death....and the same of self-respect. The people without self-respect were not the people the tribe protected. So, if you don't believe in evolution or if you believe in intelligent design, don't ever tell me that because if you do prefer intelligent design as an approach to how we developed, then why are you into intelligent design is the fact that mobility is one of our most important characteristics because when we lose it we are in big danger. And so we have an automatic push factor so that when we hear somebody doesn't have mobility we automatically look for aides of all sorts that will help with mobility. And here's what happens when the person can't do this, it's not just that somebody needs more time, we have to pay somebody more time to feed John if we have to help him if he can't feed himself. It's also if there is an aide that will help John feed himself it returns his mobility to himself, and secondly, go back one step, it helps him maintain his self-respect. Being fed is not a good way to help someone maintain his self-respect. Do people get used to it, yes, but do they ever like it – no! We all think they do, but they don't. They act like they do because they don't want to intrude on us, but they don't...they would much rather do it for themselves.

The third area, the first being self-respect, the second being lack of mobility, the third area to look at is to see where your wares can help us has to do with avoiding isolation. One of the great human fears that we all share, greater to most people than the fear of dying, is the fear of being alone. That means each step towards being alone, each part of our society, of our companionship, of our being with other people that is taken away from us, we empathize with very strongly because it is moving toward the horrendous danger of being alone. Why do we hate being alone so much? Because it is dangerous for a human being to be, maybe not in our society today, but in every earlier society, certainly up until the past few hundred years if you were alone, you were in danger, it's as simple as that! And people who did not fear being alone enough to overcome it and were sure to be around somebody. Even people they couldn't stand

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were more likely not to survive. So programmed into our genetics, we do not want to be alone and we understand people who must not be alone. Show how the items in your life care plan and maybe add some that you thought about before can help this person maintain human society. Doesn't mean you have to be best friends, you can be caretakers. Human beings of any kind. The person who has lost his job most often count one of the major losses for them, beside the money, is being around people at work even in jobs they hate. Ask a Kentucky coal miner who is not able to go down in the mines anymore if there is anything he misses about that job down in the mines and he will say, "Yeah, I miss the people!" So find things in your life care plan ...I don't know people streaming in the front porch, in the summer, and the neighbors are out there, they are part of the community – simple as that. Where do you get this enough to justify it in your LCP, from the psychologist you asked about it. When you talk to the attorney about this make sure you work this all in, because there will be some real money there. By the way, the lack of companionship, isolation, being alone is one of the real reasons that you are going to provide mobility in the form of specially equipped vans and wheel chairs that can go outside of the house, plus a companion that can take somebody out shopping or to the movies, that sort of thing is better than someone just to be in the house with. One other area, just to illustrate the importance of safety, when you have a client with brain damage you must be able to show the jury that the kinds of things that happen to people with brain damage --- isolation, limit their mobility and take away their self-respect. A person with brain damage generally is no good in an emergency. A person with brain damage in a sudden emergency, what can happen to them, if they are allowed to be out without a companion.

Just step off a curb to cross a street, somebody sees a car coming too fast and yells "look out" and then the person does not know what to do – they freeze. Or in the middle of the night they wake up and the house is ablaze, it's on fire, and they don't know what to do. They can't make those decisions anymore. At that moment that person has the equivalent ability to protect themselves of a four year old. That is the functioning of their brain at that moment. The rest of the time they can seem perfectly normal but that moment, that is all they have. That is why they need 24 hour care. You can never predict, ever, when that dangerous moment is going to happen. And they don't deserve to be put into a position of just an 8 hour companion. Let's hope that if there is an emergency it is during those 8 hours. This is just an example of how it is the safety factor, not just the care factor that can be worked into you LCP. The client needs ...let's put it this way, if you leave a four year old alone in the house the Department of Health and Human Services is going to come and take the four year old away from you. Well it is just the same for the adult person with brain damage without the executive function who can't make a decision in an emergency cannot be left alone at any time, because you never know when an emergency is going to strike that a normal brain would be able to protect the person that this client's brain cannot.

A few other items and I will be done. You need to add to your credibility the fact not just that you have been doing this work for a long, long time; or if you are new you have worked with people with experience. You need, on your own, to do the research to see if the kinds of things that you recommend have indeed worked out as being needed in the long run. Have you ever gone back to check 20 years later to see if something you have recommended, or something another LCPer has recommended is really needed. This becomes power to say to the jury we have checked, we the LCPers of the world, have checked 20 years later to see if the people who got this and the people who got this and the people who didn't get this...did it really cause the harm we are talking about...the answer is yes. This is not just theoretically predicting it, we have gone and looked. Did it really provide the help, did that arm therapy

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really work...yes! I went back and I looked, thirty years later. And an older LCPer suggested it and it worked. In other words, the proof of the pudding is in the eating...and I have watched jurors, when LCPers talk about, “I know this is because in ‘such-and-such’ a study I went around and I looked and I saw what happened when people forgot it, or didn’t get it”. The jury is awake and taking note of this. It is a big deal to them. So that is the proof of the pudding that will help you as much as anything else you can do.

There is another area that is new and it is going to sound unbelievable but it will go into your LCP, and in some cases it alone, will double and triple the value of your LCP. I have so far taught this to a limited number of attorneys, but it is extremely BIG TIME, BIG IMPORTANT STUFF! I am sitting right now in Durham, NC and I work with a number of neuroscientists at Duke University and we are putting into brain codes and all that stuff and it is all very exciting and weird, etc., etc. So I am meeting a lot of neuroscience people, one of them, and if you do cases that involve paralysis – quad, or whatever, you will want to know about this; this is just a sample of a larger technique here. There is a gentleman, a professor, a research scientist –Miguel Nicolelis, this is for real. He has developed a way that works that a quadriplegic can get up and walk, and use his arms and legs and feed himself. In fact, this guy is a Brazilian, Dr. Nicolelis. At the next Olympics that are going to be held in Brazil, the first ceremonial goal that will be kicked on the soccer field will be a quadriplegic walking out onto the field, coming up to the ball and kicking it into the net. Now that sounds like it is impossible. I think it is impossible. The problem is...I’ve seen it. It is the most unbelievable thing. So if you do cases that involve paralysis, here’s what’s going to happen, not just with paralysis, but there are similar miracles in virtually every area of permanent injury to your clients, brain damage...yes; pain, no matter what kind, yes: lack of mobility issues ...yes. Whatever the area of permanent injury that ails your client, whatever the injury is that was caused by your client’s negligence – coming down the pike in the next 5 years, 10 years, 15 years are going to be things that some technician or some scientist will be able to get on the stand and say or be able to tell you so that you can say it is more likely than not in the case of Nicolelis’ stuff. It is far more likely, in fact it is almost certain that within 5 to 10 years we will be able to take any quadriplegic and have them up and walking and controlled by their own brain, not by an outside computer. I will explain all of that stuff. The key is, for our purposes here today as that stuff in whatever field first comes on the market, it’s going to be horrendously expensive. And those scientists and technicians will be able to (Nicolelis says “I don’t know...it will cost 2, 3, 4 million dollars when it first comes out”), these folks are going to cooperate with you because they are going to want people to have the money down the line to get those things because that will be their field. So they have a motive to help you. That once it’s out there who the hell can afford it, but they have to have people who can afford it in order to develop it to the point where it is a lot less expensive and a lot more reliable. So they’ll help you. And when you have that miracle coming at them, and first of all you want to know what I’m talking about. Nicolelis will show videos of a quadriplegic get up and walk and support himself; in fact, in your LCP is the more likely than not, a requirement of \$5 million more, so this quadriplegic will be able to take advantage of that invention when it comes along and is ready for the public, and you show them this after next year or when ever it is the Olympics in Brazil. You show this quadriplegic.... be sure you watch out for this.....who will be able to walk out, a quadriplegic on their own, with their own brain controlling them, and not an outside computer, kick a ball into a goalie’s net. Your juror’s will not just be interested in this – they will cry when they see something like that happen. Make sure, no matter what the ailments are that you or an assistant or attorney or somebody has done their homework to find

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out what is coming down the pike that is going to be able to help these people do better, or be cured, or be fixed, or have better mobility, or better safety or better self-respect or better comfort or whatever it is that these long term things are going to do and put estimated monies aside into the LCP. It is perfectly legal. I mean it meets muster if you can get someone to say it is more likely than not that this will be available. And it is more likely than not, for whatever the standard is for money in that venue that this is roughly what it is going to cost. That goes into your LCP. And what happens to the client psychologically if that money is not there? This becomes an important area for you. Remember what I said about what is not provided....can you imagine the harm that it does to the client? Fifteen years down the road, ten years down the road to turn on the television and see this guy at the Olympics who is kicking this goal ...a quadriplegic just like the client. And the client knows there is no chance that he is ever going to get it because he doesn't have the money for it. That is emotional harm that can be much worse than the harm that was originally done by what ever put him in this shape. Okay it is time for me to stop. We have time for one or two questions. If other questions arise, again, my email is ball@nc.rr.com. Feel free to send questions to me. If it is a short question, or short answer I don't mind because I learn a lot from the questions I receive. Thank you for allowing me to address you by video. I hope you have a lovely time in the mountains – watch out for avalanches and earthquakes out there ... you are in a very dangerous place.

The JLCP, FLCPR, IALCP, and IARP sincerely thank Mr. Ball for his informative presentation and for his willingness to have his presentation's transcript printed to share with the life care planning community.

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