LIFE CARE ANALYTICS

USING ANALYTICS TO NEGOTIATE COMPLEX PERSONAL INJURY CLAIMS

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“Knowledge is power.”

- Sir Francis Bacon, 1597

As the quote above demonstrates, ever since the age of discovery, mankind has been seeking deeper knowledge to make better decisions. In the information age, we are inundated with an unlimited volume of data, opinions and experts. Never have we had access to more information and never has the fundamental data ever been so conflicting. This is especially true in the field of complex personal injury claims. In nearly every case, almost every detail is litigated and there are conflicting opinions that impact strategy and case valuation. Life Care Analytics (LCA) is a company formed to organize the data that has been generated through litigation. The white paper titled Life Care Analytics Methodology provides an overview of how the disparate data is collected, validated and analyzed. The intent of this paper is to demonstrate how powerful this data can be when combined with standard risk transfer strategies to position the case for resolution. The LCA methodology and the resulting deliverables can play a major role in crafting a strategy to bridge the inevitable divide between two gap positions.

In any negotiation, it is impossible to make progress unless there is some form of agreement between the parties. In the initial stages of litigation, this is difficult because both sides “expert-up” as the battle-lines are drawn. Every element of the case is in conflict; causation, medical needs, life expectancy, cost of care, coverage, liability, etc. It is a hot mess.

The difference of opinion is most obvious when comparing the plaintiff and defense Life Care Plans. The life expectancy differs dramatically for each and the need for attendant care has an equally wide spectrum. These two items have the greatest impact on the future cost of care for the catastrophically injured plaintiff.

One of the pillars of the LCA methodology is the validation of key data points from independent 3rd party sources. The principals of LCA have found that by validating data from well-respected professional organizations the litigants can find common ground. The best example of this is how LCA tackles the contested issue of life expectancy for an injured plaintiff/claimant.

To demonstrate how this is done let’s walk through a case study that includes a 39-year-old male who was involved in an accident resulting in his becoming an incomplete quadriplegic. Clearly, this type of injury would impact his life expectancy. Using 1983a life expectancy table, a typical 39-year-old male would have a 42 year life expectancy. It is common for the defense to exaggerate the impact of the injuries on the injury victim and retain an expert that states the life expectancy is no more than 16 years. Equally off-base is the typical plaintiff position that the plaintiff’s life expectancy would be minimally impacted say from 42 to 39 years.

To find common ground, LCA works in conjunction with the referring party’s structured settlement specialist to submit the medical records for the injured party to the nation’s top life insurance companies to be underwritten. Each of these companies will evaluate the injured party and the impact of the injury and resulting disabilities/medical conditions have on the injured party’s life expectancy. By having the nation’s top life insurance companies evaluate and underwrite the injured party a market-based life expectancy can be determined. Most importantly, for each company, the life expectancy is then used to price-out a structured settlement which then acts as a risk transfer vehicle.

For the 39 year-old injury victim outlined in this paper, the chart outlines the results of the underwriting process:

Life Company	Rated Age
American General	51
Berkshire Hathaway	50
Independent Life	59
Metropolitan Life	51
New York Life	45
Pacific Life	50
Prudential	47
USAA	48
Average	**51**

LCA recommends that the first strategic negotiation move is to retain a structured settlement consultant to initiate the underwriting process. This helps to resolve the difference of opinion between the plaintiff and the defense on the injured party's life expectancy. Most importantly, by going through this process, you have brought in market-based pricing for risk transfer that is specific to this case. This risk transfer vehicle, the structured settlement, provides 3rd party validation of case specific economic cost associated with providing future cash flows to meet anticipated needs.

In short, for the exchange of the agreed upon premium dollars, the life insurance company providing the structured settlement annuity will carry the duration risk (long life) for the plaintiff. By presenting market-based pricing with your demand/offer for the risk transfer you are using a cluster of well-respected, rated and regulated 3rd party financial institutions to tackle both life expectancy and the discount rate for future cash flows. The life expectancy is somewhat irrelevant. What matters is the cost for the life annuity to cover the costs. (i.e., if New York Life with a 45 rated age was the lowest price, they should go with that over Independent Life with a rated ate of 59. The rated age is a means to an end where the end is the cost for the needed, life contingent benefits.)

NOTE: If the other side refuses to concede this point it is strongly recommended that you ask they retain a structured settlement professional to confirm/challenge the findings of structured settlement professional you have retained. In our experience, when this happens the results simply confirm the original underwriting and your counterpart is forced to concede the key points of life expectancy and discount rate.

To demonstrate the impact of how this simple technique helps to close the gap between a plaintiff and a defendant let's focus on the attendant care requirements for the 39-year-old incomplete quadriplegic. In the chart below, we have isolated the attendant care requirements outlined in both the plaintiff and defense Life Care Plans. Lastly, we have priced out both plans with a structured settlement that is formatted to provide a life-income with a 20-year guarantee and an annual cost of living adjustment that matches the respective inputs:

[TABLE I]

Attendant care recommended terms from Plaintiff and Defense Life Care Plans

	Plaintiff	Defense
Daily Care Requirements		
RN - $50.00/hr.	0	0
LPN - $40.00/hr.	12	0
C.N.A. - $20.00/hr.	12	12
Total Daily Care	***24***	***12***
Plaintiff age	39	39
Life Expectancy	39	16
Cost of Living Adjustment	3.00%	0.00%
Discount Rate for Future Cash Flows	3.00%	3.00%
Net Present Value of Future Cash Flows - Plaintiff Life Expectancy	9,950,680	1,998,000
Net Present Value of Future Cash Flows - Defense Life Expectancy	4,082,330	1,100,353
Average Rated Age	51	51
Rated Age of Final Life Company	59	59
Cost of Life and 20 Annuity (Lowest Cost)*	6,338,855	1,474,984
% Difference from Plaintiff Life Expectancy NPV	-36%	-26%
% Difference from Defense Life Expectancy NPV	55%	34%

*Structured Settlement cost provided by Independent Life

As the analysis indicates by using the structured settlement risk transfer strategy we have been able to capitalize on 3rd party underwriting and risk transfer. The plaintiff demand was reduced 36% from $10.0 million to $6.3 million. Conversely, the underwriting and structured settlement market-based pricing has highlighted the defense's position was mispriced by 34% ($1.1 million vs. $1.5 million).

From a negotiation standpoint, LCA recommends you provide as much detail with each offer/demand that is made during the mediation process. Through LCA's proprietary application DIVA (Data Integration and Valuation Analysis), itemized offers/demands can be made. Outlined in Exhibit I is the defense offer and in Exhibit II is the plaintiff demand for the case study outlined earlier. You will observe that in both illustrations, the attendant care component outlined in Table I is highlighted in yellow. You will also see that other key economic components of the litigation are outlined in the illustration including fees, costs, liens, etc.

At this point, with life expectancy being driven by the life insurance company as opposed to a biased expert, we can isolate the care requirements and try to find common ground to help drive a successful resolution. LCA focuses on the care and the care mix because it typically accounts for up to 85% of the future medical expenses in a catastrophic injury claim. Through DIVA, LCA can create a series of "stages" with different care mixes to help provide a roadmap or framework for a series of negotiated steps.

In Exhibit III, through the DIVA application, LCA has prepared 10 stages of blended care (these stages can be modified within the DIVA application) and each stage has been priced out with three different structured settlement formats to provide the care highlighted in each stage. The intent of this exhibit is to allow the negotiation team to plan out a series of steps to ultimately position the case for a settlement that meets the financial objective of the party. For example, in the case study used earlier a reasonable settlement would be Stage 5. The care mix for this scenario is 18 hours per day of attendant care with 6 hours of care being provided by an LPN and the remaining 12 hours being provided by a CNA. The LPN can bathe and administer medication while the CNA acts more as a basic attendant. The stage 5 demand/offer illustration is attached as exhibit IV.

In the collective experience of the LCA executive team, by focusing on the use of the proceeds and how the proposed settlement dollars will positively impact the plaintiff and the impacted family, common ground can be found, and a settlement will be achieved. The key is providing consistency in the mission, intention and use of the settlement proceeds on a move-by-move basis. This sure beats the mid-point game and the inevitable bracket negotiation strategies that dominate the mediation landscape today.

[EXHIBIT I – DEFENSE OFFER]

LIFE CARE ANALYTICS

Prepared For: John Esquire, Esq.
Date: April 3, 2019

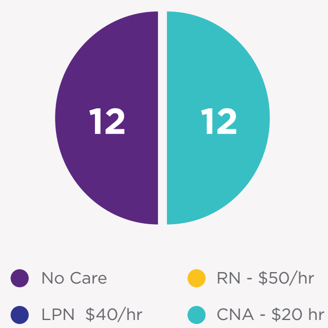
Structure Expert: Frank Jones
Analytics Expert: Michael A. Cohen

JOHN DOE PROPOSED SETTLEMENT BREAKDOWN

Financial Breakdown

*Structured Settlement for Future Care	2,257,496
Cash for Up Front Expenses	500,000
Additional Damages	-
Liens	-
Costs	250,000
Client Total	**3,007,496**
Attorney Fees	**1,043,536**
Total Settlement	**4,051,032**

Daily Care Allocation



**Allocation of Care Projections funded by the Structured Settlement*

Care Category	Cost	Guaranteed Benefits Through Age 59	Expected Benefits Through Age 80
Medical Care	122,736	145,787	298,863
Diagnostic Tests	29,093	34,557	70,841
Therapeutic Evaluations	43,189	51,300	105,165
Outpatient Therapy	67,690	80,403	164,826
Medications	310,609	368,944	756,335
Support Care	1,474,984	1,752,000	3,591,600
Bathing/Toileting	2,289	2,719	5,573
Mobility Equipment	5,452	6,476	13,276
Transferring	3,051	3,624	7,429
Housing	-	-	-
Transportation	198,403	235,665	483,113
	2,257,496	**2,681,474**	**5,497,022**

Life with Certain Annuity: $11,172.81 for life payable monthly, guaranteed for 20 year(s), beginning on 07/01/2019, with the last guaranteed payment on 06/01/2039.
Structured Settlement and Illustration Provided by: *Independent Life Insurance Company*.

LIFE CARE ANALYTICS

Prepared For: John Esquire, Esq.
Date: April 3, 2019

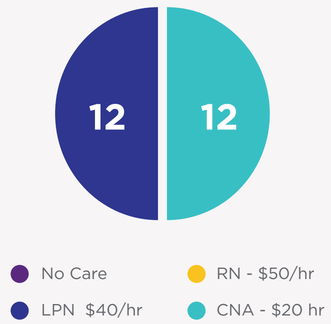
Structure Expert: Frank Jones
Analytics Expert: Michael A. Cohen

JOHN DOE PROPOSED SETTLEMENT BREAKDOWN

Financial Breakdown

*Structured Settlement for Future Care	7,459,822
Cash for Up Front Expenses	500,000
Additional Damages	-
Liens	-
Costs	250,000
Client Total	**8,209,822**
Attorney Fees	**2,344,118**
Total Settlement	**10,553,940**

Daily Care Allocation



**Allocation of Care Projections funded by the Structured Settlement*

Care Category	Cost	Guaranteed Benefits Through Age 59	Expected Benefits Through Age 80
Medical Care	175,822	195,867	573,404
Diagnostic Tests	41,676	46,428	135,917
Therapeutic Evaluations	61,869	68,923	201,771
Outpatient Therapy	96,968	108,023	316,238
Medications	444,955	495,683	1,451,117
Support Care	6,338,855	7,061,534	20,672,715
Bathing/Toileting	3,279	3,653	10,693
Mobility Equipment	7,810	8,701	25,471
Transferring	4,371	4,869	14,254
Housing	-	-	-
Transportation	284,217	316,620	926,909
	7,459,822	**8,310,300**	**24,328,489**

Life with Certain Annuity: $25,772.82 for life payable monthly, guaranteed for 20 year(s), beginning on 07/01/2019, with the last guaranteed payment on 06/01/2039.
Structured Settlement and Illustration Provided by: *Independent Life Insurance Company*.

LIFE CARE ANALYTICS

Life Care Plan - Assisted Care Stage Analysis

Life & 20 with 3% COLA

	Summary of Care							
Stage	Hours of Daily Care	Care Provider 1	Care Provider 2	Monthly Benefit	Annuity Cost	Other Costs	Attorney Fees	Total
Stage 10:	24	LPN - 12	C.N.A. - 12	25,773	7,459,822	750,000	2,344,118	10,553,940
Stage 9:	24	LPN - 8	C.N.A. - 16	23,339	6,755,575	750,000	2,168,056	9,673,632
Stage 8:	20	LPN - 10	C.N.A. - 10	22,123	6,403,452	750,000	2,080,026	9,233,478
Stage 7:	20	LPN - 8	C.N.A. - 12	20,906	6,051,329	750,000	1,991,995	8,793,324
Stage 6:	18	LPN - 8	C.N.A. - 10	19,689	5,699,206	750,000	1,903,964	8,353,170
Stage 5:	18	LPN - 6	C.N.A. - 12	18,473	5,347,083	750,000	1,815,933	7,913,016
Stage 4:	16	LPN - 6	C.N.A. - 10	17,256	4,994,959	750,000	1,727,902	7,472,862
Stage 3:	16	LPN - 4	C.N.A. - 12	16,039	4,642,836	750,000	1,639,872	7,032,708
Stage 2:	12	LPN - 2	C.N.A. - 10	12,389	3,586,467	750,000	1,375,779	5,712,246
Stage 1:	12	C.N.A. - 12		11,173	3,234,343	750,000	1,287,748	5,272,092

Life & 20 with 2% COLA

	Summary of Care							
Stage	Hours of Daily Care	Care Provider 1	Care Provider 2	Monthly Benefit	Annuity Cost	Other Costs	Attorney Fees	Total
Stage 10:	24	LPN - 12	C.N.A. - 12	25,773	6,604,184	750,000	2,130,209	9,484,393
Stage 9:	24	LPN - 8	C.N.A. - 16	23,339	5,980,723	750,000	1,974,343	8,705,066
Stage 8:	20	LPN - 10	C.N.A. - 10	22,123	5,668,992	750,000	1,896,411	8,315,403
Stage 7:	20	LPN - 8	C.N.A. - 12	20,906	5,357,261	750,000	1,818,478	7,925,739
Stage 6:	18	LPN - 8	C.N.A. - 10	19,689	5,045,530	750,000	1,740,545	7,536,076
Stage 5:	18	LPN - 6	C.N.A. - 12	18,473	4,733,800	750,000	1,662,612	7,146,412
Stage 4:	16	LPN - 6	C.N.A. - 10	17,256	4,422,069	750,000	1,584,680	6,756,748
Stage 3:	16	LPN - 4	C.N.A. - 12	16,039	4,110,338	750,000	1,506,747	6,367,085
Stage 2:	12	LPN - 2	C.N.A. - 10	12,389	3,175,146	750,000	1,272,949	5,198,094
Stage 1:	12	C.N.A. - 12		11,173	2,863,415	750,000	1,195,016	4,808,431

Life & 20 (FLAT)

	Summary of Care							
Stage	Hours of Daily Care	Care Provider 1	Care Provider 2	Monthly Benefit	Annuity Cost	Other Costs	Attorney Fees	Total
Stage 10:	24	LPN - 12	C.N.A. - 12	25,773	5,206,484	750,000	1,780,784	7,737,268
Stage 9:	24	LPN - 8	C.N.A. - 16	23,339	4,714,986	750,000	1,657,909	7,122,895
Stage 8:	20	LPN - 10	C.N.A. - 10	22,123	4,469,237	750,000	1,596,472	6,815,709
Stage 7:	20	LPN - 8	C.N.A. - 12	20,906	4,223,488	750,000	1,535,034	6,508,522
Stage 6:	18	LPN - 8	C.N.A. - 10	19,689	3,977,739	750,000	1,473,597	6,201,336
Stage 5:	18	LPN - 6	C.N.A. - 12	18,473	3,731,990	750,000	1,412,160	5,894,150
Stage 4:	16	LPN - 6	C.N.A. - 10	17,256	3,486,241	750,000	1,350,723	5,586,963
Stage 3:	16	LPN - 4	C.N.A. - 12	16,039	3,240,492	750,000	1,289,285	5,279,777
Stage 2:	12	LPN - 2	C.N.A. - 10	12,389	2,503,245	750,000	1,104,974	4,358,218
Stage 1:	12	C.N.A. - 12		11,173	2,257,496	750,000	1,043,536	4,051,032

*The encoded reports and analysis are provided using the Assisted Care Stage highlighted in green. This is using the LCP and a structured settlement that is Guaranteed for 20 years and life thereafter, with a 2% COLA annually.

[EXHIBIT IV]

LIFE CARE
ANALYTICS

Prepared For: John Esquire, Esq.
Date: April 3, 2019

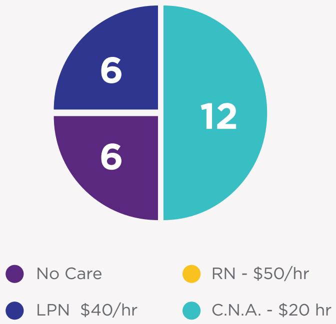
Structure Expert: Frank Jones
Analytics Expert: Michael A. Cohen

JOHN DOE PROPOSED SETTLEMENT BREAKDOWN

Financial Breakdown

*Structured Settlement for Future Care	4,733,800
Cash for Up Front Expenses	500,000
Additional Damages	-
Liens	-
Costs	250,000
Client Total	**5,483,800**
Attorney Fees	**1,662,612**
Total Settlement	**7,146,412**

Daily Care Allocation



**Allocation of Care Projections funded by the Structured Settlement*

Care Category	Cost	Guaranteed Benefits Through Age 59	Expected Benefits Through Age 80
Medical Care	155,663	177,112	456,386
Diagnostic Tests	36,898	41,982	108,180
Therapeutic Evaluations	54,775	62,323	160,595
Outpatient Therapy	85,849	97,679	251,701
Medications	393,936	448,218	1,154,979
Support Care	3,741,363	4,256,899	10,969,276
Bathing/Toileting	2,903	3,303	8,511
Mobility Equipment	6,915	7,867	20,273
Transferring	3,869	4,403	11,345
Housing	-	-	-
Transportation	251,629	286,302	737,749
	4,733,800	**5,386,088**	**13,878,996**

Life with Certain Annuity: $18,472.81 for life payable monthly, guaranteed for 20 year(s), beginning on 07/01/2019, with the last guaranteed payment on 06/01/2039.
Structured Settlement and Illustration Provided by: *Independent Life Insurance Company*.

ABOUT THE AUTHORS

Michael A. Upchurch

Michael Upchurch is a career executive who has focused his efforts on serving the needs of the complex claim's community. Mr. Upchurch in an entrepreneur who serves this community with a passion to improve this marketplace for everyone involved. In addition to being the founder of Life Care Analytics, Mr. Upchurch is the founder of NeuLife Rehabilitation and the founder of Independent Life Insurance Company.

NeuLife Rehabilitation is one of the largest in-patient post-acute rehabilitation facilities focusing on Traumatic Brain Injury (TBI) and Spinal Cord Injury (SCI) in the southeast. NeuLife is a preferred provider of rehabilitation services for many of the largest workers' compensation carriers, the Veterans Administration and many commercial health plans. NeuLife has received recognition for its innovative treatment programs and outcomes. NeuLife is honored to serve the TBI and SCI communities and is often a preferred provider for trauma and LTAC facilities throughout the southeast when these providers are dealing with a complex patient and working through the continuation of care. More information can be found at www.neuliferehab.com.

Independent Life is the first life insurance company exclusively focused on structured settlements. Independent Life's management team has more than 120 years of combined experience in the insurance, structured settlement and investments sectors. In February 2019, Independent Life introduced the industries first Payee Protection Policy. Independent Life has been trusted by some of the nation's largest Property and Casualty carriers to be a counter-party in a structured settlement. To learn more about Independent Life please visit www.independent.life.

Michael A. Cohen

Mr. Cohen was one of the founding faculty members of Columbia University's graduate level Enterprise Risk Management Program. He developed and taught multiple courses, including: "Strategic Risk Management' and 'External Stakeholder Requirements'.

For many years, Mr. Cohen was Vice President at A.M. Best Company, where he headed the rating division that analyzed the entire U.S. life insurance industry, evaluating the financial strength, operating performance and business profiles of those companies. He introduced risk management as a core element of A.M. Best's credit analysis and rating process. In addition to these duties, he authored A.M. Best industry publications and research reports, contributed to its information products and developed industry statistical studies.

Mikel B. Taft

Mikel Taft is an operational executive who has focused exclusively on the claims analysis and resolution industry over the past decade while serving at Delta Settlements. During his time there, Mikel specialized in analyzing, valuing and preparing settlement solutions for catastrophic claims. Mikel often focused on the resolution of catastrophic cases and would be brought in by the litigation teams during the negotiation phase to analyze the future care requirements and create comprehensive reports to help bridge the divide with the plaintiff and defense.

Before settlement planning, Mikel was an Executive with the Boy Scouts of America. While at the Boy Scouts, Mikel was recognized nationally, earning multiple awards for recruiting and fundraising throughout the time of the economic crisis. Mikel helped develop the National Council's training for recruitment and fundraising. Mikel attended the University of North Florida, earning a degree in Marketing with a focus in Financial Services.

LIFE CARE
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