SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

INDEX NO:
350366/11

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ELIMIR MARKOVIC and EMRU MARKOVIC, infants under the age of 14 years by their mother and natural guardian SADETA LJALJICIC, and SADETA LJALJICIC, individually

Plaintiff(s),

EXPERT DISCLOSURE CPLR 3101(d) (Provder)

against

224TH STREET APARTMENTS LIMITED LIABILITY COMPANY & FRIEDMAN MANAGEMENT CORP.

Defendant(s),

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PLEASE TAKE NOTICE, that the Plaintiffs have retained the following individual as an expert witness who will be called upon to give testimony at the time of trial:

Edmond Provder, CRC,
Occupational Assessment Services, Inc.
THE ROTHMAN CENTER,
300-3 Route 17 South
Building #3, Second Floor, Suite 4A
Lodi, New Jersey 07644-3810

(a) Said expert witness will give testimony in the field of: Life Care Plan Evaluation Employability and Earning Capacity Evaluation.

(b) The substance of the opinions to which said expert is expected to testify are fully set forth in the two (2) written comprehensive analyses (ELIMIR MARKOVIC and EMRU MARKOVIC) which are appended hereto and made part of this exchange.

(c) The grounds for the aforestated opinions are fully set forth in the (**2**) written comprehensive analyses (ELIMIR MARKOVIC and EMRU MARKOVIC) which are appended hereto and made part of this exchange.

(d) The witness's background and qualifications are fully set forth in the written Curriculum Vitae, which is appended hereto and made part of this exchange.

Dated:
New York, New York
July 23, 2014

KEOGH CRISPI, P.C.
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By: PAT JAMES CRISPI
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Toms River, NJ
Miami, FL

LIFE CARE PLAN & EARNING CAPACITY EVALUATION on Emru Markovic

Prepared for the Law Offices of Keogh Crispi, P.C.

July 23, 2014

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Life Care Plan - TYPICAL YEAR
Emru Markovic- SUMMARY 7/23/14

Life Care - Section

A-1: Projected Evaluations.....$2,832

A-2: Projected Therapeutic Modalities.....$13,914

A-3: Projected Medical Care.....$3,563

A-4: Educational Needs.....$22,707

A-5: Home Care Needs.....$28,835

ANNUAL TOTAL PLAN COSTS $71,851

TOTAL PLAN COSTS (71.9 years).....$5,166,086

LOST EARNINGS $301,995

TOTAL LOSS $5,468,081

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LIFE CARE PLAN & EARNING CAPACITY EVALUATION

on

Emru Markovic
SS#075-98-5282

At the request of his attorneys, Emru Markovic was examined for the purpose of a vocational evaluation and an assessment of his power to earn monies. The Vocational Evaluation consisted of a standard vocational interview and testing in order to assess the effect of Emru's non-exertional impairments on his ability to perform Sedentary, Light, Medium, Heavy, and Very Heavy Work activities, as they exist in the labor market and are defined in the Dictionary of Occupational Titles, Fourth Edition, Revised 1991, and in Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, 1981.

In addition, Emru was referred to Occupational Assessment Services for a Life Care Plan Evaluation to assess the specific extent to which Emru's medical impairments impede his ability to demonstrate independent living skills and handle activities of daily living, as well as the costs associated with these limitations.

The Life Care Plan Evaluation consisted of a record review, an assessment of the individual's ability to perform activities of daily living, the formulation and development of the Life Care Plan using a standardized format, and research into the local cost of each item contained in the plan.

Emru was evaluated on 6/27/14 at our office in New York City.

PURPOSE OF REFERRAL

Emru was referred to Occupational Assessment Services for a comprehensive vocational evaluation in order to assess the effect of his lead poisoning on his future vocational capacity, employability, and earning capacity.

The evaluation consisted of the administration of a standard vocational interview and standardized tests to observe and assess the effect of his non-exertional impairments on his vocational capacity.

Explored in this report is the specific manner in which Emru's vocational handicaps may impede his ability to perform Sedentary, Light, Medium, Heavy and Very Heavy types of occupations, as they exist in the labor market and are defined in the Dictionary of Occupational Titles, Fourth Edition, Revised 1991, and in Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, 1981.

The results of the evaluation served as a foundation to assess Emru's employability, transferable skills, earning capacity, and vocational rehabilitation potential.

The vocational opinions expressed in this report are based on the assumption that Emru's cognitive conditions and resultant vocational capacity are permanent.

Emru was referred to Occupational Assessment Services for a Life Care Plan Evaluation to assess the specific extent to which Emru's medical impairments impede his ability to

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demonstrate independent living skills and handle activities of daily living, as well as the costs associated with these limitations.

Also considered were the effects of his Lead Poisoning on his long term Life Care Planning needs given his physical, emotional, and cognitive limitations.

REFERRAL QUESTIONS

The vocational evaluation focused on answering the following questions:

1. What is Emru's vocational capacity?

2. What is his residual earning capacity?

VOCATIONAL EVALUATION PROCESS

The vocational evaluation consists of four parts:

1. The initial section involves reviewing the medical records and other documents describing the evaluee's condition. This data provides background information to better understand the evaluee and his treatment.

2. The second section consists of performing a standard vocational interview to obtain information on the evaluee's education and medical treatment.

3. Based on the information obtained in the document review and vocational interview, a test battery is administered to measure abilities.

4. The final step in the evaluation process is to review all of the material and reach an opinion as to earning capacity and the feasibility of Emru to receive vocational rehabilitation services.

RECORDS REVIEWED

Metropolitan Hospital Center (4/9/10-5/25/12) laboratory results.

Dr. Cullinan - Psychological Evaluation (8/28/13) notes a full scale IQ of 95 and states "Emru shows language based learning difficulty. From the history that I reviewed, Emru's language development faltered during the time of his highest lead explosure, and continues to be problematic to this point. He also has difficulty maintaining attention and concentration at a level expected for children his age...It is estimated that Emru has suffered an estimated 12 point IQ loss which is permanent."

Dr. Adler (9/24/12) states "Lead poisoning, language delay, behavioral variability...Emru Markovic has had an IQ loss approaching 12 points. Emru Markovic could not improve as

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much as possible from his various therapies because of the brain damage caused by lead. The problems caused by lead are permanent."

Dr. Masur - Neuropsychological Evaluation (12/6/12) notes a full scale IQ of 97 and states "There is no evidence for the presence of cognitive or behavioral impairment that can be causally related to Emru's history of elevated lead levels. Emru is a young man of average level of intellectual functioning, and he has clearly demonstrated improvement from prior examination...his prognosis for continued functioning at his optimal level of ability is excellent."

Dr. Shinnar (7/6/13) states "Emru is a young man with a typical pattern of developmental language disorder...It is very unlikely that lead exposure played any significant role in his problems...Given his improvement with therapy and his ability to interact better and improvement in his medical issues, his long term prognosis is favorable."

Emru's New York City Department of Education IEP (9/7/12) noting speech language therapy 2x30 minutes, physical therapy 2x30 minutes, counseling services 1x30 minutes.

New York Center for Child Development - Psychological Evaluation (6/26/12) notes a full scale IQ of 86 and states "Speech and language evaluation is recommended due to concerns regarding Emru's expressive language and articulation difficulties....Occupational therapy evaluation is recommended due to Emru's significant difficulties calming down and possible sensory difficulties. Physical therapy evaluation is recommended due to concerns regarding Emru's poor balance and coordination...Educational evaluation is recommended due to observed limitations in Emru's general funds of knowledge and difficulties holding and using a pencil. Play therapy is recommended to assist Emru develop appropriate play skills and practice playing cooperatively with others."

New York Center for Child Development - Speech and Language Evaluation (7/9/12) states "Mildly delayed receptive language skills and mildly delayed expressive language skills. Total communication skills were mildly delayed...Speech/language therapy is recommended at this time."

New York Center for Child Development - Occupational Therapy Evaluation (7/12/12) states "He appears to have slight delay in his fine motor skills at this time...According to standardized testing, he appears to have fine motor skills that fall 1.4 standard deviations below the mean."

New York Center for Child Development - Physical Therapy Evaluation (8/9/12) states "He exhibits weakness in his core and lower extremity as well as poor coordination while running...Emru presents with a greater than 33% delay in his current gross motor skills. Emru would benefit from physical therapy within his school setting to help negotiate his environment safely and independently."

Deposition of Sadeta Ljaljicic (6/18/12, 6/22/12).

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GENERAL DESCRIPTION

Emru and his mother, Sadeta Ljaljicic, arrived on time for the session. He is neatly groomed and attired. Emru was able to respond to basic questions and identify several colors.

During the evaluation, his mother, Sadeta Ljaljicic, age 29, acted as the historian.

He is able to state his age and that a shape is a circle. He knows some of his colors. Emru had some difficulty remaining in his seat.

BACKGROUND INFORMATION

Emru is five years old, born 9/29/08 in New York City. He resides with his mother, father, and two brothers in an apartment at 34 West 139th Street, Apt 2-A, New York (New York County), New York 10037; telephone 646-448-4254.

His siblings are Ehran Markovic, age 7, who just completed the first grade. He attends a regular class and is able bodied.

In addition, he resides with his brother, Elmir, age 4, who has been lead poisoned.

He was able to recognize seven fingers.

Emru was able to respond to questions regarding the show "Blues Clues" which he watches.

He received speech therapy when he was in Kindergarten. He is going to be in special placement for first grade due to impaired memory and impaired concentration. He has difficulty comprehending. He reports liking to do math.

He plays with friends but cannot state their names. He has a computer at home but it does not work.

PARENTS' BACKGROUND

Elmir's mother, Sadeta Ljaljicic is age 29. She attended up to the 4th grade in Kosovo. She is in the process of trying to get her GED. She has no employment history.

Elmir's father, Jufad Markovic, is age 39. He attended up to the 7th grade in Yugoslavia. He is employed as a Building Superintendent where he earns $1,600 per month plus the rental of an apartment.

EDUCATIONAL HISTORY

Emru attends PS 197and is going into the first grade. He is being evaluated prior to entering this class. He is in a regular classroom but received resource room training.

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He attends school Monday to Friday, 8:00 a.m. to 2:20 p.m.

His teacher is Ms. Hall. His mother walks him to school.

He attended a special school prior to Kindergarten.

According to his mother, Emru is not doing well in school due to his impaired memory.

He received speech therapy when he was in Kindergarten. He is going to be in special placement for first grade due to impaired memory and impaired concentration. He has difficulty comprehending. He reports liking to do math.

MEDICAL INFORMATION

Emru's condition is attributed to lead poisoning exposure from 2/15/10-2/15/12.

He is treated at Metropolitan Hospital.

His mother believes he is "hyperactive" at home.

His mother notes that Emru does have a poor attention span.

His hearing is reported to be normal. His mother notes that Emru had an ear infection once.

His mother has to wash, dress, and bathe him. He is toilet trained but sometimes has accidents.

He is right-handed.

VOCATIONAL HANDICAPS

His intelligence functioning has been noted by Dr. Adler (9/24/12) who states "Lead poisoning, language delay, behavioral variability...Emru Markovic has had an IQ loss approaching 12 points. Emru Markovic could not improve as much as possible from his various therapies because of the brain damage caused by lead. The problems caused by lead are permanent."

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RESIDUAL EARNING CAPACITY

The establishment of the residual earning capacity involves determining:

A. What jobs a person is capable of doing,
B. How likely it is that the individual can find employment in those jobs, and
C. The pay scale for the types of jobs the person is capable of doing.

The functional limitations imposed by Emru's injuries are the major determinants of the opportunities, or lack thereof, available to him for vocational alternatives.

Functional limitations may affect an individual's job and earnings potential in one or more ways.

1. The limitations may make it impossible, or at least difficult, to perform certain necessary job tasks.

2. The limitations may limit mobility and make it difficult for the individual to get to and from the job site.

3. The limitations may make it impossible, or at least difficult, to perform job tasks at a competitive rate, which is the level of production acceptable to an employer.

4. The limitations may interact with the work environment in such a way as to make performance difficult, uncomfortable, or dangerous

5. There may be increased danger or risk to oneself because of the physical limitations and the difficulty of performing certain functions.

6. The limitations may affect the work or safety of co-workers or the public.

7. The limitations may impair one's competitive ability, thereby impeding normal progress up the "organizational ladder" or the chance of getting a job in the open labor market.

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All of these elements need not exist in every case of functional limitations. In some cases, there may be other factors that would hinder job performance or labor market competitiveness. To the extent they are present, however, the elements will generally affect the individual's ability to obtain and retain employment, may affect the types of jobs potentially available, or may affect future raises, promotions, and/or job mobility.

Because of his injury, Emru has suffered significant vocational limitations.

IMPAIRED EARNING CAPACITY

Earning capacity is defined as the potential of a worker, possessing knowledge, skills, and abilities to work and earn money in a competitive labor market. The most commonly accepted definitions of earning capacity involve the amount of money a person can earn because of age, education, training, work experience and residual functional capacity. The definition usually contains three elements:

(1) The amount of money that a worker is capable of earning by virtue of physical condition (residual functional capacity), the degree of recovery experience and training.

(2) The ability to **hold skill and earning power** (Deutsch & Sawyer, 1997); and

(3) The ability of the individual to obtain and/or hold the **highest paying jobs** to which he or she might have access (Weed & Field 2001).

The foundation for earning capacity comes from residual functional capacity (RFC) and employability.

The impaired earning capacity of an individual is based upon the determination of the probable course of future earnings or the **capacity** for earnings. For an individual with a demonstrated adult earning capacity the single best indication of what will be done in the future will depend, to a great extent, upon what has been done in the past. What actually has been accomplished in the past, however, does not necessarily establish the **capacity to earn** but is rather just some evidence as to this capacity. In a case such as this, the individual does not have a demonstrated adult earning capacity, therefore, the calculations must be based upon a statistical group within which he would have fallen. Generally the calculations are based upon the expected level of education he could have been expected to have achieved. Data is published by the U.S. Bureau of Census as to the earnings by age, education and sex. In this case, the statistical group used are **full-time working males with a 9th to 12th grade education or high school graduate (including GED).**

The extrapolation of an earnings stream into the future must consider various socioeconomic forces at work in the economy. In most cases, there are three subject matter areas which must be utilized in making such an extrapolation--personnel, economics, and statistics.

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EMPLOYABILITY OPINION

Because of his lead poisoning with resultant developmental delays in the cognitive and speech areas, it is my opinion, as a Vocational Expert, that Emru's ability to perform work in the local and national labor market on a sustained, competitive basis has been negatively affected.

If not for his lead poisoning, his pre-injury earning capacity would be represented by the earnings range of full-time working males with a 9th to 12th grade education or high school graduate (including GED).

According to the publication Current Population Survey, 2012 Annual Social and Economic Supplement (ASEC), Bureau of Labor Statistics and U.S. Census Bureau, males with this level of education have median earnings of $26,043 to $40,070 per annum which represents Emru's pre-injury earning capacity. (App. B14).

It is my opinion as a Vocational Expert that, on the four-point scale of disability—*Nondisabled, Secondary Work Limitation, Occupationally Disabled, Severely Disabled*, Emru is Occupationally Disabled which is defined as an inability to work at his pre-injury level but with the ability to perform some other type of employment on a full-time basis. This will result in about a 20-percent diminution of earning capacity over his work life. This percentage takes into account the limited participation in the labor market of disabled persons which is 49 to 52%, making it more difficult for him to obtain and maintain employment, to experience longer periods of unemployability, and a shortened work life expectancy, as well as loss of vocational/educational opportunity. (App. B14, 16)

Emru has sustained a significant diminution of earning capacity of $5,208 to $8,014 per annum over his work life, or **a total loss of $243,360 to $360,630** for 45 more years with a work life expectancy of age 67, due to the residuals of his lead poisoning and resultant developmental delays. This figure is unadjusted for inflation, excludes fringe benefits, and is not reduced to present value.

LIFE CARE PLAN OPINION

Careful consideration has been given to the Life Care Planning evaluation, as well as the medical evaluations and records contained in the file.

All needs dictated by his medical conditions are outlined in the Life Care Plan tables and Cost Summary Chart attached. Careful consideration has been given to each sub-part of the Life Care Plan, including but not limited to, future evaluations, therapies, equipment, support care needs, and medical needs required as a result of his multiple medical conditions.

An assessment of Emru's current and future medical care and rehabilitation needs was made based on my review of the records, and knowledge of equipment, technology, and treatments that can assist in his care and development.

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An attempt has been made to review the reasonable cost of care based upon 2014 local (New York City area) rates without consideration for price increases or inflation. There may be variations and plan modifications made with Emru's treating physicians and family.

Prepared by:

Edmond Provder
Certified Rehabilitation Counselor
Diplomate, American Board of Vocational Experts

NAME: Emru Markovic
DATE OF BIRTH: 9/29/08
DATE PREPARED: 7/23/14

LIFE CARE PLAN - PROJECTED EVALUATIONS

Evaluation	Age/Year Initiated	Age/Year Suspended	Per-Year Frequency	*Base Cost Per Year
Rehabilitation Life Care Plan	5 7/14	Life Expectancy	1 X 3 years until age 21; then 1 X 5 years	$3,500 per evaluation
Occupational Therapy	5 7/14	21 9/30	1 X year	$65 - $350
Physical Therapy	5 7/14	21 9/30	1 X year	$65 - $350
Speech Therapy	5 7/14	21 9/30	1 X year	$300 - $1,320
Neurobehavioral/ Cognitive Testing (Neuropsychological Testing)	5 7/14	21 9/30	1 X 3 years	$1,600 - $4,200

All growth trends to be determined by an economist.

NOTE: Life Care Plan Format is adapted from A Guide to Rehabilitation, Deutsche and Sawyer, Matthew Bender, New York, 11587. Permission for use of these forms was given by the authors through personnel communications.

NAME: Emru Markovic
DATE OF BIRTH: 9/29/08
DATE PREPARED: 7/23/14

LIFE CARE PLAN - PROJECTED THERAPEUTIC MODALITIES

Therapy	Age/Year Initiated	Age/Year Suspended	Frequency of Treatment	*Base Cost Per Year
Case Manager/ Rehabilitation Counselor	5 7/14	Life Expectancy	2-4 hours per month, 12 X year	$2,352 - $8,640 at $98 - $180 per session
Occupational Therapy	5 7/14	21 9/30	2 X week for 48 weeks	$3,840 - $11,520 at $40 - $120 per session
Speech/ Cognitive Therapy	5 7/14	21 9/30	2 X week for 48 weeks	$14,400 - $19,200 at $150 - $200 per session
Psychological Counseling - Behavioral Modification	5 7/14	21 9/30	2 X week for 48 weeks	$14,400 at $150 per hour

*** All growth trends to be determined by an economist.**

NAME: Emru Markovic
DATE OF BIRTH: 9/29/08

LIFE CARE PLAN - PROJECTED MEDICAL CARE

Medical Specialty	Frequency of Visits	Purpose	Cost Per Visit	*Cost Per Year
Pediatrician	3- 4 X year until 21	Ongoing treatment	Initial $170 - $500; Follow Up $90 - $208	$270 - $2,000
Internist	2 X year after age 21	Ongoing treatment	Initial $100 - $250; Follow Up $75 - $250	$150 - $500
Neurologist	1 X year	Ongoing evaluation	Initial $200 - $375; Follow Up $75 - $150	$75 - $375
Lab Work: Blood:	1 X year	Lead Level Ferritin CBC w/Chem 20 Protein Electrophoresis	$325 - $407 $166 - $196 $202 - $241 $99 - $111	$325 - $407 $166 - $196 $202 - $241 $99 - $111
Urine Testing	1 X year	Creatinine Clearance Test Retinol Binding	$141 - $195 $10 - $13 $285- $349	$141 - $195 $10 - $13 $285 - $349
X-Rays	1 X 5 years	Chest X-Ray Fluorescence Renal Ultrasound	$40 - $61 $100 - $107 $200 - $250	$8 - $12 $20 - $22 $40 - $50
Specialty Testing	1 X 5 years	Angiogram EMG EKG	$500 - $1,100 $1,000 - $1,100 $30 - $40	$100 - $220 $200 - $220 $6 - $8

*** All growth trends to be determined by an economist.**

NAME: Emru Markovic
DATE OF BIRTH: 9/29/08
DATE PREPARED: 7/23/14

LIFE CARE PLAN - EDUCATIONAL FACILITIES

Facility/Home Care Recommendations	Age/Year Initiated	Age/Year Suspended	Hours/Shifts/Days Attendance of Care	*Base Cost Per Year
Educational Facility/Private School for Children with Behavioral Problems	5 7/14	21 9/30	7 hours per day, 5 days per week	$92,000 per year
Tutoring (after school)	5 7/14	21 9/30	1 hour X 5 days per week for 39 weeks	$9,750 - $10,335 at $50 - $53 per hour

*** All growth trends to be determined by an economist.**

*Price quotes obtained from: Sylvan Learning Center; Huntington Learning Center; The Center for Discovery

NAME: Emru Markovic
DATE OF BIRTH: 9/29/08
DATE PREPARED: 7/23/14

LIFE CARE PLAN - HOME CARE/FACILITY CARE

Facility/Home Care Recommendations	Age/Year Initiated	Age/Year Suspended	Hours/Shifts/Days Attendance of Care	*Base Cost Per Year
Home Attendant	5 7/14	Life Expectancy	4 hours per day, 7 days per week	$25,550 - $32,120 at $17.50 - $22 per hour

*** All growth trends to be determined by an economist.**

*Price quotes obtained for Home Attendant: Bayda Nurses; Visiting Nurse Services of NY; Home Instead Senior Care; and Preferred Home Care Agency

5-POINT PHYSICAL DEMAND SCALE

***dentary Work** involves:*

- EXERTING 10 pounds of force occasionally, and/or a negligible amount of force to lift, carry,
- push, pull, or otherwise move objects, including the human body.
- SITTING most of the time, walking and standing occasionally.

***ight Work** involves:*

- EXERTING 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects.
- Even if weight exertion is negligible, WALKING OR STANDING to a significant degree, and/or
- SITTING most of the time but with pushing and/or pulling of arm or leg controls, and/or
- Working at a production rate pace entailing constant pushing and/or pulling of materials.

***edium Work** involves:*

- EXERTING 20 to 50 pounds of force occasionally, and/or up to 10 to 25 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.

***eavy Work** involves:*

- EXERTING 50 to 100 pounds of force occasionally, and/or up to 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects.

***y Heavy Work** involves:*

- EXERTING in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20
- pounds of force constantly to move objects.

Occasionally = up to ⅓ of the time

Frequently = ⅓ to ⅔ of the time

Constantly = ⅔ or more of the time

Department of Labor's Dictionary of Occupational Titles, Fourth Edition, Revised 1991, page 1013

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Appendix C

VOCATIONAL RESOURCES CONSULTED

1. Dictionary of Occupational Titles, Fourth Edition-Revised, U.S. Department of Labor, Employment and Training Administration/JIST Works, Inc., 1991.

2. O*Net (Occupational Information Network) On Line http://online.onetonline.org

3. Job Browser Pro, Version 1.6.6 Skilltran, Spokane, Wa., 2012.

4. Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration, 1993.

5. The Guide For Occupational Exploration, 2000 Edition, Farr, Ludden & Shatkin, Published by JIST Works Inc., 2000.

6. The Transitional Classification of Jobs, 6th Edition, J. E. and T. F. Field, Elliott & Fitzpatrick, Inc., 2004.

7. OASYS - Transferable Skills Program, VERTEK, Washington.

8. The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, Employment and Training Administration/JIST Works, Inc., 1991.

9. Occupational Outlook Handbook, 2013-2014 Edition, U.S. Department of Labor, Bureau of Labor Statistics Bulletin 2700/JIST Works, Inc., 2013 also at. http://www.bls.gov/ooh/

10. Rehabilitation Consultant's Handbook, 4th Revised Edition, Roger O. Weed and Timothy F. Field, Athens, GA 2012.

11 A Guide to Rehabilitation Volume I and II, Deutsch, Paul M. & Sawyer, Horace Ahab Press, Purchase, New York 2000.

12. A Theory of Work Adjustment, Dawis, R.V., England, G.W., & Lofquist, L.H.; Minnesota Studies in Rehabilitation XV, Bulletin #38, St. Paul, MN: University of Minnesota, 1964.

13. A Theoretical Model for Rehabilitation Counseling, Rehabilitation Counseling Bulletin, 33 (4), pp268-278.

14. Current Population Survey (CPS) 2012, A Joint Effort Between the Bureau of Labor Statistics and Census Bureau,Annual Social and Economic (ASEC) Supplement PINC-04, at www.census.gov/hhes/www/cpstables/032013/perinc/new04_012

15. Occupational Employment Statistics, May 2013 Metropolitan Area Occupational Employment and Wage Estimates New York-Northern New Jersey-Long Island, NY-NJ-PA at http://stats.bls.gov/oes/current/oes_35620.htm#43-0000

16. The Dollar Value of a Day, Time Diary Analysis, 2012 Dollar Valuation, Expectancy Date, Shawnee Mission, Kansas 2013.

17. The Healthy Life Expectancy 2009 Tables, Expectancy Date, Shawnee Mission, Kansas 2014.

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20. Approach of Earning Capacity, 3rd Edition, Shahnasarian, Michael, Lawyers & Judges Publishing Company, Inc. Tucson, AZ, 2011

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22. A Guide to Vocational Assessment, 2nd Edition, Power, Paul W., Pro-ed Publishing Company, Austin, Texas 1991.

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Appendix D

LIFE CARE PLANNING RESOURCES CONSULTED

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3. Life Care Planning and Case Management Handbook, 2nd Edition Weed, Roger O, Editor, CRC Press, Boca Raton, 2004.

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Appendix E

Life Care Plan
Glossary of Terms

ADL - Activities of Daily Living: eating, dressing, shaving, grooming, etc.

Ambulation - walking with braces and/or crutches.

Catheter - a flexible plastic tube of varying sizes utilized for withdrawing fluids from or introducing fluids into a cavity of the body. This tubing is also used in specialized medical procedures.

Cognition - the conscious process of the mind by which we are aware of thoughts and perception, including all aspects of perceiving, thinking, and remembering.

Decubitus - a bed sore or discolored, open area of skin damaged by pressure. Common areas to this breakdown of skin are the buttocks, hip, shoulder areas, ankles, heels, and elbows.

Disability - any physical, mental, or emotional condition that is chronic or long-lasting (not acute or temporary), which is severe enough to limit the individual's functioning and which results in, or threatens to be, a handicap to productive activity.

Incontinent - lack of bladder and/or bowel control.

Indwelling Catheter - a flexible tube retained in the bladder, used for continuous urinary drainage. Can enter bladder via urethra or through an opening in the abdomen (suprapubicostomy).

Life Care Plan - estimates of the costs of life time care for the catastrophically injured. Topics include medical services, products, architectural changes, transportation and any other costs associated with caring for the client.

Pain Limitation - pain refers to an unpleasant sensation characterized by throbbing, aching, shooting or other unpleasant feelings associated with bodily injury or disorder. When pain is continuing, unremitting, uncontrollable, and severe, it may constitute a severe functional limitation to normal living. Much depends on the individual's tolerance for pain as well as secondary rewards for the suffering of pain.

Paraplegia - this term refers to impairment or loss of motor and/or sensory functioning in the thoracic, lumbar or sacral (but not cervical) segments of the spinal cord, secondary to damage of neural elements within the spinal canal. With paraplegia, arm functioning is spared, but, depending on the level of injury, the trunk, legs and pelvic organs may be involved. The term is used in referring to cauda equina and conus medullaris injuries, but not to lumbosacral plexus lesions or injury to peripheral nerves outside the neural canal.

Life Care Plan
Glossary of Terms
Page 2

Pressure Sore - a skin ulceration leading to tissue death, caused by excessive pressure which interferes with blood flow to a localized area. Also known as decubitus ulcer. Very preventable; very expensive to treat.

Quadriplegia **(also known as tetraplegia)** - paralysis affecting all four body limbs. In spinal cord injury, usually results from damage to cervical spine.

Rehabilitation - the provision of any kind of service provided individuals to correct, aid, or compensate for their handicapping problems.

Rehabilitation Technology - compensatory strategies and adaptive equipment to increase or improve functional capabilities of persons with disabilities; used to enhance vocational, educational, and/or independent living opportunities for persons with disabilities; technological methods of achieving practical outcomes in the rehabilitation process.

Seizure - an uncontrolled discharge of nerve cells which may spread to other cells throughout the brain. The sudden attack is usually momentary, but may be accompanied by loss of bowel and bladder control, tremors, and/or aggressiveness.

Spasticity - normal reaction in people with upper motor neuron injuries (generally above L-1), hyperactive muscles move or jerk involuntarily. In some people spasticity can be caused by bladder infections, skin ulcers, and other sensory stimulus. Spasticity is caused by excessive reflex activity below the level of lesion; since the activities are no longer coordinated by the brain, they are exaggerated.

Tetraplegia - this term refers to impairment or loss of motor and/or sensory function in the cervical segments of the spinal cord due to damage of neural elements within the spinal canal. Tetraplegia results in impairment of function in the arms as well as in the trunk, legs and pelvic organs. It does not include brachial plexus lesions or injury to peripheral nerves outside the neural canal.

Appendix F

Employability - Glossary of Terms

Aptitude - the specific capacities or abilities required of an individual in order to facilitate the learning of or carrying out of some task or job duty.

Disability - any physical, mental, or emotional condition that is chronic or long-lasting, which is severe enough to limit the individual's functioning and which results in a handicap to productive activity.

Earnings Loss - the individual's expected loss of earnings, if any, which results from the injury. Loss of earnings is based on history whereas loss of earnings capacity is projected into the future.

Earnings Capacity - ability of individual to obtain and hold the highest paying of jobs to which he might have access. Access is determined by worker traits, work skills and amount of training.

Employability - exists if a person possesses skills, abilities, and traits necessary to perform a job; the kinds and types of jobs which a person with a disability might be able to perform.

Essential Functions - (an Americans with Disabilities Act and 1973 Rehab. Act term) fundamental job duties of the employment position the individual with a disability holds or desires.

Exertional Level - physical abilities necessary for certain types of jobs; includes sedentary, light, medium, heavy, and very heavy.

Functional Limitations - results from physical, mental, and emotional disabilities which adversely affects the workers capacity to function at a job.

Handicap - the effect of the disability on the ability to perform gainful work.

Illiteracy - inability to read or write; generally little or no formal education.

Intelligence Quotient - **(IQ)** it is a measure of general intelligence obtained by testing.

Job Description - narrative description of activities and requirements of a job; does not necessarily accurately reflect what a worker will actually do in that job.

Limited Education - some ability in reasoning, arithmetic, and language skills, but not enough to perform semi-skilled or skilled job; generally the 7th to 11th grades according to definition by the Social Security Administration.

Labor Market Access - **(LMA)** a method for determining the employability and loss of access to the labor market of an individual with a disability. Utilizes the Vocational Diagnosis and Assessment of Residual Employability process (VDARE) to determine residual functional capacity.

Loss of Access - generally related to the loss of access to the labor market. Persons with injuries may suffer a reduction in the numbers of jobs which are available to them as a result of reduced work life expectancy (such as earlier retirement, or part-time rather than full time work) or due to functional limitations which prevent the client from choosing certain occupations.

Marginal Education - ability in reasoning, arithmetic, and language skills sufficient to perform simple, unskilled types of jobs; generally, 6th grade & below.

Mental Limitation - retardation and learning disabilities are grouped as a functional limitation, although the casual circumstances are quite different; both refer to a hindrance or negative effect in the learning and performance of activities and to other overt manifestations of inadequate mental function.

Mobility Limitations - function of getting from one place to another is limited; may be caused either by physical disability or environmental barriers.

Non-Exertional Impairment - does not limit physical exertion and does not directly affect ability to sit, stand, walk, lift, carry, push, or pull; does have impact on ability to work.

Employability - Glossary of Terms

Pain Limitation - pain refers to an unpleasant sensation characterized by throbbing, aching, shooting or other unpleasant feelings associated with bodily injury or disorder. When pain is continuing, unremitting, uncontrollable, and severe, it may constitute a severe functional limitation to normal living.

Partial Disability - exists if the individual cannot perform some or all of the work for which he or she was fitted prior to the injury.

Physical Demands - the physical requirements made on the worker by the specific job worker situation.

Placeability - economic conditions and employer attitudes are such that a person can actually be placed in a job; the difficulty in placing a person with a disability in a job.

Psychometric Instruments - standardized instruments which measure correlative mental functioning of a cognitive, psychomotor, or effective nature purported to be important to specific job performance utilizing abstracted tasks.

Residual Functional Capacity - a disabled person's remaining physical and mental work potential and capacity.

Sheltered Workshop - It provides transitional and/or long-term employment in a controlled and protected working environment for those who are unable either to compete or to function in the open job market due to their handicap.

Skill Level - level of knowledge of work activity and degree of judgment required to perform a certain job; includes unskilled, semi-skilled, and skilled.

Temperament - personal traits consisting of the individual's characteristic mode or inclination of emotional response.

Total Disability - exists if the individual is unable to return to preInjury employment and unable (due to an injury) to obtain employment with similar livelihood.

Transferability of Skills - skills that were used in one job can be interchanged or substituted into another job; used to determine the employability of a person.

VDARE Process - (Vocational Diagnosis and Assessment of Residual Employability) uses client's work history as a basis upon which to build an assessment of client vocational functioning capabilities.

Vocational Assessment - process by which vocational expert determines loss of vocational functioning due to a disability and helps clients to correlate their characteristics as workers with the characteristics of occupations.

Vocational Rehabilitation Services - services designed to enable a handicapped person to secure and retain employment.

Wage Loss Analysis - a procedure which addresses the amount of wages lost to a worker as a result of an injury.

Work Tolerance - ability to sustain a work effort for a prolonged period of time, ability to maintain a steady flow of production at an acceptable pace and acceptable level of quality, ability to handle a certain amount of pressure.

Work Samples - a well defined work activity involving tasks, materials, and tools which are identical or similar to those in an actual job or cluster of jobs. It is used to assess an individual's vocational aptitude, worker characteristics, and vocational interest.

Worker Trait - the requirements made of the worker in terms of aptitudes, general educational development, vocational preparation, physical demands, and personal traits.

Resources: Vocational Evaluation and Work Adjustment Standards With Interpretive Guidelines and VEWAA Glossary, Copyright, 1977.
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PROFESSIONAL QUALIFICATIONS OF EDMOND A. PROVDER

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EDUCATION

1971	B.S. Rehabilitation Counseling, Pennsylvania State University
1973	M.Ed. Rehabilitation Counseling, Pennsylvania State University
1977-1987	Rehabilitation Counseling Doctoral Candidate, 60 credits, N.Y.U.
2003	University of Florida/Intelicus Life Care Planning Program for Catastrophic Case Management, 128-post graduate hours

PROFESSIONAL EXPERIENCE

Vocational Expert/Life Care Planner — *August 1981 to Present*
Occupational Assessment Services

Evaluate the vocational potential and employability of able-bodied and disabled individuals through interviewing, reviewing records, and/or administration of vocational testing to provide a vocational appraisal as to the individual's ability to work in the competitive labor market. Develop and implement Life Care Plans for catastrophic individuals. Consult with industry and government agencies regarding Americans with Disabilities Act.

Provide initial assessment, vocational evaluation, counseling, case management, and job-placement services to assist industrial-disabled and able-bodied clients return to gainful employment, given their residual functional capacity. Approved vendor—New Jersey Division of Vocational Rehabilitation Services, New Jersey Commission for the Blind and Visually Impaired, New York Commission for the Blind and Visually Handicapped.

Testimony accepted in Federal and State Courts—New York, New Jersey, Pennsylvania, Maine, Massachusetts; state courts—Florida, New Hampshire, Connecticut, Ohio, Wisconsin, Illinois, North Carolina.

Vocational Consultant — *June 1997 to September 2000*
Social Security Administration — *October 1977 to September 1985*

Provided impartial vocational testimony in Social Security Disability hearings as to claimants' ability to perform substantial gainful activity, given their residual functional capacity.

Supervisor Vocational Facilities — *December 1979 to December 1981*
Mount Sinai Hospital — *July 1974 to August 1978*

Supervised and administered the Sheltered Workshop and Vocational Evaluation Programs, which included the provision of supervision, counseling, work adjustment services, and job placement services to the physically disabled, mentally ill, visually impaired and industrially disabled.

Vocational Consultant — *February 1975 to December 1979*

Administered and developed vocational rehabilitation programs for South Beach Psychiatric Center, Staten Island Association for Education of the Handicapped

Provided individual and group counseling, vocational evaluation, work adjustment, and job placement services to severely physically disabled, visually impaired and developmentally disabled clients.

PROFESSIONAL AFFILIATIONS

Certified Rehabilitation Counselor (#18792); Diplomate, American Board of Vocational Experts (#00448)
Certified Life Care Planner (#0501)

Professional Member of National Rehabilitation Counseling Association; National Rehabilitation Association; Vocational Evaluation and Work Adjustment Association, Job Placement Division; Brain Injury Association, Inc.; IARPS; RESNA

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New York City
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Miami, FL

LIFE CARE PLAN & EARNING CAPACITY EVALUATION on Elimir Markovic

Prepared for the Law Offices of Keogh Crispi, P.C.

July 23, 2014

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Curriculum Vitae of Edmond A. Provder

Life Care Plan - TYPICAL YEAR
Elimir Markovic- SUMMARY 7/23/14

Life Care - Section

A-1: Projected Evaluations.....$2,125

A-2: Projected Therapeutic Modalities.....$14,563

A-3: Projected Medical Care.....$3,723

A-4: Educational Needs.....$23,745

A-5: Home Care Needs.....$28,835

ANNUAL TOTAL PLAN COSTS $72,991

TOTAL PLAN COSTS (72.9 years).....$5,321,044

LOST EARNINGS $301,995

TOTAL LOSS $5,623,039

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LIFE CARE PLAN & EARNING CAPACITY EVALUATION

on

Elimir Markovic
SS#127-98-1259

At the request of his attorneys, Elimir Markovic was examined for the purpose of a vocational evaluation and an assessment of his power to earn monies. The Vocational Evaluation consisted of a standard vocational interview and testing in order to assess the effect of Elimir's non-exertional impairments on his ability to perform Sedentary, Light, Medium, Heavy, and Very Heavy Work activities, as they exist in the labor market and are defined in the Dictionary of Occupational Titles, Fourth Edition, Revised 1991, and in Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, 1981.

In addition, Elimir was referred to Occupational Assessment Services for a Life Care Plan Evaluation to assess the specific extent to which his medical impairments impede his ability to demonstrate independent living skills and handle activities of daily living, as well as the costs associated with these limitations.

The Life Care Plan Evaluation consisted of a record review, an assessment of the individual's ability to perform activities of daily living, the formulation and development of the Life Care Plan using a standardized format, and research into the local cost of each item contained in the plan.

Elimir was evaluated on 6/27/14 at our office in New York City.

PURPOSE OF REFERRAL

Elimir was referred to Occupational Assessment Services for a comprehensive vocational evaluation in order to assess the effect of his lead poisoning and residual conditions on his future vocational capacity, employability, and earning capacity.

The evaluation consisted of the administration of a standard vocational interview and standardized tests to observe and assess the effect of his non-exertional impairments on his vocational capacity.

Explored in this report is the specific manner in which Elimir's vocational handicaps may impede his ability to perform Sedentary, Light, Medium, Heavy and Very Heavy types of occupations, as they exist in the labor market and are defined in the Dictionary of Occupational Titles, Fourth Edition, Revised 1991, and in Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, 1981.

The results of the evaluation served as a foundation to assess Elimir's employability, transferable skills, earning capacity, and vocational rehabilitation potential.

The vocational opinions expressed in this report are based on the assumption that Elimir's cognitive conditions and resultant vocational capacity are permanent.

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He was referred to Occupational Assessment Services for a Life Care Plan Evaluation to assess the specific extent to which Elimir's medical impairments impede his ability to demonstrate independent living skills and handle activities of daily living, as well as the costs associated with these limitations.

Also considered were the effects of his Lead Poisoning on his long term Life Care Planning needs given his emotional and cognitive limitations.

REFERRAL QUESTIONS

The vocational evaluation focused on answering the following questions:

1. What is Elimir's vocational capacity?

2. What is his residual earning capacity?

VOCATIONAL EVALUATION PROCESS

The vocational evaluation consists of four parts:

1. The initial section involves reviewing the medical records and other documents describing the evaluee's condition. This data provides background information to better understand the evaluee and his treatment.

2. The second section consists of performing a standard vocational interview to obtain information on the evaluee's education and medical treatment.

3. Based on the information obtained in the document review and vocational interview, a test battery is administered to measure abilities.

4. The final step in the evaluation process is to review all of the material and reach an opinion as to earning capacity and the feasibility of Elimir to receive vocational rehabilitation services.

RECORDS REVIEWED

Metropolitan Hospital Center (12/29/10-2/24/12) laboratory results.

Dr. Cullinan - Psychological Evaluation (8/27/13) notes a full scale IQ of 82 and states "Elimir is approaching 4 years of age cognitive ability is generally within the borderline to low average range. Attention and concentration difficulties were noted today. There is a history of speech and language delay...permanent loss of approximately 12 IQ points and contributed to his speech and language and attention and concentration difficulty."

Dr. Adler (9/15/12) states "Lead poisoning, language delay, behavioral variability...Elimir Markovic has had an IQ loss approaching 12 points. Elimir Markovic could not improve as

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much as possible from his various therapies because of the brain damage caused by lead. The problems caused by lead are permanent."

Dr. Masur - Neuropsychological Evaluation (12/6/12) notes a full scale IQ of 104 and states "Elimir is a young man with average intellectual and cognitive capability. There is no evidence for the presence of ongoing cognitive or behavioral impairment that can be causally related to his history of elevated lead levels...prognosis for performance at his optimal level of functioning is excellent."

Dr. Shinnar (7/6/13) states "His clinical behavior and examination are consistent with a high functioning autistic spectrum disorder youngster. In addition to his delayed expressive speech, he has a paucity of spontaneous speech. He has his own language. He has poor sociability and play by report and likes to play on his own...Autism spectrum disorders have never been causally related to lead exposure at this magnitude."

Elimir's records from the New York Center for Infants and Toddlers (9/9/11-11/12/12) includes Individualized Family Service Plan (6/11/12), and NYC Early Intervention Program progress notes noting a 30 percent delay.

Elimir's Speech and Language Evaluation (9/28/12) sates "Average receptive language skills and delayed expressive language skills...Speech/language therapy is recommended at this time."

Elimir's Psychological Evaluation (9/12/12) states "Speech and language evaluation is recommended due to concerns regarding Elimir's expressive language. It is recommended that Elimir is enrolled in a class/group setting in order to expose him to social interactions and structured adult support. Play therapy is recommended to assist Elimir develop appropriate play skills and practice playing cooperatively with others."

Ability Builders for Children - Speech and Language Evaluation (9/16/11) notes a 33% delay in cognitive and communication abilities.

Ability Builders for Children - Development Evaluation (9/16/11).

Deposition of Sadeta Ljaljicic (6/18/12, 6/22/12).

GENERAL DESCRIPTION

Elimir and his mother, Sadeta Ljaljicic, arrived on time for the session. He is neatly groomed and attired. Elimir was able to respond to basic questions and identify several colors.

During the evaluation, his mother, Sadeta Ljaljicic, age 29, acted as the historian.

He is able to state his age and that a shape is a circle. He knows some of his colors. Elimir had some difficulty remaining in his seat.

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BACKGROUND INFORMATION

Elimir is four years old, born 12/27/09 in New York City. He resides with his mother, father and two brothers in an apartment at 34 West 139th Street, Apt 2-A, New York (New York County), New York 10037; telephone 646-448-4254.

His siblings are Erhan Markovic, age 7 who just completed the first grade. He attends a regular class and is able bodied.

In addition, he resides with his brother, Emru, age 5 ½, who has been lead poisoned. He does not count when six fingers were held up.

He received services through the early intervention program where he received speech, occupational, and physical therapy twice per week.

He did not receive any extra services in pre-kindergarten. He is scheduled to enter Kindergarten when he will receive an evaluation. His mother states being told that he will require special placement in school due to impaired memory and impaired concentration. He has difficulty comprehending. His mother said he cannot read but can write his name.

He plays with friends but cannot state their names. He does have a computer at home but it does not work.

PARENTS' BACKGROUND

Elimir's mother, Sadeta Ljaljicic is age 29. She attended up to the 4th grade in Kosovo. She is in the process of trying to get her GED. She has no employment history.

Elimir's father, Jufad Markovic, is age 39. He attended up to the 7th grade in Yugoslavia. He is employed as a Building Superintendent where he earns $1,600 per month plus the rental of an apartment.

EDUCATIONAL HISTORY

Elimir will be attending Kindergarten at PS 19. He is being evaluated prior to entering this class.

He attends school Monday to Friday, 8:30 a.m. to 5:00 p.m.

His teacher is Ms. Williams. His mother walks him to school.

According to his mother, Elimir is not doing well in school due to his impaired memory and impaired concentration. He has difficulty comprehending. He states being "bad" in school and states "I do not know what is wrong with me."

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His mother reports that he hits other children and demonstrates poor judgment, ie. he will put his hand on a hot stove. He has to be constantly watched so he does not injure himself or others.

MEDICAL INFORMATION

Elimir's condition is attributed to lead poisoning exposure from 2/15/10-2/15/12 which has resulted in developmental delays.

He is treated at Metropolitan Hospital.

His mother believes he is "hyperactive" at home.

His mother notes that Elimir does have a poor attention.span.

His hearing is reported to be normal.

His mother reports that he has blood in his nose.

His mother has to wash, dress, and bathe him. He is toilet trained but sometimes has accidents.

He is left-handed.

VOCATIONAL HANDICAPS

His intelligence functioning has been noted by Dr. Adler (9/15/12) who states "Lead poisoning, language delay, behavioral variability...Elimir Markovic has had an IQ loss approaching 12 points. Elimir Markovic could not improve as much as possible from his various therapies because of the brain damage caused by lead. The problems caused by lead are permanent."

The Ability Builders for Children Speech and Language Evaluation (9/16/11) notes a 33% delay in cognitive and communication abilities.

RESIDUAL EARNING CAPACITY

The establishment of the residual earning capacity involves determining:

A. What jobs a person is capable of doing,
B. How likely it is that the individual can find employment in those jobs, and
C. The pay scale for the types of jobs the person is capable of doing.

The functional limitations imposed by Elimir's injuries are the major determinants of the opportunities, or lack thereof, available to him for vocational alternatives.

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Functional limitations may affect an individual's job and earnings potential in one or more ways.

1. The limitations may make it impossible, or at least difficult, to perform certain necessary job tasks.

2. The limitations may limit mobility and make it difficult for the individual to get to and from the job site.

3. The limitations may make it impossible, or at least difficult, to perform job tasks at a competitive rate, which is the level of production acceptable to an employer.

4. The limitations may interact with the work environment in such a way as to make performance difficult, uncomfortable, or dangerous.

5. There may be increased danger or risk to oneself because of the physical limitations and the difficulty of performing certain functions.

6. The limitations may affect the work or safety of co-workers or the public.

7. The limitations may impair one's competitive ability, thereby impeding normal progress up the "organizational ladder" or the chance of getting a job in the open labor market.

All of these elements need not exist in every case of functional limitations. In some cases, there may be other factors that would hinder job performance or labor market competitiveness. To the extent they are present, however, the elements will generally affect the individual's ability to obtain and retain employment, may affect the types of jobs potentially available, or may affect future raises, promotions, and/or job mobility.

Because of his injury, Elimir has suffered significant vocational limitations

IMPAIRED EARNING CAPACITY

Earning capacity is defined as the potential of a worker, possessing knowledge, skills, and abilities to work and earn money in a competitive labor market. The most commonly accepted definitions of earning capacity involve the amount of money a person can earn because of age, education, training, work experience and residual functional capacity. The definition usually contains three elements:

(1) The amount of money that a worker is capable of earning by virtue of physical condition (residual functional capacity), the degree of recovery experience and training.

(2) The ability to **hold skill and earning power** (Deutsch & Sawyer, 1997); and

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(3) The ability of the individual to obtain and/or hold the **highest paying jobs** to which he or she might have access (Weed & Field 2001).

The foundation for earning capacity comes from residual functional capacity (RFC) and employability.

The impaired earning capacity of an individual is based upon the determination of the probable course of future earnings or the **capacity** for earnings. For an individual with a demonstrated adult earning capacity the single best indication of what will be done in the future will depend, to a great extent, upon what has been done in the past. What actually has been accomplished in the past, however, does not necessarily establish the **capacity to earn** but is rather just some evidence as to this capacity. In a case such as this, the individual does not have a demonstrated adult earning capacity, therefore, the calculations must be based upon a statistical group within which he would have fallen. Generally the calculations are based upon the expected level of education he could have been expected to have achieved. Data is published by the U.S. Bureau of Census as to the earnings by age, education and sex. In this case, the statistical group used are **full-time working males with a 9th to 12th grade education or high school graduate (including GED).**

The extrapolation of an earnings stream into the future must consider various socioeconomic forces at work in the economy. In most cases, there are three subject matter areas which must be utilized in making such an extrapolation--personnel, economics, and statistics.

EMPLOYABILITY OPINION

Because of his lead poisoning with resultant developmental delays in the cognitive and speech areas, it is my opinion, as a Vocational Expert, that Elimir's ability to perform work in the local and national labor market on a sustained, competitive basis has been negatively affected.

If not for his lead poisoning, his pre-injury earning capacity would be represented by the earnings range of full-time working males with a 9th to 12th grade education or high school graduate (including GED).

According to the publication Current Population Survey, 2012 Annual Social and Economic Supplement (ASEC), Bureau of Labor Statistics and U.S. Census Bureau, males with this level of education have median earnings of $26,043 to $40,070 per annum which represents Elimir's pre-injury earning capacity. (App. B14).

It is my opinion as a Vocational Expert that, on the four-point scale of disability—*Nondisabled, Secondary Work Limitation, Occupationally Disabled, Severely Disabled*, Elimir is Occupationally Disabled which is defined as an inability to work at his pre injury level but with the ability to perform some other type of employment on a full time basis. This will result in about a 20-percent diminution of earning capacity over his work life. This percentage takes into account the limited participation in the labor market of disabled persons which is 49 to 52%, making it more difficult for him to obtain and maintain

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employment, to experience longer periods of unemployability, and a shortened work life expectancy, as well as loss of vocational/educational opportunity. (App. B14, 16)

Elimir has sustained a significant diminution of earning capacity of $5,208 to $8,014 per annum over his work life, or **a total loss of $243,360 to $360,630** for 45 more years with a work life expectancy of age 67, due to the residuals of his lead poisoning and resultant developmental delays. This figure is unadjusted for inflation, excludes fringe benefits, and is not reduced to present value.

LIFE CARE PLAN OPINION

Careful consideration has been given to the Life Care Planning evaluation, as well as the medical evaluations and records contained in the file.

All needs dictated by his medical conditions are outlined in the Life Care Plan tables and Cost Summary Chart attached. Careful consideration has been given to each sub-part of the Life Care Plan, including but not limited to, future evaluations, therapies, equipment, support care needs, and medical needs required as a result of his multiple medical conditions.

An assessment of Elimir's current and future medical care and rehabilitation needs was made based on my review of the records and knowledge of equipment, technology, and treatments that can assist in his care and development.

An attempt has been made to review the reasonable cost of care based upon 2014 local (New York City area) rates without consideration for price increases or inflation. There may be variations and plan modifications made with Elimir's treating physicians and family.

Prepared by:

Edmond Provder
Certified Rehabilitation Counselor
Diplomate, American Board of Vocational Experts

NAME: Elimir Markovic
DATE OF BIRTH: 12/27/09
DATE PREPARED: 7/23/14

LIFE CARE PLAN - PROJECTED EVALUATIONS

Evaluation	Age/Year Initiated	Age/Year Suspended	Per-Year Frequency	*Base Cost Per Year
Rehabilitation Life Care Plan	4 7/14	Life Expectancy	1 X 3 years until age 21; then 1 X 5 years	$3,500 per evaluation
Occupational Therapy	4 7/14	21 12/31	1 X year	$65 - $350
Physical Therapy	4 7/14	21 12/31	1 X year	$65 - $350
Speech Therapy	4 7/14	21 12/31	1 X year	$300 - $1,320
Neurobehavioral/ Cognitive Testing (Neuropsychological Testing)	4 7/14	21 12/31	1 X 3 years	$1,600 - $4,200

*** All growth trends to be determined by an economist.**

NOTE: Life Care Plan Format is adapted from A Guide to Rehabilitation, Deutsche and Sawyer, Matthew Bender, New York, 11587. Permission for use of these forms was given by the authors through personnel communications.

NAME: Elimir Markovic
DATE OF BIRTH: 12/27/09
DATE PREPARED: 7/23/14

LIFE CARE PLAN - PROJECTED THERAPEUTIC MODALITIES

Therapy	Age/Year Initiated	Age/Year Suspended	Frequency of Treatment	*Base Cost Per Year
Case Manager/ Rehabilitation Counselor	4 7/14	Life Expectancy	2-4 hours per month, 12 X year	$2,352 - $8,640 at $98 - $180 per session
Occupational Therapy	4 7/14	21 12/31	2 X week for 48 weeks	$3,840 - $11,520 at $40 - $120 per session
Speech/ Cognitive Therapy	4 7/14	21 12/31	2 X week for 48 weeks	$14,400 - $19,200 at $150 - $200 per session
Psychological Counseling - Behavioral Modification	4 7/14	21 12/31	2 X week for 48 weeks	$14,400 at $150 per hour

*** All growth trends to be determined by an economist.**

NAME: Elimir Markovic
DATE OF BIRTH: 12/27/09
DATE PREPARED: 7/23/14

LIFE CARE PLAN - PROJECTED MEDICAL CARE

Medical Specialty	Frequency of Visits	Purpose	Cost Per Visit	*Cost Per Year
Pediatrician	3- 4 X year until 21	Ongoing treatment	Initial $170 - $500; Follow Up $90 - $208	$270 - $2,000
Internist	2 X year after age 21	Ongoing treatment	Initial $100 - $250; Follow Up $75 - $250	$150 - $500
Neurologist	1 X year	Ongoing evaluation	Initial $200 - $375; Follow Up $75 - $150	$75 - $375
Lab Work: Blood:	1 X year	Lead Level Ferritin CBC w/Chem 20 Protein Electrophoresis	$325 - $407 $166 - $196 $202 - $241 $99 - $111	$325 - $407 $166 - $196 $202 - $241 $99 - $111
Urine Testing	1 X year	Creatinine Clearance Test Retinol Binding	$141 - $195 $10 - $13 $285- $349	$141 - $195 $10 - $13 $285 - $349
X-Rays	1 X 5 years	Chest X-Ray Fluorescence Renal Ultrasound	$40 - $61 $100 - $107 $200 - $250	$8 - $12 $20 - $22 $40 - $50
Specialty Testing	1 X 5 years	Angiogram EMG EKG	$500 - $1,100 $1,000 - $1,100 $30 - $40	$100 - $220 $200 - $220 $6 - $8

*** All growth trends to be determined by an economist.**

NAME: Elimir Markovic
DATE OF BIRTH: 12/27/09
DATE PREPARED: 7/23/14

LIFE CARE PLAN - EDUCATIONAL FACILITIES

Facility/Home Care Recommendations	Age/Year Initiated	Age/Year Suspended	Hours/Shifts/Days Attendance of Care	*Base Cost Per Year
Educational Facility/Private School for Children with Behavioral Problems	4 7/14	21 12/31	7 hours per day, 5 days per week	$92,000 per year
Tutoring (after school)	4 7/14	21 12/31	1 hour X 5 days per week for 39 weeks	$9,750 - $10,335 at $50 - $53 per hour

*** All growth trends to be determined by an economist.**

*Price quotes obtained from: Sylvan Learning Center; Huntington Learning Center; The Center for Discovery; Matheny Medical and Educational Center

NAME: Elimir Markovic
DATE OF BIRTH: 12/27/09
DATE PREPARED: 7/23/14

LIFE CARE PLAN - HOME CARE/FACILITY CARE

Facility/Home Care Recommendations	Age/Year Initiated	Age/Year Suspended	Hours/Shifts/Days Attendance of Care	*Base Cost Per Year
Home Attendant	4 7/14	Life Expectancy	4 hours per day, 7 days per week	$25,550 - $32,120 at $17.50 - $22 per hour

*** All growth trends to be determined by an economist.**

*Price quotes obtained for Home Attendant: Bayada Nurses; Visiting Nurse Services of NY; Home Instead Senior Care; Preferred Home Care Agency

5-POINT PHYSICAL DEMAND SCALE

***edentary Work** involves:*

- EXERTING 10 pounds of force occasionally, and/or a negligibe amount of force to lift, carry,
- push, pull, or otherwise move objects, including the human body.
- SITTING most of the time, walking and standing occasionally.

***ight Work** involves:*

- EXERTING 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects.
- Even if weight exertion is negligible, WALKING OR STANDING to a significant degree, and/or
- SITTING most of the time but with pushing and/or pulling of arm or leg controls, and/or
- Working at a production rate pace entailing constant pushingand/or pulling of materials.

***ledium Work** involves:*

- EXERTING 20 to 50 pounds of force occasionally, and/or up to 10 to 25 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.

***leavy Work** involves:*

- EXERTING 50 to 100 pounds of force occasionally, and/or up to 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects.

***ery Heavy Work** involves:*

- EXERTING in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 2
- pounds of force constantly to move objects.

Occasionally = up to ⅓ of the time

Frequently = ⅓ to ⅔ of the time

Constantly = ⅔ or more of the time

S. Department of Labor's Dictionary of Occupational Titles, Fourth Edition, Revised 1991, pag 1013

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Appendix C

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Appendix D

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Appendix E

Life Care Plan
Glossary of Terms

ADL - Activities of Daily Living: eating, dressing, shaving, grooming, etc.

Ambulation - walking with braces and/or crutches.

Catheter - a flexible plastic tube of varying sizes utilized for withdrawing fluids from or introducing fluids into a cavity of the body. This tubing is also used in specialized medical procedures.

Cognition - the conscious process of the mind by which we are aware of thoughts and perception, including all aspects of perceiving, thinking, and remembering.

Decubitus - a bed sore or discolored, open area of skin damaged by pressure. Common areas to this breakdown of skin are the buttocks, hip, shoulder areas, ankles, heels, and elbows.

Disability - any physical, mental, or emotional condition that is chronic or long-lasting (not acute or temporary), which is severe enough to limit the individual's functioning and which results in, or threatens to be, a handicap to productive activity.

Incontinent - lack of bladder and/or bowel control.

Indwelling Catheter - a flexible tube retained in the bladder, used for continuous urinary drainage. Can enter bladder via urethra or through an opening in the abdomen (suprapubicostomy).

Life Care Plan - estimates of the costs of life time care for the catastrophically injured. Topics include medical services, products, architectural changes, transportation and any other costs associated with caring for the client.

Pain Limitation - pain refers to an unpleasant sensation characterized by throbbing, aching, shooting or other unpleasant feelings associated with bodily injury or disorder. When pain is continuing, unremitting, uncontrollable, and severe, it may constitute a severe functional limitation to normal living. Much depends on the individual's tolerance for pain as well as secondary rewards for the suffering of pain.

Paraplegia - this term refers to impairment or loss of motor and/or sensory functioning in the thoracic, lumbar or sacral (but not cervical) segments of the spinal cord, secondary to damage of neural elements within the spinal canal. With paraplegia, arm functioning is spared, but, depending on the level of injury, the trunk, legs and pelvic organs may be involved. The term is used in referring to cauda equina and conus medullaris injuries, but not to lumbosacral plexus lesions or injury to peripheral nerves outside the neural canal.

Pressure Sore - a skin ulceration leading to tissue death, caused by excessive pressure which interferes with blood flow to a localized area. Also known as decubitus ulcer. Very preventable; very expensive to treat.

Quadriplegia **(also known as tetraplegia)** - paralysis affecting all four body limbs. In spinal cord injury, usually results from damage to cervical spine.

Rehabilitation - the provision of any kind of service provided individuals to correct, aid, or compensate for their handicapping problems.

Rehabilitation Technology - compensatory strategies and adaptive equipment to increase or improve functional capabilities of persons with disabilities; used to enhance vocational, educational, and/or independent living opportunities for persons with disabilities; technological methods of achieving practical outcomes in the rehabilitation process.

Seizure - an uncontrolled discharge of nerve cells which may spread to other cells throughout the brain. The sudden attack is usually momentary, but may be accompanied by loss of bowel and bladder control, tremors, and/or aggressiveness.

Spasticity - normal reaction in people with upper motor neuron injuries (generally above L-1), hyperactive muscles move or jerk involuntarily. In some people spasticity can be caused by bladder infections, skin ulcers, and other sensory stimulus. Spasticity is caused by excessive reflex activity below the level of lesion; since the activities are no longer coordinated by the brain, they are exaggerated.

Tetraplegia - this term refers to impairment or loss of motor and/or sensory function in the cervical segments of the spinal cord due to damage of neural elements within the spinal canal. Tetraplegia results in impairment of function in the arms as well as in the trunk, legs and pelvic organs. It does not include brachial plexus lesions or injury to peripheral nerves outside the neural canal.

Appendix F

Employability - Glossary of Terms

Aptitude - the specific capacities or abilities required of an individual in order to facilitate the learning of or carrying out of some task or job duty.

Disability - any physical, mental, or emotional condition that is chronic or long-lasting, which is severe enough to limit the individual's functioning and which results in a handicap to productive activity.

Earnings Loss - the individual's expected loss of earnings, if any, which results from the injury. Loss of earnings is based on history whereas loss of earnings capacity is projected into the future.

Earnings Capacity - ability of individual to obtain and hold the highest paying of jobs to which he might have access. Access is determined by worker traits, work skills and amount of training.

Employability - exists if a person possesses skills, abilities, and traits necessary to perform a job; the kinds and types of jobs which a person with a disability might be able to perform.

Essential Functions - (an Americans with Disabilities Act and 1973 Rehab. Act term) fundamental job duties of the employment position the individual with a disability holds or desires.

Exertional Level - physical abilities necessary for certain types of jobs; includes sedentary, light, medium, heavy, and very heavy.

Functional Limitations - results from physical, mental, and emotional disabilities which adversely affects the workers capacity to function at a job.

Handicap - the effect of the disability on the ability to perform gainful work.

Illiteracy - inability to read or write; generally little or no formal education.

Intelligence Quotient - **(IQ)** it is a measure of general intelligence obtained by testing.

Job Description - narrative description of activities and requirements of a job; does not necessarily accurately reflect what a worker will actually do in that job.

Limited Education - some ability in reasoning, arithmetic, and language skills, but not enough to perform semi-skilled or skilled job; generally the 7th to 11th grades according to definition by the Social Security Administration.

Labor Market Access - **(LMA)** a method for determining the employability and loss of access to the labor market of an individual with a disability. Utilizes the Vocational Diagnosis and Assessment of Residual Employability process (VDARE) to determine residual functional capacity.

Loss of Access - generally related to the loss of access to the labor market. Persons with injuries may suffer a reduction in the numbers of jobs which are available to them as a result of reduced work life expectancy (such as earlier retirement, or part-time rather than full time work) or due to functional limitations which prevent the client from choosing certain occupations.

Marginal Education - ability in reasoning, arithmetic, and language skills sufficient to perform simple, unskilled types of jobs; generally, 6th grade & below.

Mental Limitation - retardation and learning disabilities are grouped as a functional limitation, although the casual circumstances are quite different; both refer to a hindrance or negative effect in the learning and performance of activities and to other overt manifestations of inadequate mental function.

Mobility Limitations - function of getting from one place to another is limited; may be caused either by physical disability or environmental barriers.

Non-Exertional Impairment - does not limit physical exertion and does not directly affect ability to sit, stand, walk, lift, carry, push, or pull; does have impact on ability to work.

Employability - Glossary of Terms

Pain Limitation - pain refers to an unpleasant sensation characterized by throbbing, aching, shooting or other unpleasant feelings associated with bodily injury or disorder. When pain is continuing, unremitting, uncontrollable, and severe, it may constitute a severe functional limitation to normal living.

Partial Disability - exists if the individual cannot perform some or all of the work for which he or she was fitted prior to the injury.

Physical Demands - the physical requirements made on the worker by the specific job worker situation.

Placeability - economic conditions and employer attitudes are such that a person can actually be placed in a job; the difficulty in placing a person with a disability in a job.

Psychometric Instruments - standardized instruments which measure correlative mental functioning of a cognitive, psychomotor, or effective nature purported to be important to specific job performance utilizing abstracted tasks.

Residual Functional Capacity - a disabled person's remaining physical and mental work potential and capacity.

Sheltered Workshop - It provides transitional and/or long-term employment in a controlled and protected working environment for those who are unable either to compete or to function in the open job market due to their handicap.

Skill Level - level of knowledge of work activity and degree of judgment required to perform a certain job; includes unskilled, semi-skilled, and skilled.

Temperament - personal traits consisting of the individual's characteristic mode or inclination of emotional response.

Total Disability - exists if the individual is unable to return to preinjury employment and unable (due to an injury) to obtain employment with similar livelihood.

Transferability of Skills - skills that were used in one job can be interchanged or substituted into another job; used to determine the employability of a person.

VDARE Process - (Vocational Diagnosis and Assessment of Residual Employability) uses client's work history as a basis upon which to build an assessment of client vocational functioning capabilities.

Vocational Assessment - process by which vocational expert determines loss of vocational functioning due to a disability and helps clients to correlate their characteristics as workers with the characteristics of occupations.

Vocational Rehabilitation Services - services designed to enable a handicapped person to secure and retain employment.

Wage Loss Analysis - a procedure which addresses the amount of wages lost to a worker as a result of an injury.

Work Tolerance - ability to sustain a work effort for a prolonged period of time, ability to maintain a steady flow of production at an acceptable pace and acceptable level of quality, ability to handle a certain amount of pressure.

Work Samples - a well defined work activity involving tasks, materials, and tools which are identical or similar to those in an actual job or cluster of jobs. It is used to assess an individual's vocational aptitude, worker characteristics, and vocational interest.

Worker Trait - the requirements made of the worker in terms of aptitudes, general educational development, vocational preparation, physical demands, and personal traits.

Resources: Vocational Evaluation and Work Adjustment Standards With Interpretive Guidelines and VEWAA Glossary, Copyright, 1977.
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PROFESSIONAL QUALIFICATIONS OF EDMOND A. PROVDER

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EDUCATION

1971	B.S. Rehabilitation Counseling, Pennsylvania State University
1973	M.Ed. Rehabilitation Counseling, Pennsylvania State University
1977-1987	Rehabilitation Counseling Doctoral Candidate, 60 credits, N.Y.U.
2003	University of Florida/Intelicus Life Care Planning Program for Catastrophic Case Management, 128-post graduate hours

PROFESSIONAL EXPERIENCE

Vocational Expert/Life Care Planner — *August 1981 to Present*
Occupational Assessment Services

Evaluate the vocational potential and employability of able-bodied and disabled individuals through interviewing, reviewing records, and/or administration of vocational testing to provide a vocational appraisal as to the individual's ability to work in the competitive labor market. Develop and implement Life Care Plans for catastrophic individuals. Consult with industry and government agencies regarding Americans with Disabilities Act.

Provide initial assessment, vocational evaluation, counseling, case management, and job-placement services to assist industrial-disabled and able-bodied clients return to gainful employment, given their residual functional capacity. Approved vendor—New Jersey Division of Vocational Rehabilitation Services, New Jersey Commission for the Blind and Visually Impaired, New York Commission for the Blind and Visually Handicapped.

Testimony accepted in Federal and State Courts—New York, New Jersey, Pennsylvania, Maine, Massachusetts; state courts—Florida, New Hampshire, Connecticut, Ohio, Wisconsin, Illinois, North Carolina.

Vocational Consultant — *June 1997 to September 2000*
Social Security Administration — *October 1977 to September 1985*

Provided impartial vocational testimony in Social Security Disability hearings as to claimants' ability to perform substantial gainful activity, given their residual functional capacity.

Supervisor Vocational Facilities — *December 1979 to December 1981*
Mount Sinai Hospital — *July 1974 to August 1978*

Supervised and administered the Sheltered Workshop and Vocational Evaluation Programs, which included the provision of supervision, counseling, work adjustment services, and job placement services to the physically disabled, mentally ill, visually impaired and industrially disabled.

Vocational Consultant — *February 1975 to December 1979*

Administered and developed vocational rehabilitation programs for South Beach Psychiatric Center, Staten Island Association for the Visually Handicapped and the Contemporary Guidance Service.

Rehabilitation Counselor — *March 1973 to July 1974*
Federation of the Handicapped

Provided individual and group counseling, vocational evaluation, work adjustment, and job placement services to severely physically disabled, visually impaired and developmentally disabled clients.

PROFESSIONAL AFFILIATIONS

Certified Rehabilitation Counselor (#18792); Diplomate, American Board of Vocational Experts (#00448)
Certified Life Care Planner (#0501)

Professional Member of National Rehabilitation Counseling Association; National Rehabilitation Association; Vocational Evaluation and Work Adjustment Association, Job Placement Division; Brain Injury Association, Inc.; IARPS; RESNA