

# TRIAL TALK

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# Model Disclosure of Expert Testimony in an Auto Case: Great Rather than “Good Enough” Expert Disclosure Drives Settlements and Verdicts

By Mac Hester, Esq.

## I. Introduction

Trial judges have become more strict and demanding as to the detail required by C.R.C.P. 26 regarding the disclosure of expert testimony. Judges often limit experts’ testimony at trial to the literal language of the expert disclosures and strike experts for inadequate disclosure when the disclosure consists of a general statement such as: “the expert will testify regarding his care and treatment of the plaintiff and all opinions and matters addressed in the medical records, which were previously provided.” Such a disclosure does not conform to the requirements of Rule 26. This article addresses the problem of insufficient substantive detail in expert disclosures in two ways: first, a menu of important elements to include in the disclosure is set forth, and second, model disclosures of some typical experts in an auto case are provided for illustration. This article does not address disclosure of an expert’s testimonial history, publications or professional fees.

## II. Menu of Medical Testimony to Be Disclosed

1. Doctor will testify as a treating physician in this case with regard to his care and treatment of Doe for the injuries

Doe suffered in the subject crash (as well as to his care of Doe prior to the subject crash).

2. Doctor is licensed to practice medicine in the state of Colorado, and he specializes in \_\_\_\_\_. Doctor’s CV is attached.

3. Doctor’s medical records were previously disclosed and he will testify regarding all opinions and matters addressed in those medical records, reports, notes, charts, reports, bills and related materials.

4. Doctor will testify regarding his medical examination, history, evaluation, review of records, diagnoses, prognoses and treatment of the plaintiff and in detail about the contents of his records, notes and charts. Doctor will testify as to anatomy, the movement of the plaintiff’s body, head and extremities as a result of the subject crash and the mechanisms of injury.

5. That the subject crash caused the following injuries [describe]:

6. That Doe was in good health prior to the crash and that Doe did not have these injuries prior to the crash.

7. That the following injuries or conditions have resolved:

8. That the following injuries or conditions have not resolved and are permanent:

9. That the plaintiff suffered temporary partial impairments [describe] as a result of the crash.

10. That the plaintiff suffered permanent partial impairments [describe] as a result of the crash.

11. That the plaintiff suffered temporary disabilities [describe] as a result of the crash.

12. That the plaintiff suffered permanent disabilities [describe] as a result of the crash.

13. That the plaintiff was unable to work from [date] to [date] as a result of the crash.

14. That the plaintiff is unable to return to his former employment as a result of the crash.

15. That the plaintiff is unable to return to any of his former employment as a result of the crash.

16. That the plaintiff is unable to engage in any substantial gainful employment as a result of the crash.

17. That the plaintiff has suffered permanent total disability as a result of the crash.

18. That the plaintiff was temporarily restricted in his activities of daily living including employment, house work, yard work, shopping, driving, hobbies and social activities.
19. That the plaintiff is permanently restricted in his activities of daily living including employment, house work, yard work, shopping, driving, hobbies and social activities.
20. That the plaintiff needed home services and essential services as a result of the crash.
21. That the plaintiff needs home services and essential services for the rest of his life as a result of the crash.
22. That the plaintiff needs life care services for the rest of his life as set forth in the Life Care Plan.
23. Doctor will testify in support of the (life care plan, functional capacity evaluation, etc.) dated [date].
24. That the plaintiff has a normal life expectancy.
25. That the plaintiff suffered pain as a result of the crash.
26. That the plaintiff continues to suffer pain and will permanently suffer pain as a result of the crash.
27. That the plaintiff suffered mental and emotional distress as a result of the crash.
28. That his treatment of the plaintiff and his related expenses were necessary, reasonable and related to the subject crash and that his medical expenses totaled \$\_\_\_\_\_.
29. That the plaintiff's medical treatment and expenses from all other medical providers were reasonable, necessary and related to the subject crash.
30. That the plaintiff will need medical treatment in the future [describe];
31. That the plaintiff will incur future medical expenses as a result of the incident, and the plaintiff's future medical

expenses are estimated to be \$\_\_\_\_\_.

32. Doctor holds the opinions stated herein to a reasonable degree of medical certainty (meaning more probably than not), based upon his education, training, expertise and experience as a doctor and a specialist in [medical specialty], the patient's history, his clinical observations, examinations, assessments, findings and treatment of the plaintiff, review of medical records and information regarding the plaintiff, review of the radiological studies, including CT scans and/or MRI studies as reported by the radiologists, consultation with other medical providers, records and information from other medical providers and all other diagnostic media, medical literature, medical knowledge and experience with injuries such as those diagnosed in the plaintiff and all materials and information used, consulted or relied upon in formulating his opinions.

33. Such materials and information include but is not necessarily limited to the traffic accident report, accident diagram, witness statements, conversations with parties and witnesses, photographs, maps, diagrams, medical records and information, books, articles, publications, software, videos, multi-media materials, training materials, seminar materials, materials and information obtained or available on the Internet, Intranet or other electronic, magnetic or optical storage, pleadings, discovery responses, depositions and the records, opinions and information of other experts and consultants.

34. Doctor will use medical records, x-rays, CT scans, MRI's, other diagnostic media, models and exemplars (including brain, skull, spine, skeletal and organic models and exemplars), medical illustrations, drawings, diagrams, charts, posters, photographs, videos, animations, physical objects and multi-media presentations to demonstrate the general medical principles of anatomy and injury and as they apply to the plaintiff and his injuries and to assist the jury in understanding his testimony.

35. Doctor's testimony will include all

opinions expressed in subsequent records and reports, supplemental records and reports and depositions and will also include opinions in rebuttal to the opinions of the defendant's experts.

### III. Model Disclosure of Expert Testimony in an Auto Case

The plaintiff, through undersigned counsel, hereby submits the following expert disclosures as required by C.R.C.P. 26(a)(2)(B)(I & II):

#### A. Treating Physicians and Other Non-Retained Experts

##### 1. Investigating Officer

Officer was the investigating officer at the scene of the crash and will testify about his investigation of the subject crash, the facts and circumstances surrounding the crash and the conclusions of his investigation. Officer will testify consistently with his traffic accident report, notes, witness statements and investigation. The traffic accident report, notes and witness statements were previously disclosed to the defendant. Officer will testify about his observations at the scene, his interview of witnesses including the parties, the condition of the vehicles, the movements, location or placement of the vehicles, the collision scene, damage to the vehicles, the collision sequence, causation of the collision and the parties' apparent medical conditions. Officer will also testify regarding subsequent investigation of the crash. Based on the above, Officer's opinions are held by him within a reasonable degree of traffic incident investigation probability. Officer will testify that the defendant was the sole cause of the subject crash, that the defendant violated the traffic control laws of the State of Colorado including C.R.S. § ; that [details of pre-collision facts]; that [details of collision]; that [details of post-collision facts]; that [details of crash scene]; that [details of vehicle damage]; that [details of apparent injuries]; that [details of witness statements]; that the traffic accident report was made in the ordinary course of

business and is accurate, that the diagram of the scene was made in the ordinary course of business and is reasonably accurate, that the action and information depicted in the diagram is reasonably accurate, that the witness statements were made in the ordinary course of business and are accurate. Officer's opinions will be stated to a reasonable degree of traffic accident investigation probability based upon his education, training, expertise and experience as a traffic accident investigation officer for the State of Colorado, his investigation of the subject incident and the materials and information he used, consulted or relied upon in his investigation. Such materials and information may include but are not necessarily limited to the traffic accident report, notes, accident diagram, witness statements, conversations with parties and witnesses, photographs, maps, diagrams, accident investigation materials and information such as books, articles, publications, software, training materials, seminar materials, materials and information obtained or available on the Internet, Intranet or other electronic, magnetic or optical storage and the information and opinions of other experts or consultants. Officer will use the traffic accident report, notes, accident diagram, witness statements, maps, diagrams, accident investigation materials, drawings, diagrams, charts, posters, photographs, videos, animations, physical objects and multi-media presentations to demonstrate the general principles of crash investigation as well as how they apply to the subject incident in order to assist the jury in understanding his testimony. Officer's testimony will include all opinions expressed in subsequent records or reports, supplemental records or reports and depositions.

## **2. Emergency Medical Technician (EMT)**

EMT was the emergency medical technician with Emergency Medical Services who responded to the scene of the subject crash. EMT is a licensed

professional emergency medical technician in the state of Colorado. The EMT records of this incident were previously disclosed and EMT will testify consistent with all matters addressed in those records, reports, notes, charts, reports, bills and related materials. EMT will testify that the patient was a restrained passenger in a car that was [details]. EMT will testify that Doe stated that he had lost consciousness and "blacked out" several times. EMT will testify that Doe's vehicle's seat was broken. EMT will testify Doe was transported to the emergency room at [Hospital] with full c-spine precautions. EMT will testify that the trauma assessment noted that the patient suffered a head injury. EMT will testify that the crash caused the plaintiff's injuries including but not limited to neck, head, arm, shoulders, back, headaches and pain, that his treatment of the plaintiff and the related expenses were necessary, reasonable and related to the subject incident; that his medical expenses totaled \$ . EMT holds the opinions stated above, within a reasonable degree of medical certainty (meaning more probably than not), based upon his education, training, expertise and experience as an Emergency Medical Technician and a specialist in the evaluation and treatment of injuries at the scene of accidents. EMT's opinions are also based upon all other diagnostic media, medical literature, medical knowledge and experience with injuries such as those diagnosed in the plaintiff and all materials and information used, consulted or relied upon in formulating his opinions. Such materials and information include but is not necessarily limited to the traffic accident report, accident diagram, witness statements, conversations with parties and witnesses, photographs, maps, diagrams, medical records and information, books, articles, publications, software, videos, multi-media materials, training materials, seminar materials, materials and information obtained or available on the Internet, Intranet or other electronic, magnetic or optical storage, pleadings,

discovery responses, depositions and the records, opinions and information of other experts and consultants. EMT will use medical records, x-rays, CT scans, MRI's, other diagnostic media, models and exemplars (including brain, skull, spine, skeletal and organic models and exemplars), medical illustrations, drawings, diagrams, charts, posters, photographs, videos, animations, physical objects and multi-media presentations to demonstrate the general medical principles of anatomy and injury as well as how they apply to the plaintiff in order to assist the jury in understanding his testimony. EMT's testimony will include all opinions expressed in subsequent records or reports, supplemental records or reports and depositions.

## **3. E. R. Physician**

Dr. ER was the physician who treated the plaintiff in the emergency room immediately following the subject crash. Dr. ER will testify as a treating physician in this case with regard to his care and treatment of the plaintiff for injuries suffered in the subject crash. Dr. ER is licensed to practice medicine in the state of Colorado, and he specializes in emergency medicine. Dr. ER's medical records were previously disclosed and he will testify consistent with all matters addressed in those medical records, reports, notes, charts, reports, bills and related materials. Dr. ER will testify about his medical examination, history, evaluation, review of records, diagnoses, prognoses and treatment of the plaintiff; in detail about the contents of his records, notes and charts; as to anatomy, mechanism of injury and that the impact of the multiple collisions caused the plaintiff's body and head to move in such a manner as to cause the injuries diagnosed including but not limited to neck, head, brain, arms, shoulders, back, orthopedic, connective tissue, muscle, headaches and pain; that the subject crash caused the plaintiff's injuries as diagnosed; that his treatment of the plaintiff and the related expenses were necessary, reasonable and related

to the subject incident; that his medical expenses totaled \$ \_\_\_\_\_, that the plaintiff had neck and head pain and an acute headache and that he prescribed the following medications: [list]. Dr. ER holds the opinions stated herein within a reasonable degree of medical certainty (meaning more probably than not), based upon his education, training, expertise and experience as a doctor and a specialist in emergency medicine, the patient's history, his clinical observations, examinations, assessments, findings and treatment of the plaintiff, review of the medical records and information regarding the plaintiff, review of the radiological studies, including CT scans and/or MRI studies as reported by the radiologists and all other diagnostic media, medical literature, medical knowledge and experience with injuries such as those diagnosed in the plaintiff and all materials and information used, consulted or relied upon in formulating his opinions. Such materials and information may include but is not necessarily limited to the traffic accident report, accident diagram, witness statements, conversations with parties and witnesses, photographs, maps, diagrams, medical records and information, books, articles, publications, software, videos, multi-media materials, training materials, seminar materials, materials and information obtained or available on the Internet, Intranet or other electronic, magnetic or optical storage, pleadings, discovery responses, depositions and the records, opinions and information of other experts and consultants. Dr. ER will use medical records, x-rays, CT scans, MRI's, other diagnostic media, models and exemplars (including brain, skull, spine, skeletal and organic models and exemplars), medical illustrations, drawings, diagrams, charts, posters, photographs, videos, animations, physical objects and multi-media presentations to demonstrate the general medical principles of anatomy and injury as well as how they apply to the plaintiff in order to assist the jury in understanding his testimony. Dr. ER's

testimony will include all opinions expressed in subsequent records or reports, supplemental records or reports and depositions.

#### 4. Neuro-Psychologist

Dr. Neuro-Psych will testify as a treating neuropsychologist in this case with regard to his care and treatment of the plaintiff for injuries he suffered as a result of the subject crash. Dr. Neuro-Psych is licensed in the state of Colorado as a licensed clinical neuropsychologist. Dr. Neuro-Psych's records were previously disclosed and he will testify consistent with all matters addressed in those records, reports, notes, charts, reports, bills and related materials. Dr. Neuro-Psych will testify that Doe presented for a neuropsychological consultation due to on-going symptoms and complaints following the subject incident; that Doe reported the circumstances of the incident, including Doe's last memory of looking down the driveway he was planning to enter when he stated "then the lights went out"; that his vehicle was pushed across the road into and then out of a ditch across a grassy area, and then his vehicle struck and broke a log pole before coming to rest; that when he regained awareness, he was unable to move and states he could not move his hands and that it was "really scary" and becomes tearful while relaying this information; that Doe wanted to exit his vehicle but could not make his hands or his body move to exit the vehicle; that Doe told him he has nightmares about not being able to move since the accident, although the nightmares were not occurring as frequently. Dr. Neuro-Psych will testify that Doe was unsure how long he may have experienced a loss of consciousness and/or a loss of awareness; that the patient has no memory of engaging in the type of behavior reported by his son, who was in the car with him; that the patient later learned that they had been struck by some type of utility truck or van. Dr. Neuro-Psych will testify that Doe stated that he did not know how much time may have passed, but esti-

mated that it may have been 4 to 5 minutes between the time of the impact and the time in which he began to regain awareness; that Doe states that he did not realize what was occurring and recalls experiencing some dizziness once he was able to regain use of his limbs and exit his vehicle; that he believes he fell backwards onto the vehicle; that he recalls feeling as though he might black out; that Doe recalled there being bystanders at the scene; that he was aware that he had been involved in an accident; that he does not feel he was thinking straight at the time; that he recalls that he was telling his son to go to work and that he was trying to gather up food that had spilled from both of their lunch pails so that his son would have something to eat. Dr. Neuro-Psych will testify, according to history taken from Doe, that Doe's car was struck in the rear by another vehicle at a high rate of speed and that Doe's car was propelled forward and left the road and struck a pole head on. Dr. Neuro-Psych will testify that Doe's body was quickly accelerated by the collision with the head and neck lagging behind, that Doe's neck hyper-extended causing Doe's brain to slam against the back of his skull, that Doe's head then was propelled forward accelerating at multiple times the acceleration of Doe's body, that Doe's body's forward movement was restrained by the seat belt, that the stoppage of Doe's body by the seat belt further accelerated Doe's head, that Doe's neck hyperflexed causing Doe's brain to slam against the front of Doe's skull, that the brain is held in place in the skull by bony ridges, that the sudden movement of Doe's head caused the brain to move against these bony ridges, that the brain sits atop the brain stem, that the movement of Doe's head caused the brain to rotate within the skull, that the brain contains millions of microscopic axons and neurons, that the movement of Doe's brain causing stretching and shearing of axons and neurons in the brain, that Doe suffered diffuse axonal injury and that the head on collision with the pole caused further

instantaneous acceleration of Doe's body, head, neck and brain which caused additional trauma to the brain. Dr. Neuro-Psych will testify that a concussion is a brain injury, that loss of consciousness is not a requirement for a diagnosis of brain injury and that alteration of consciousness may indicate brain injury. Dr. Neuro-Psych will testify that Doe has suffered an increased risk of dementia, seizure disorder and more severe brain or cognitive injury due to multiple insults. Dr. Neuro-Psych will testify that Doe also reports that his safety glasses, that had been inside his lunch pail, were broken during the accident; that Doe recalls discovering two knots on his head following the incident, one on the back right side of his head that was present immediately following the accident and one that was also on the top perhaps the right side of his head; Doe also recalls developing a headache and neck pain initially following the incident; that he reports his vehicle was totaled in the accident and the other driver was ticketed for the incident; that Doe was unclear what speed the other vehicle may have been traveling when it struck him but believes it may have been highway speed; Doe and his wife later learned that the speed of the impact was estimated to be at least 55 mph and the patient's vehicle was estimated to be barely moving when the incident occurred. Dr. Neuro-Psych will testify that his patient told him that ambulance personnel presented on the scene and the patient believes he told the ambulance personnel that he had lost consciousness for a period of time; that he was fitted with a neck brace and placed on a backboard and then transported to the hospital. Dr. Neuro-Psych will testify that his patient recalled having sporadic memory of the events that occurred after this time; that he indicated that he did not recall being taken out of the ambulance and into the emergency room and that he has sporadic recall of being in the emergency room; that he does recall experiencing pain in his head, neck and

back while in the emergency room; that he recalls being given a diagnosis of grade three concussion; that he called his wife and his wife went to the emergency room to pick him up along with his son, who was in the accident with him. Dr. Neuro-Psych will testify that the plaintiff Mrs. Doe told him that her husband looked pale (with a grayish look to his skin); that his face looked a little puffy; that her husband did not appear to want to discuss the details of the accident and indicated that he just wanted to go home. Dr. Neuro-Psych will further testify that his patient did not recall much of the day of the accident and believes he may have slept upon returning home; that he was taking Vicodin, which helped with some of his pain; that he recalls feeling very dizzy for several days following the accident and on occasion felt as if he would black out; that he also recalled feeling nauseous but does not believe he ever threw up or vomited; that his terrible headaches are often accompanied by nausea; and that he recalls having vision problems throughout much of the previous summer. Dr. Neuro-Psych will testify that his patient reported having been evaluated by Dr. Family and recalled complaining of chronic neck pain, back pain and headaches; that he believed he may also have seen Dr. Family again toward the end of May; that he recalls having developed appreciable pain on the backside of his legs and rear area over the Memorial Day weekend and that he was given a prescription for ibuprofen. Dr. Neuro-Psych will further testify that his patient reported being seen by a neurologist in June 2002; that he had already had a CT scan by that time, which was negative; that he believes he was evaluated and told that he had a concussion or post-traumatic headaches; that he was having headache pain, shoulder pain and neck pain and that those pain symptoms were worsening; that his patient also recalls that he had developed symptoms in which his right hand would go numb and right side of his face would go numb. His patient further reports that

he had developed numbness in his fingertips and his thumbs on his right hand and the right side of his face; that he also would occasionally experience burning and tingling in these areas that would occasionally develop into burning pain. Dr. Neuro-Psych will further testify that his patient underwent some physical therapy that helped improve some of his neck stiffness; that his patient was seen by a neurosurgeon, Dr. Neuro, who the patient believed identified a bulging disc in his patient's cervical spine; that his patient also states that he was seen by a pain specialist and may have received a steroid injection in his neck that did not help initially but did have some benefit a week later; that his patient was seen by Dr. Ortho, another surgeon, who identified three bad disks in his neck and that he underwent a discogram, which he reports was very painful; his patient reported that it was his understanding that he may undergo surgery or fusion on two or three of the disks but that there was a possibility that his pain would continue and the surgery might create more pain; that the patient reported being seen by a pain management doctor who prescribed a steroid injection; that he had tried several medications that led to some symptom benefit; that he also received a TENS Unit from Dr. Neuro that led to some benefit, that he tried massage therapy on several occasions but felt that this triggered and/or worsened his pain and headaches; that his patient had a history of acid reflux and that his medications at that time had worsened or irritated his acid reflux. Dr. Neuro-Psych will also testify that upon seeing his patient for the first time, his patient's only current provider is Dr. Family and his only medications at that time were Neurontin, which helps dull the headaches, Vioxx, Flexeril, Persocet (p.m.) and Prevacid. Dr. Neuro-Psych will testify that at his first meeting with his patient, the patient's complaints included experiencing and demonstrating cognitive difficulties immediately following the subject incident; that plaintiff Mrs. Doe described episodes of

his patient putting milk in the pantry and that he would send her to the wrong restaurant to pick up carry-out food, etc.; that he also experienced some physical symptoms immediately following the incident such as being “mellow” for the first week or so following the incident and slept often during that time; that within two weeks post incident, he began to present as more irritable and grouchy and was more argumentative with his children, that he also slept a lot early on following the incident; that he was experiencing balance difficulties and dizziness early on as well; that his patient reportedly presented as repetitive in the questions he would ask of his wife; that his wife also reported that he would appear to space out and not respond despite her attempts to gain his attention. Dr. Neuro-Psych will testify that his patient’s cognitive symptom complaints include slowed speed of information processing, memory difficulties, attention/concentration problems, distractibility, losing his train of thought, reduced multi-tract thinking ability, easily over-stimulated by noise and commotion, reading difficulties, verbal comprehension difficulties, reduced verbal fluency, occasional dysarthria, problems finding words, calculating difficulties, planning and organizing difficulties, reduced problem-solving abilities and slowed decision-making abilities. Dr. Neuro-Psych will also testify that his patient reported increased light sensitivity (visually); occasional light-headedness; nausea related to his neck pain and headaches; daily headaches that average at a 4 but can be anywhere in the 3 to 10 range, daily back pain that averages at 5, daily neck pain that often presents similarly in ratings with his headaches and shoulder pain that may occur 5 days a week rated at a 5 (these pain ratings are based on a 0-10 pain scale with 0 = no pain and 10 = excruciating/unbearable pain); his patient also complained of chronic numbness and tingling in his right fingertips and on the right side of his face; that the patient reports that occasionally during the month, he may

experience burning in his face; the patient further endorses having a decreased sense of smell and at times feels that food tastes more bland than it did pre-incident. Dr. Neuro-Psych will also testify that his patient reported being a little more emotional than he was pre-incident, including irritability, frustration, lack of patience, apathy (including loss of interest in sports and decreased passion in pursuing his art, painting), loss of motivation, reduced self confidence, depression, occasional anxiety, occasional helplessness and occasional hopelessness; that his patient also reports that he is concerned about what will happen in his vocational future as he had not been able to work since the incident. Dr. Neuro-Psych will also testify that his patient reports that he sleeps poorly and that he reported difficulty staying asleep and difficulties with early morning awakening secondary to pain symptoms; he also reported changes in his appetite and his weight, as well as experiencing decreased energy and diminished libido. Dr. Neuro-Psych will testify that his patient experienced driving related fears and anxieties and his patient notes that at times his headaches may worsen while he is in an automobile; that his patient reports his anxiety in the car is worse if he is a passenger and he endorses hypervigilance when in an automobile; his patient reports having incident-related nightmares in the past; his patient reports that his symptoms are relatively stable and are not appreciably improving or worsening over recent months. Dr. Neuro-Psych will testify that he observed that his patient was pleasant and cooperative, but that at times he demonstrated a flat/blunted affect, which was punctuated with occasional period of tearfulness, which appeared to be seemingly in reaction to the topic being discussed at hand, otherwise, he did not demonstrate unusual behaviors or actions during the initial interview. Dr. Neuro-Psych will testify that his patient underwent cognitive screening, reporting developmental history, reporting academic/vocational history,

reporting social history, reporting medical/psychiatric history. Dr. Neuro-Psych will testify that, based on the patient’s representation, it appeared that he was suffering from symptoms consistent with post-concussion syndrome, coup contrecoup injury, traumatic brain injury, diffuse axonal injury and stretching and shearing of axons and neurons. He will also testify that his patient’s current presentation was likely being significantly confounded by the ongoing physical complaints that he was experiencing; that he felt his patient would make a good candidate to undergo neuropsychological testing, however, he recommended this testing be deferred pending attempts to further treat his various physical symptoms; that he believes Doe’s physical complaints are confounding his current neuropsychological presentation. He will testify that he referred his patient to Dr. Psych for further evaluation and treatment of his patient’s emotional presentation to address adjustment issues and his pain complaints; he will further testify that he encouraged his patient to contact Dr. Neuro’s office for follow-up in an attempt to further assess and treat his pain symptoms. Dr. Neuro-Psych will testify that he recommended the patient return in two months for follow-up. Dr. Neuro-Psych will also testify that his patient returned for follow-up in June 2003 and reported symptoms of slowed mental processing, memory, attention, executive functioning, reading speech, physical pain, headache, depression, anxiety, driving fears, energy, libido, dizziness, nausea, frustration, decreased patience, decreased motivation, decreased sense of smell; that his patient reported returning to Dr. Neuro for follow-up; that his patient began seeing Dr. Psych that he had been started on Wellbutrin then had changed to Zoloft, that he was to see Dr. Ortho in the near future; that his patient reported his pain complaints had improved since seeing Dr. Neuro two months previously. Dr. Neuro-Psych will testify that his diagnosis was adjustment issues and Post Concussion Syndrome and that he

recommended his patient keep seeing Dr. Psych and that he return for neuropsychological testing to delineate symptom complaints. Dr. Neuro-Psych will testify that his patient presented for neuropsychological testing on July 28, 2003; his patient reported that his current treatment was through Dr. Psych, Dr. Neuro, Dr. Ortho and Dr. Family; that his current medications included Zoloft 150 mg., Neurontin, Flexeril, Vioxx and Percocet; that he had not taken any of these medications on the day of the testing to keep them from confounding his performances; his patient reported that typically those medications do not adversely impact upon his cognitive abilities. Dr. Neuro-Psych will testify that his patient reported having a normal birth and normal achievement of developmental milestones throughout his childhood; that his patient reported being the youngest of 4 children; that he was raised in an intact home environment and did not receive abuse as a child; that his mother and father are still alive; that his patient denied a history of learning disabilities or ever being held back in school; that his patient denied difficulties acquiring basic academic skills or subjects; that his patient reported that he typically was an average student in school and that during high school he was above average at time, including being on the honor roll perhaps a couple of times; that he liked science and history and that he excelled in the arts; that Doe was working as a drywall finisher at the time of the subject incident; that Doe has been unable to return to work since the subject incident due to the physical aspects of the job. Dr. Neuro-Psych will also testify that his patient and his wife report some frustration as Doe had received a promotion and a pay raise just prior to the subject incident but was subsequently unable to work and reap the benefits of the promotion and raise. Dr. Neuro-Psych will also testify that his patient reported being married to plaintiff Mrs. Doe for 20 years and that they have three children. Dr. Neuro-Psych will also testify

that his patient and his wife report and demonstrate a supportive relationship but that they have had increased financial stress since the subject incident; that the patient's wife works as an office manager. Dr. Neuro-Psych will also testify that his patient reported having been involved in an auto accident in 1979 wherein he experienced a loss of

consciousness of approximately one half hour; that his patient denied any residual cognitive or physical symptoms associated with this past accident. Dr. Neuro-Psych will also testify that his patient denied a history of medical problems such as diabetes, HIV or high blood pressure; that he admits to a history of acid reflux disease for the



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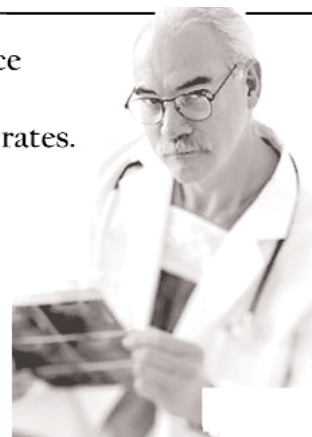
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prior three to four years; that he and his wife indicate that he rarely consumes alcohol and may consume one alcoholic drink 1 to 2 times per month; that he denies illegal drug use, cigarette use or caffeinated beverage use; that he denies an appreciable history of psychiatric or psychological problems; that he reported experiencing some stress associated with his father's death, which appeared, by his description, to be stress related to a normal grieving process. Dr. Neuro-Psych will also testify that his patient was pleasant and cooperative with all testing procedures; that he demonstrated appropriate eye contact, rapport and affect during testing and did not demonstrate unusual symptoms in this regard; that he did report that during his drive to Dr. Neuro-Psych's office, he rated his pain as a 3 on a 1 to 10 scale; that he also reported that he felt a little frazzled related to finding parking. Dr. Neuro-Psych will testify that during post-test feedback, his patient reported that when he returned from lunch in the afternoon, he felt that his headaches may have increased perhaps to the range of a 6; that his hands were also observed to be shaking during testing; as part of this evaluation, he was administered validity testing with the Target Response Test and the TOMM; that he responded within normal limits on this portion of testing suggesting he put forth effort on this portion of testing. Overall he appeared to put forth excellent effort throughout the entire evaluation and the results of this evaluation may be viewed as a reasonable valid assessment of his current neuropsychological abilities. Dr. Neuro-Psych will testify regarding his patient's Neuropsychological Test Results which are attached hereto and incorporated herein as Neuropsychological Test Results for Doe for testing that occurred on July 28, 2003. Dr. Neuro-Psych will also testify that, after reviewing Doe's test results, his recommendations were: (1) given Doe's report of experiencing blank episodes, feeling as if things are not real, experiencing an unusual taste in his mouth,

having a decreased sense of taste and experiencing unusual odors, he recommended that his patient undergo neurologic follow-up for these symptom complaints. Dr. Neuro-Psych opined that there may be a number of different explanations for these symptoms, however, given the potential ramifications of these symptom complaints (e.g. possible seizure-related activity). Dr. Neuro-Psych recommends further neurologic evaluations (including a possible EEG) as soon as possible. Dr. Neuro-Psych also will testify that (2) due to his patient's appreciable attention/processing speed difficulties as measured during current testing and pending consultation with his treatment providers, he recommended that his patient return to his office to undergo challenge testing (with the TOVA) while on a low dose psychostimulant to attempt to see if trial on a low dose psychostimulant can lead to appreciable improvements in his attention/processing speed ability. Dr. Neuro-Psych will testify that challenge or titration testing in this regard is recommended to help assess if his cognitive abilities benefit from this type of medication and at what optimal dose; that the patient and his wife appeared interested in pursuing this avenue of intervention; that given the concerns raised in recommendation number one, however, the patient may be best served if recommendation number 2 is delayed until he has undergone further neurologic evaluation of the above described symptoms; that he recommended that (3) his patient have continued psychotherapy with Dr. Psych given the nature of the patient's current presentation and appreciable psychological symptoms; that his patient appears to already be benefiting from the therapy he is receiving from Dr. Psych and he likely will benefit from continued therapy in this regard. Dr. Neuro-Psych will also testify that he recommended that Doe continue antidepressant medication to continue to treat his present symptoms; that his patient's medication regimen may need to be

further evaluated/adjusted should Doe not begin to demonstrate reasonable symptom improvements in the near future. Dr. Neuro-Psych will also testify that his patient may also benefit from (4) referral to receive cognitive rehabilitation and he recommended cognitive rehabilitation to assist Doe with developing compensatory and remediation strategies/techniques to manage and treat his cognitive symptom complaints. Dr. Neuro-Psych's testimony will also include that he believes Doe may benefit from a formal vocational evaluation and intervention (including possible retraining) to help him in his eventual efforts to return to competitive employment; that it is doubtful that Doe will be able to return to his previous occupation as a drywall hanger and that Doe would likely benefit from receiving assistance in finding vocational options that suit his cognitive abilities. Dr. Neuro-Psych will also testify that he recommended continued neuropsychological follow-up as needed, particularly should Doe continue to endorse ongoing cognitive complaints once his pain and psychological symptoms are better managed. Dr. Neuro-Psych will testify that he saw Doe in follow-up after the testing and that Doe reported some frustration with the testing and Dr. Neuro-Psych's impression was that his patient experienced significant attention/concentration, processing speed difficulties; decreased memory as well as significant depression and anxiety. Dr. Neuro-Psych will testify that he continued to diagnose Doe with post-concussive syndrome and traumatic brain injury and he recommended continued psychotherapy with Dr. Psych, neurocognitive rehabilitation after consultation with treatment providers after physical symptoms are better managed; a trial of psychostimulant challenge testing/trial; and possible EEG. Dr. Neuro-Psych's testimony will also include follow-up with Doe in January 2005 and Doe's complaints at that time continued to include slowed mental processing, memory problems,

attention problems, executive functioning, reading problems, speech, calculating, orientation, physical pain, headache, depression, anxiety, driving fears, decreased energy, libido, irritability; tinnitus, dizziness, frustration, decreased patience, apathy, decreased motivation, decreased self-confidence and occasional helplessness/hopelessness. Dr. Neuro-Psych noted that his patient had been seeing Ms. Cognitive for cognitive therapy, that he continued to see Dr. Psych, that he had had an EEG, that Dr. Neuro had diagnosed seizures and put Doe on medication for them and that Doe had a cervical fusion. Dr. Neuro-Psych will testify that he noted in Doe's chart that pending a consult with Dr. Neuro, Doe may benefit from a trial of psychostimulant medications. Dr. Neuro-Psych will testify that he saw Doe in June 2005 for TOVA testing and for comparison with his results of July 28, 2003, TOVA testing and that it showed slight improvement though was clearly significantly impaired and, pending consult with Dr. Neuro, Dr. Neuro-Psych may still recommend adjustments in Doe's medication, that he also discussed with his patient various cognitive exercises he could perform on his own at home. Dr. Neuro-Psych will use models (including brain, skull, spine, skeletal and organic models), drawings, videos and illustrations to demonstrate the general medical principles of anatomy and injury as they apply to plaintiff and his injuries and conditions. Dr. Neuro-Psych's medical records and reports are attached hereto and he will testify consistent with all matters addressed in those medical records, reports, notes, charts, reports, bills and related materials. Dr. Neuro-Psych will testify that the plaintiff's medical bills were related to the incident and were reasonable and necessary. Dr. Neuro-Psych will further testify that the plaintiff's incident injuries had a negative impact upon him, including but not limited to restrictions of activities of daily living, employment restrictions, physical restrictions, permanent injury and

impairment and the pain experienced by the patient because of his incident injuries. Dr. Neuro-Psych will testify that Doe will have to take medications for seizures, seizure disorder, epilepsy, brain injury, headaches and/or pain for the rest of his life. Dr. Neuro-Psych will testify that Doe is at risk of greater brain injury from future trauma and at risk for accelerated dementia and Alzheimer's disease. Dr. Neuro-Psych will testify in support of the life care plan. Dr. Neuro-Psych will testify that the crash caused the injuries diagnosed including but not limited to neck, head, brain, neurologic, diffuse axonal injury, neuronal injury, cognitive injury, depression, organic and reactive depression, stress, psychological disorder, orthopedic, connective tissue, muscle, sleep disorder, epilepsy, seizures, seizure disorder caused by the crash, seizure disorder caused by the brain injury that was caused by the crash, headaches and pain. Dr. Neuro-Psych will testify that Doe's injuries are permanent and that Doe has a normal life expectancy. Dr. Neuro-Psych holds the opinions stated within a reasonable degree of medical certainty (meaning more probably than not), based upon his clinical observations, examinations, assessments and findings as to Doe; review of the medical records and information; and medical knowledge and experience with injuries and conditions such as those diagnosed in Doe. Based on his years of training, experience, certification as a clinical psychologist and his observations, evaluations and clinical care and studies of Doe, Dr. Neuro-Psych's opinions are held within a reasonable degree of medical certainty and he will testify about the following things: in detail about the contents of his records, notes and charts; Doe's psychological examination, history, evaluation, review of records, diagnoses and prognoses, the causation of psychological conditions; that the collision caused Doe's chronic pain syndrome and ongoing cognitive difficulties; that the collision caused Doe's adjustment disorder with mixed anxiety and depressed mood; that there

is no pre-existing psychological condition; that Doe suffered permanent injuries as a result of the incident; that Doe suffered temporary and permanent partial impairments as a result of the incident; that Doe suffered temporary and permanent disabilities as a result of the incident; that Doe was temporarily restricted in his activities of daily living including employment, house work, yard work, shopping, driving, hobbies and social activities; that Doe is permanently restricted in his activities of daily living including employment, house work, yard work, shopping, driving, hobbies and social activities; that Doe needed home services and essential services as a result of the incident; that Doe suffered pain as a result of the incident, and he will continue to suffer pain in the future; that Doe suffered mental and emotional distress as a result of the incident; that Doe will need psychological treatment in the future; that Doe will incur future medical expenses as a result of the incident. Doctor Neuro-Psych's testimony will include all opinions expressed in subsequent records and reports, supplemental records and reports and depositions and will also include opinions in rebuttal to the opinions of the defendant's experts.

## 5. Orthopedic Physician

Dr. Ortho will testify as a treating physician in this case with regard to his care and treatment of Doe for injuries he suffered in the subject crash. Dr. Ortho is licensed to practice medicine in the state of Colorado, and he specializes in orthopedic medicine and spine surgery. Dr. Ortho's medical records were previously disclosed and he will testify consistent with all matters addressed in those medical records, reports, notes, charts, reports, bills and related materials. Dr. Ortho will testify, according to history taken from Doe, that Doe's car was struck in the rear by another vehicle at approximately thirty miles per hour and that Doe's car was propelled forward and left the road and struck a pole head-on. Dr. Ortho will testify that Doe's body was quickly accelerated by

the collision with the head and neck lagging behind, that Doe's neck hyper-extended causing ligament stretch and damage, that Doe's head then was propelled forward accelerating at multiple times the acceleration of Doe's body, that Doe's body's forward movement was restrained by the seat belt, that the stoppage of Doe's body by the seat belt further accelerated Doe's head, that Doe's neck hyper-flexed stretching and damaging the ligaments and connective tissues of the neck, that the movement of Doe's head and neck created an S shaped wave in the cervical spine that caused damage to the vertebral facets, that the movement also caused torque and stress upon the cervical discs, that such torque and stress caused subsequent annular tears in the cervical discs leading to disc bulge/herniation and that the head-on collision with the pole caused further instantaneous acceleration of Doe's body, head and neck which caused additional trauma to the ligaments, connective tissues, facets and cervical discs. [Details of medical treatment; insert applicable menu items.]

*B. Individuals Retained or Specially Employed to Provide Expert Testimony*

**1. Vocational Evaluation Expert**

Dr. Voc is an expert in the field of vocational rehabilitation including the evaluation of the vocational capabilities and limitations of persons having sustained personal injuries. Dr. Voc is also an expert in the field of life care planning. Dr. Voc's educational background, publications, presentations and lectures are included in his curriculum vitae, which is attached. Dr. Voc is in private practice in Denver, Colorado. Dr. Voc was retained by the plaintiff to evaluate the plaintiff's vocational capabilities, limitations, restrictions and employability and to assess the Life Care Plan authored by Ms. Planner, RN. Dr. Voc will testify regarding his opinions about the life care plan, that the life care plan is reasonable, necessary and related to the collision, that it approximates a conservative "floor" level of care and that Doe's needs may very well

exceed the level of care set out in the life care plan. Dr. Voc has reviewed the plaintiff's medical records, employment records, Social Security records, Life Care Plan and the other records, materials and resources listed in his report. In addition, Dr. Voc has met with and interviewed the plaintiff. Based upon his review of these records, materials and resources, as well as his interview of the plaintiff, his education, experience, research and training, Dr. Voc will offer the opinions set forth in his report as well as the following opinions: Doe is permanently and totally disabled, has suffered a total loss of earning capacity and is permanently unemployable as a result of the crash. Doe needs permanent life care services as a result of the crash. Doe is currently unemployed and has not worked since the injury due to the ongoing symptoms.

At the time of injury he was employed as a lead man/drywall finisher. His job duties in this position included applying drywall and texture spray, touching up walls before they were texture sprayed, filling in for absent employees and inspecting the drywall to ensure proper application. A position as a lead man/drywall finisher requires the ability to perform at least medium physical strength demands (frequently lifting or carrying objects weighing 25 to 50 pounds), to learn and understand instruction and procedures, to communicate well with others, to demonstrate good eye-hand-foot coordination and to perform work accurately. Doe is probably unable to return to this type of work due to the neck, bilateral shoulder, back and right arm and hand pain, as well as problems with balance, diminished speed of thought processing and other cognitive problems. Furthermore, Dr. Ortho has restricted him to no lifting over 10 pounds and no repetitive and overhead use of the arms. Drs. Ortho, Psych and Neuro-Psych have opined that he is currently unable to work due to the symptoms. Doe's past work history includes employment as a stocker, meat cutter, graphic designer, roofer, roughneck, roustabout, fine artist

and handcrafter. Work as a stocker and meat cutter requires the ability to perform heavy physical strength work (occasionally lifting up to 100 pounds or more and frequent lifting up to 50 pounds), good manual dexterity and other physical requirements which exceed his physical and cognitive tolerances. Roofers, roustabouts and roughnecks must be able to perform heavy physical strength work, engage in prolonged standing, sometimes work in extreme weather and have good eye-hand-foot coordination. Roofers must also have good balance. Such work is beyond his capacity because of this combination of symptoms and related limitations. Doe has worked as an artist, graphic designer and handcrafter. Work in these occupations requires the ability to make visual comparisons and discriminations, think visually in three-dimensions, discriminate colors accurately, possess good manual dexterity, plan and organize an art project and engage in prolonged cervical flexion. Since the MVA Doe has had difficulty with planning paintings and color discrimination and believes that his artwork is flawed. He has sold several paintings since the injury this year. However, for the same reasons as noted above he is probably not capable of earning a living as an artist. Doe is highly motivated to return to work and his former employer has described him as hardworking, dependable and pleasant. However, as a result of this combination of unresolved physical, cognitive and emotional symptomology there is not a reasonable probability that Doe will be able to return to work in the future in any capacity. Doe is continuing to experience pervasive cognitive, physical and emotional symptoms which are interfering with all aspects of his personal and vocational functioning. Given the unremitting symptoms and restrictions, we believe that he is unemployable, and absent a remission of symptoms, the probability of returning to any type of competitive employment in the future is low. Dr. Voc will testify: regarding the contents of his report,

records, notes and charts that Doe is permanently restricted in his activities of daily living including employment, house work, yard work, shopping, driving, hobbies and social activities; that Doe needs home services, essential services and life care for the rest of his life as a result of the crash; that his interview, examination and assessment of the plaintiff and related expenses were necessary, reasonable and related to the subject crash; that his medical expenses totaled \$ \_\_\_\_\_. Dr. Voc will also testify concerning other medical care providers' diagnoses, prognoses and treatment. Dr. Voc will base his opinions on his examination and treatment of the patient, diagnostic media, review of medical records and information from other physicians, medical literature, general medical experience and his special expertise. Dr. Voc holds the opinions stated herein, within a reasonable degree of vocational certainty and life care planning certainty (meaning more probably than not), based upon his education, training, expertise and experience as a vocational rehabilitation and life care specialist, Doe's history, his interview, observations, examinations, assessments, findings and treatment of the plaintiff, review of the medical records and information regarding the plaintiff, review of the radiological studies, including CT scans and/or MRI studies as reported by the radiologists and all other diagnostic media, medical literature, medical knowledge and experience with injuries such as those diagnosed in the plaintiff and all materials and information used, consulted or relied upon in formulating his opinions. Such materials and information include but is not necessarily limited to the traffic accident report, accident diagram, witness statements, conversations with parties and witnesses, photographs, maps, diagrams, medical records and information, employment records, Social Security records, books, articles, publications, software, videos, multi-media materials, training materials, seminar materials, materials and information obtained or

available on the Internet, Intranet or other electronic, magnetic or optical storage, pleadings, discovery responses, depositions and the records, opinions and information of other experts and consultants. Dr. Voc will use medical records, employment records, vocational records, life care plans, models and exemplars (including brain, skull, spine, skeletal and organic models and exemplars), medical illustrations, vocational illustrations, drawings, diagrams, charts, posters, photographs, videos, animations, physical objects and multi-media presentations to demonstrate the general principles of vocational assessment and rehabilitation and life care planning as well as their application to the plaintiff in order to assist the jury in understanding his testimony. Dr. Voc's testimony will include all opinions expressed in subsequent records and reports, supplemental records and reports and depositions and will also include opinions in rebuttal to the opinions of the defendant's experts.

## 2. Economic Damages Expert

Ms. Econ is an economist. Ms. Econ is an expert in economics, economic damages and earning capacity. Ms. Econ's report, curriculum vitae and testimonial history are attached hereto.

Ms. Econ reviewed the following materials in rendering her opinions and report in this matter: employment records for Doe from his employer at the time of the subject incident; the complaint filed by the plaintiffs in the subject matter; State of Missouri, Department of Labor and Industrial Relations, Division of Employment Security General Aptitude Test Battery report dated October 27, 1986; the plaintiff Mrs. Doe's Responses to Interrogatories and Requests for Production of Documents dated January 7, 2005; the plaintiff Doe's responses to interrogatories and request for production of documents; Doe's Social Security Administration Notice of Decision – fully favorable with regard to the plaintiff's application for disability benefits,

Doe's summary of earnings from Social Security Administration; Doe's medical expense summary as of January 7, 2005; selected reports/chart notes from the chart of Doe's chart with Neurologist Dr. Neuro, M.D., pages Bates labeled 1-3, 24 and 30; selected reports/chart notes from Doe's chart with Dr. Psych, pages Bates labeled 32-43 & 52 & 53; selected reports/chart notes from Doe's chart with Dr. Neuro-Psych, pages Bates labeled 9-15; selected reports/chart notes from Doe's chart with Dr. Ortho, pages Bates labeled 3, 4, 8, 9, 10 and 29; medical records for Doe from [Medical Center], pages Bates labeled 1-5, 11, 12, 45, 46, 47, 23 & 26; Colorado No-Fault Lost of Earnings Schedule and Work Sheet and Wage & Salary Verification from State Farm Insurance Company in connection with Doe's PIP benefits; State of Colorado Traffic Accident Report with attachments including drivers' statements and citation issued to defendant; letter to Ms. Econ with personal information on the Doe family, including children's names and dates of birth; current and historical relationships between interest rates, inflation and wage growth indices, in addition to private and government agency forecast data for these economic indicators, state and Federal Labor Department information regarding labor force participation rates, employment probabilities, geographic differentials, etc.; formation on disabled workers including labor force participation, earnings, employment opportunities, unemployment rates, severity of limitations, etc., age-earnings profiles and occupation mobility data, material regarding employee benefit levels, retirement and pension information, numerous documents regarding time contributions for household activities, telephone interviews of the plaintiff; and all studies, literature, sources and authorities referenced in her report. Ms. Econ's findings, opinions, evaluation and assessment are related in her report dated October 6, 2003. Ms. Econ will testify about Doe's past losses, including past wage and benefits losses, as

well as future wage and benefits losses. Ms. Econ will testify that all of the plaintiff's economic losses are a result of injuries he suffered in the subject crash and as outlined in her report and incorporated herein by reference. Ms. Econ will testify to the lifetime projected earnings for men of Doe's age, expected educational levels and to the economic basis for a determination of the loss of future earnings Doe will suffer as a result of his crash related injuries. Ms. Econ will testify about her findings, opinions and conclusions (both subjectively and objectively), her assessments and her evaluation as expressly set forth in her records, notes and chart - all of which are incorporated by reference herein as if expressly set forth. Ms. Econ will also testify about all of her findings, opinions and conclusions (both subjectively and objectively), her assessments and evaluations of Doe from the date of this disclosure to the date of trial as will be expressly set forth in Ms. Econ's future records, notes and chart, which cannot be disclosed at this time because they do not yet exist. Such items shall be disclosed by way of supplementation under C.R.C.P. 26. Ms. Econ will offer testimony and opinions using various exhibits, graphs, charts, tools, diagrams, videos, animations, scholarly treatises, economic models, economic trends, multi-media presentations and similar aids to discuss and illustrate Doe's conditions, impairments, functional abilities and/or disabilities, current, past and future economic situation and permanency and to aid in the explanation of any of her findings, opinions and conclusions (both subjectively and objectively), her assessment and evaluation of Doe. Specifically, Ms. Econ will testify about her expert opinions (outlined herein) which are all held by her within a reasonable degree of economic probability: Ms. Econ will testify in detail about the contents of her report of July 18, 2005, including her evaluation, observations, testing, testing results, opinions, recommendations and

evaluation of Doe as set forth therein. Ms. Econ will testify that the plaintiff has sustained past wage losses in the amount of \$120,600.00 after offset of PIP benefits. She will testify that Doe has sustained \$603,500.00 in future wage losses because of the injuries he suffered in the subject crash. She will testify that the past loss time period reflects the losses incurred from the time of the incident to the time of the report. She will testify that Doe had a work life expectancy of 15.0 years to retirement at age 65 and a life expectancy of 29.8 years. Ms. Econ will testify that an aggregate fund amounting to \$724,100.00 will compensate Doe for the probable losses from the date of the incident to the date of her report and replace the future lost stream of earnings and other future needs. She will testify that to ignore the cost of living or earnings growth factor would understate the losses sustained while failure to incorporate interest earned from the funds on hand today would overstate the probable losses. She will testify that by simultaneously considering earnings and interest factors, her evaluation of the plaintiff's situation appropriately reflects the net present value of his losses in real terms. She will further testify that past medical costs should be added for a full accounting of economic losses. She will testify that no dollar amounts for pain and suffering and loss of enjoyment of life have been included in her analysis. Ms. Econ will also testify consistent with all of the sources and authorities she cited in her July 18, 2005, report. Ms. Econ holds the opinions stated above, within a reasonable degree of economic certainty (meaning more probably than not), based upon: personal review, examination, assessment, evaluation, study and findings of Doe's economic and non-economic circumstances, her knowledge of Doe's economic, vocational, employment and medical histories before and after the automobile collision, the course of treatment undergone by Doe for his crash related

injuries, her review of Doe's personal injury evaluation and employability assessment, Doe's response to treatment for his symptoms and functional levels, Ms. Econ's knowledge of economics and her experience in assessing and evaluating the economic impact of injuries such as those sustained by Doe will have on his life, her experience and knowledge in evaluating, informally and formally, the economy, economic variables, economic situation of the subject, the needs of subjects with cognitive impairments and injuries such as Doe has, his educational, vocational and employment histories as well as his history of earnings and his future prospects as they are after the crash and as they would have been if the crash had not occurred, her years of training, knowledge, education and experience in economics and labor economics, her experience as an economist and her personal evaluation, assessment and study of Doe's case, Ms. Econ also relied on the sources and authorities cited in her July 18, 2005, report and incorporated herein in their entirety by reference and all the materials and information used, consulted or relied upon in the economic loss evaluation. Such materials and information include but are not necessarily limited to books, articles, publications, software, training materials, seminar materials, materials and information obtained or available on the Internet, Intranet or other electronic, magnetic or optical storage and the information and opinions of other economic loss experts or consultants. Ms. Econ will testify in support of the life care plan prepared by Ms. Planner. Ms. Econ will testify that all of the economic effects upon Doe as set forth herein were caused by the injuries, impairments and disabilities due to the subject crash. Ms. Econ's testimony will include all opinions expressed in subsequent records and reports, supplemental records and reports and depositions and will also include opinions in rebuttal to the opinions of the defendant's experts.

## IV. Notes Regarding the Model Disclosure of Expert Testimony and Expert Disclosures in General

1. The model disclosure is a partial listing of experts in an auto case.
2. In order to save space, a full, detailed disclosure of treating physician testimony was set forth only with respect to the neuro-psychologist. Ideally, the expected testimony of all treating physicians who may be called to testify should be set forth with such detail.
3. If certain treating physicians definitely will not be called to testify, then they should not be disclosed (although they should have been disclosed in the initial disclosures as persons likely to have discoverable information).
4. For retained experts who provide detailed reports, the reports may be incorporated rather than regurgitated verbatim in the disclosure; however, be sure to disclose opinions that need to come in at trial that are not contained within the reports.
5. The model disclosures are set forth in block style, not by numbered paragraph as in the menu or by paragraph or by topic. There is a reason for this. The reason is that if the disclosures are set forth as in the menu, then opposing counsel will use the menu as a checklist to attack the disclosures in a pre-trial motion to strike or limit testimony or during trial to bog down the direct examination of the experts. So, use the menu to draft detailed block style disclosures – not to provide opposing counsel with an attack checklist.
6. Although the model disclosure of the neuro-psychologist's testimony goes well above and beyond what is required by Rule 26, there are two important points to keep in mind: (1) great disclosures are more effective than "good enough" disclosures because (a) you don't have to worry about the expert being struck or severely limited, and (b) you demonstrate that you are well prepared and ready for trial while opposing counsel is behind the power



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curve; and (2) opposing counsel's mediocre disclosures can be argued to be inadequate when compared to your great disclosures (even if opposing counsel's disclosures may be "good enough" to satisfy Rule 26).

7. There is a potential danger in drafting such extremely detailed disclosures: that trial judges will come to expect that such detail is required by Rule 26 when it is not. For example, on a scale of 0 to 100 where 0 is no disclosure and 100 is disclosure by an omniscient/omnipotent being and where Rule 26 requires a disclosure of 50, consistently great disclosures of 80 may increase expectations to 80 leading to a de facto requirement of 80 instead of the de jure requirement of 50. Because defense counsel actively attempts to increase the plaintiff's burden of disclosure above the requirements of Rule 26, plaintiff's counsel should always be ready to address such disclosure inflation.

8. The expert disclosure requirements of Rule 26 apply equally to defendants and intervenors – not just to plaintiffs. It is not sufficient for defendants to disclose the "plaintiff's treating physicians and their medical records." If the defendant intends to use a treating physician's opinions or records at trial, then those opinions and specific records must be disclosed. The plaintiff is not required to search through his own medical records in an attempt to determine what facts or language will be used against him by the defendant. If defense counsel lists a treating physician of the plaintiff as an expert, then defense counsel must disclose all expected testimony of the treating physician that defense counsel will use against the plaintiff.

9. In expert disclosure motions and hearings, remember that defense counsel has an additional month to draft their expert disclosures – not "one month" as they regularly whine. In other words, for example, the plaintiff had eight months in which to draft his disclosures while the defendant had nine months.

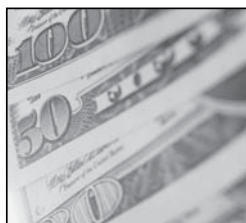
10. Draft expert disclosures *at least* three months in advance of the deadline. Then, you will still have time to obtain the opinions you really need.

**V. Conclusion**

Great, rather than "good enough," expert disclosures drive settlement at settlement conferences and verdicts at trial. Stay in the driver's seat by drafting great expert disclosures.

Mac Hester, Esq. © 2005

**Mac Hester is a trial lawyer and practices with the Metier Law Firm, LLC in Fort Collins, Colorado. His practice focuses on personal injury litigation, traumatic brain injury, spinal injury and premises liability.**



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