

LIFE EXPECTANCY AS AN ISSUE IN A MTBI CASE

By Randall H. Scarlett

Catastrophic injuries may result in a diminishment of expected life. Where a child sustains catastrophic injuries through the negligence of another, is rendered brain damaged, is spastic quadriplegic, has limited mobility, and must be fed through a gastrostomy, few of us would fail to anticipate the life expectancy issue. Indeed, the life expectancy issue may well prove to be the most important in the case itself. Even where plaintiff's counsel has established liability to a jury, a misplaced adoption of expected remaining life will result in the deprivation of funds plaintiff may very well need to survive.

While it may not be difficult to anticipate contentions of diminished expected life in a case involving a catastrophic injury, many will be surprised to see the issue present in a case involving moderate or mild traumatic brain injury. However, the issue is being raised with greater frequency.

Often times, the unwary plaintiff's lawyer actually bolsters the defendants' argument. As we all know, individuals who have sustained a brain injury can become overwhelmed when faced with the task of making seemingly simple decisions. To the individual having sustained a brain injury, the question of whether it is safe to cross the street becomes as perplexing and complicated as is Einstein's theory of relativity to the average six year old. In a rush to amplify the cognitive deficits of a plaintiff, counsel may actually increase the jury's perception of shortened life expectancy. (Were the plaintiff to attempt to cross the street before it was safe, serious further injury or death could be expected.)

With this submission, I include an article I co-authored with my partner, Steven A. Fabbro, entitled "*Life Expectancy of the Catastrophically Injured Child: Handling the Defense Expert*". This article first ran in the December 1995 issue of CAOC's Forum. The points contained therein are no less important in the mild to moderate brain injury action.