



# LITIGATING SPINAL CORD INJURIES

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Litigating a spinal cord injury case can be extremely complex and challenging because your client has suffered a devastating injury with life-long complications. However, these cases can be extremely rewarding. A successful resolution by settlement or jury verdict can provide your client and his dependent family members with a lifetime of financial security.

To properly represent your client, you need to have a complete understanding of the spinal cord, the spinal column, the central nervous system, the peripheral nervous system and the autonomic nervous system. Consider retaining a neurologist or a neurosurgeon as a consulting expert to assist you in better understanding your client's injuries, diagnosis, prognosis

and treatment plan. If this is your first spinal cord injury case you should consult with other attorneys who have experience handling interstate trucking cases and spinal cord injury cases.

## Spinal Cord Injuries

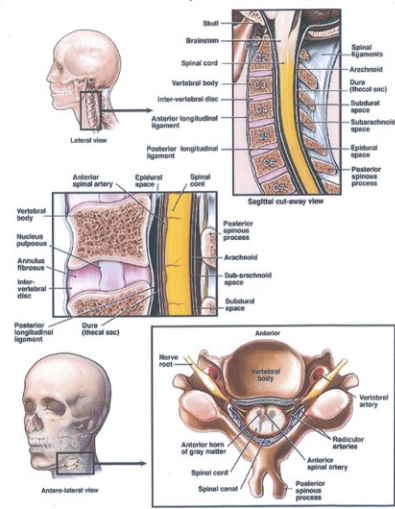
A spinal cord injury usually begins with a sudden traumatic blow to the spine that fractures or dislocates a vertebra. The spinal cord injury occurs when the bone fragments from the fractured vertebrae or disc material from a herniated disc tears, compresses or bruises the spinal cord tissue. Axons are cut off or damaged beyond repair and neural cell membranes are broken. The crushing and tearing of axons is just the beginning of the injury process. The initial trauma sets off a cascade of biochemical and cellular events that kills neurons, strips axons of their myelin insulation and triggers an inflammatory immune

system response. Days or even weeks later, after this second wave of damage has passed, the area of destruction has increased—sometimes to several segments above and below the original injury—and so has the extent of disability.

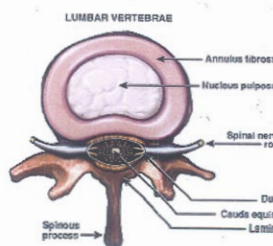
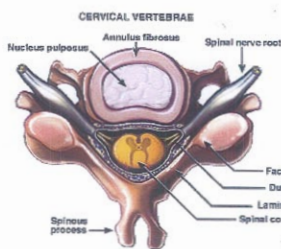
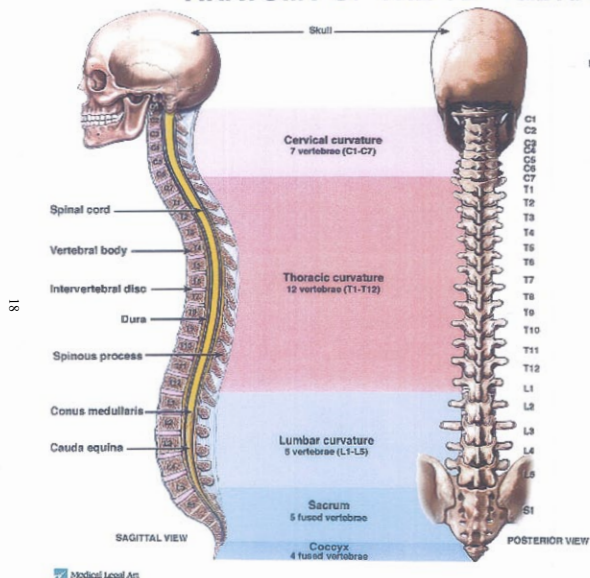
Spinal cord injuries at any level can cause muscle spasticity, loss of normal bowel and bladder control, numbness, pain, weakness and paralysis.

When spinal cord injuries occur in the neck, symptoms can affect the

Cervical Spine Anatomy

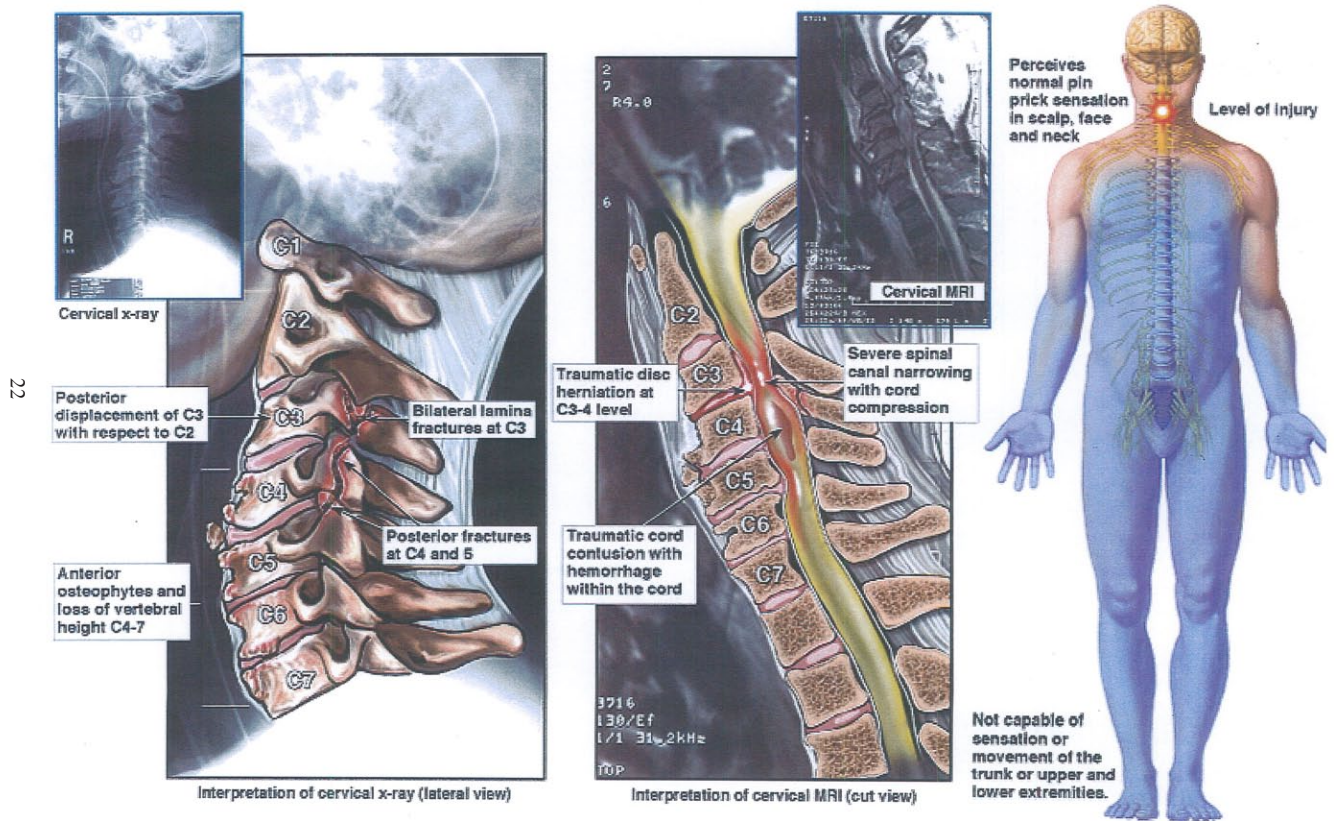


## ANATOMY OF THE VERTEBRAL COLUMN



arms, legs and middle of the body. The symptoms may occur on one or both sides of the body. If the injury is high up in the neck, symptoms can also include breathing difficulties from paralysis of the breathing muscles. When spinal cord injuries occur at chest level, symptoms can affect the legs and when spinal cord injuries occur in the lower back level, symptoms can affect one or both legs, as well as the muscles that control the bowel and bladder.

# Cervical Spine Injuries with Subsequent Quadriplegia



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## Medical Terminology

A “complete” spinal cord injury means that the spinal cord has absolutely no function below the affected area. An “incomplete” or partial spinal cord injury means that the spinal cord has some function left below the affected area.

Spinal cord injuries are defined as follows:

- Quadriplegia/Tetraplegia – This classification involves loss of movement and sensation in all four limbs.
- Paraplegia – This classification involves loss of movement and sensation in the lower half of the body.
- Hemiplegia – This classification describes a loss of movement and sensation on one side of the body, either right or the left. This is most commonly caused by injury to the brain but it can also be caused by lesions to the spinal cord.
- Triplegia – This classification involves the loss of movement and sensation in one arm and both legs and is usually the result of an incomplete spinal cord injury.

## Treatment of Spinal Cord Injuries

If a spinal cord injury is suspected, the emergency personnel will immobilize the patient to prevent further injury. After immobilization and stabilization, an emergency room physician may need to take pressure off of the spinal cord, which could involve surgery.

*Continued on page 30*



## Why Mediate?

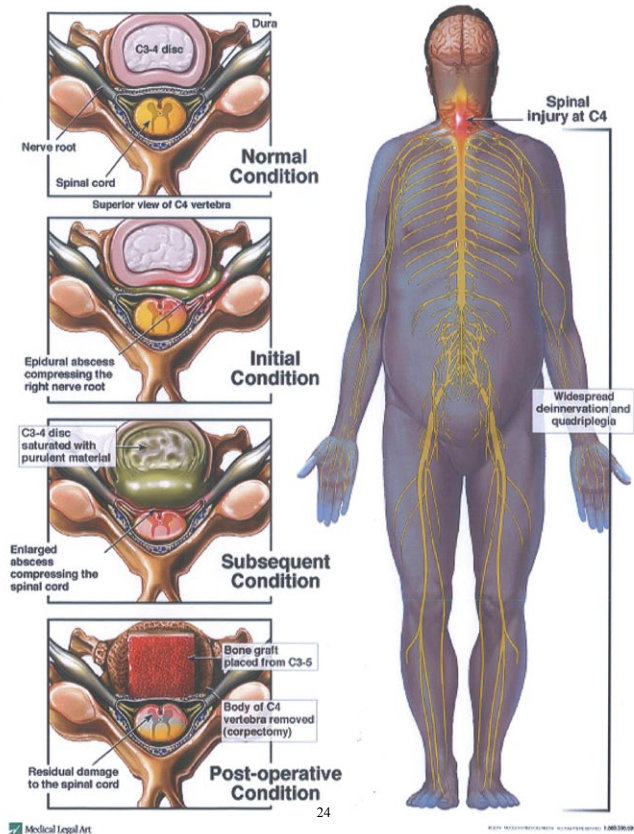
- ▶ Early Intervention
- ▶ Direct Contact w/Other Side (CR and/or Safety Risk Mgr)
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### Progression of Cervical Condition



Surgery may be needed to:

- Remove fluid or tissue that presses on the spinal cord;
- Remove bone fragments or disk fragments that impinge on the cord; or to
- Fuse Vertebrae

If surgery is not required then spinal traction may be recommended.

In most cases the patient receives steroid medication as soon as possible after the injury to reduce the swelling. According to the National Institute of Neurological Disorders and Stroke (NINDS), Methylprednisolone, a steroid drug became standard treatment for acute spinal cord injury in 1990 when a large scale clinical trial showed significantly better recovery in patients who were given the drug within the first eight hours after their injury. Methylprednisolone appears to reduce the damage to nerve cells and decreases inflammation near the injury site by suppressing activities of immune cells.

### Rehabilitation

Rehabilitation programs for spinal

cord injuries usually combine physical therapy and occupational therapy with skill building activities and counseling to provide medical, social and emotional support. A rehabilitative team is usually led by a physiatrist who is a doctor specializing in physical medicine and rehabilitation. The team can include social workers, physical therapists, occupational therapists, rehabilitation nurses, rehabilitation psychologists, vocational counselors and a case manager.

### Managing Long-Term Care

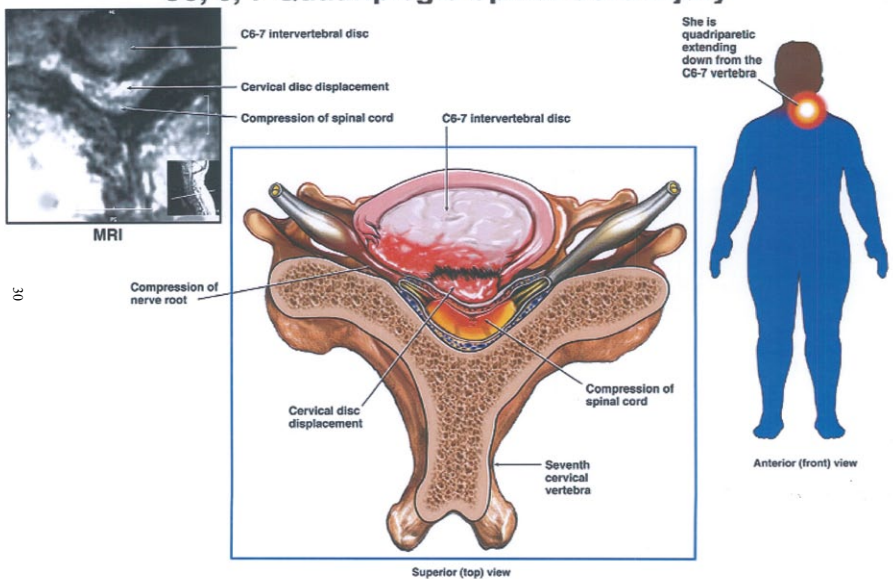
“Until World War II, a serious spinal cord injury usually meant certain death or at best a lifetime confined to a wheelchair and an ongoing struggle to survive secondary complications such as breathing problems or blood clots. But today, improved emergency care for people with spinal cord injuries and aggressive treatment and rehabilitation can minimize damage to the nervous system and even restore limited abilities.” [National Institute of Neurological Disorders and Stroke (NINDS) *Spinal Cord Injury: Hope Through Research*, Page 2 (last updated December 31, 2012).]

Although patients with spinal cord injuries are living longer, they are also experiencing more long-term complications. These problems include: extreme blood pressure changes, chronic kidney disease, deep vein thrombosis, lung infections, skin breakdown, urinary tract infections, loss of bladder control, loss of bowel control, loss of sexual function and autonomic dysreflexia.

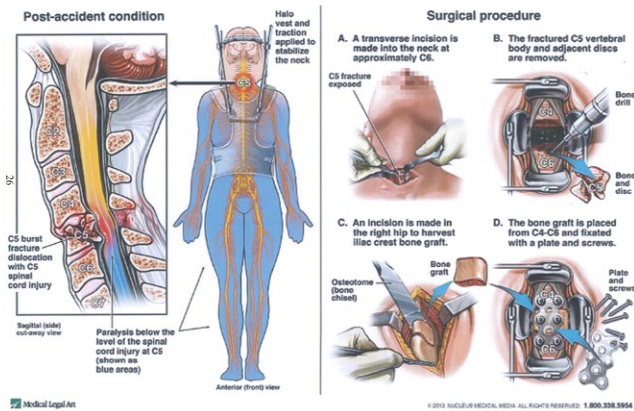
### Autonomic Dysreflexia

“Autonomic dysreflexia is a life-threatening reflex action that primarily affects those with injuries to the neck or upper back. It happens when there is an irritation, pain or stimulus to the nervous system below the level of injury. The irritated area tries to send a signal to the brain,

### C5, 6, 7 Quadriplegic Spinal Cord Injury

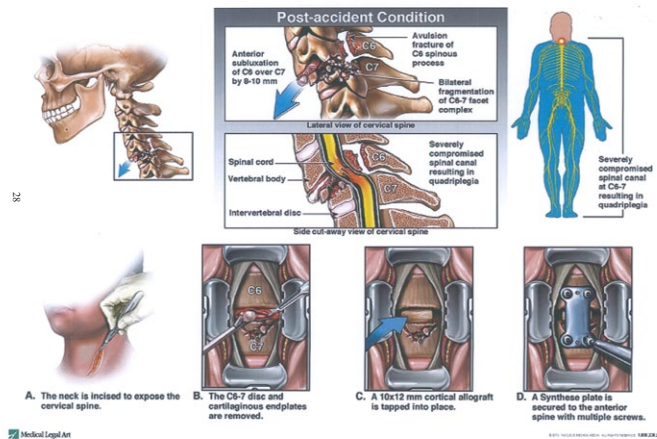


## C5 Spinal Fracture and Resulting Paralysis with Surgical Stabilization



but since the signal isn't able to get through, a reflex action occurs without the brain's regulation.

## Cervical Spine Injuries and Quadriplegia with Surgical Fusion



Unlike spasms that affect muscles, autonomic dysreflexia affects vascular and organ systems controlled by the sympathetic nervous system.

Anything that causes pain or irritation can set off autonomic dysreflexia: the urge to urinate or defecate, pressure sores, cuts, burns, bruises, sunburn, pressure of any kind on the body, ingrown toenails or tight clothing. For example, the impulse to urinate can set off high blood pressure or rapid heartbeat that, if uncontrolled, can cause stroke, seizures or death. Symptoms such as flushing or sweating, a pounding headache, anxiety, sudden high blood pressure, vision changes, or goose bumps on the arms and legs can signal the onset of autonomic dysreflexia. Treatment should be swift. Changing position, emptying the bladder or bowels and removing or loosening tight clothing are just a few of the possibilities that should be tried to relieve whatever is causing the irritation." [National Institute of Neurological Disorders and Stroke (NINDS) *Spinal Cord Injury: Hope Through Research*, Page 9 (last updated December 31, 2012).]

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## Decubitus Ulcers

Paraplegics and quadriplegics often experience a breakdown of bodily tissue due to the lack of movement in and pressure on their skin. A visible sign of this breakdown is the development of decubitus ulcers, also known as bedsores. If decubitus ulcers develop, infections will appear and possibly erode down to and into the bone, and cause overwhelming, life-endangering sepsis, as in Christopher Reeve's case. These decubitus ulcers can also result in osteomyelitis, a life threatening bone infection that is difficult to treat and can take weeks or months to heal.

## Other Serious Complications

Another serious complication of paraplegia or quadriplegia is a propensity to develop deep vein thrombosis (DVT), which may result in pulmonary embolism (PE).

The majority of people with spinal cord injuries develop osteoporosis.

Most paraplegics and all quadriplegics need a system of mechanical intervention in order to void urine from a neurogenic bladder. Most patients use a catheter of some sort. These catheters increase the likelihood of urinary tract infection.

All of these complications lead to embarrassment and loss of self-esteem. For a quadriplegic, the chance of continuing work is very slim. As a result of spinal cord injury,

most victims leave work causing additional problems of financial dependency both for themselves and their families, loss of self-esteem, and loss of direction, purpose and meaning of life. As a result, most people will suffer at least an initial period of depression, requiring medication and/or therapy.

## Loss of Consortium

A loss of consortium claim is a valuable claim for the spouse of a spinal cord injured patient.

Injured men likely will not be able to procreate without surgical intervention.

## Life Expectancy

Life expectancy of those who survive spinal cord injuries long enough to receive treatment has improved in recent years, although it is still below normal. Persons sustaining paraplegia at age 20 years have an average subsequent life expectancy of 44 years, compared to 57 years for the general population. Mortality following a spinal cord injury is highest in the first year after injury, after which, rates decline.

## Expert Witnesses

A spinal cord case is a "major" personal injury case. In order to succeed you will need a stable of elite experts. In my experience, using treating physicians at trial is very helpful. These doctors are the only experts who actually saw and treated your client while he was in excruciating pain or while undergoing surgery. However, in addition to the treating physician you may also need medical doctors who specialize in the care and treatment of spinal cord injuries. Experts who have written extensively on this topic may prove to be extremely helpful as you try to explain the complexities of a spinal cord injury to a jury.

Physical therapists who work daily with your client can provide compelling testimony concerning your client's heroic efforts to improve his condition. Depending on the facts of your case, you may decide to use a physiatrist, social worker, occupational therapist, rehabilitation nurses, rehabilitation psychologists or vocational counselors.

Critical to your case is the use of a properly qualified Life Care Planner and Forensic Economist.

## Life Care Planners

"In spinal cord injury cases, life care planners are the expert witnesses who provide fact-finders with the evidence necessary to evaluate the future care needs of the plaintiff. These needs, of course, constitute a principal element of damages in neurological injury cases. Life care plans delineate the goods and services required by plaintiffs in order for them to have the opportunity to recover from their injuries. Thus, the life care plan serves two vital functions. First it provides an evaluation of the damages aspect of the case, thereby giving plaintiff attorneys the basis for making a proper settlement demand. Second, the plan allows

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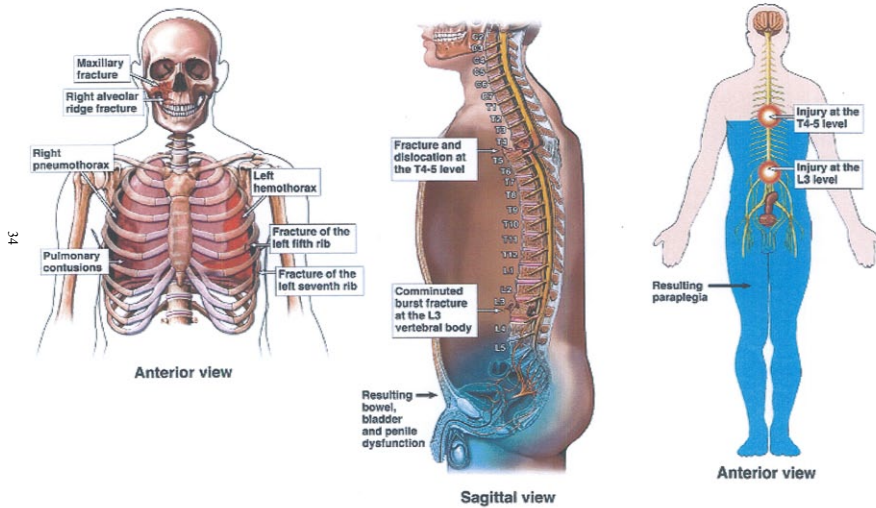
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## Thoracic and Spinal Injuries with Resulting Paraplegia



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## Day In The Life Video

The trial of a spinal cord injury case will involve many different types of demonstrative evidence. Blowups of key medical records, x-rays, CT scans and MRIs as well as medical illustrations and models are common. Photographs and videos showing your client before the accident can be very powerful tools of persuasion.

Most importantly in a spinal cord injury case, you want to produce the best possible “Day In The Life Video.” These videos will clearly show to the jury just how difficult it is to get through the day when you are a paraplegic or quadriplegic who is literally a prisoner in his own body.

A Day In The Life Video will depict the plaintiff and the plaintiff’s family in their typical daily routine. It is important to carefully review the law in your jurisdiction before spending a significant sum of money on the production of a Day In The Life Video. Generally, a Day In The Life Video will be admissible if the video fairly and accurately portrays the plaintiff’s daily routine, condition, therapy or adaptation to injury, AND, that the video is not unduly prejudicial. Because a Day In The Life Video may be graphic and upsetting, it may be argued that the video will prejudice the jury. The question then before the court is whether the video’s value as evidence

the plaintiff’s adversary to vividly see in written form what plaintiff’s needs are and how plaintiff will later demonstrate those needs to the jury. Life care plans set out projected therapeutic modalities of care, assess education and development programs, describe medication and supply needs, identify equipment and assistive technology requirements, and demonstrate architectural renovations which plaintiffs require in order to make their homes inhabitable following injury.

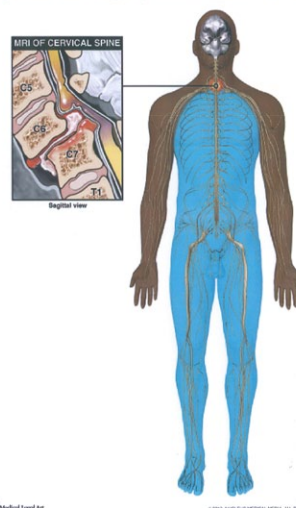
The value of presenting a detailed life care plan to the jury in spinal cord injury cases cannot be overestimated. Jurors often use the cost to fund the plan as the “floor” of the damages award and add to it other types of compensatory damages – e.g., for pain and suffering, loss of consortium, etc.” [Taylor, *Neurolaw: Brain and Spinal Cord Injuries*, §6:34 (ATLA Press 2006).]

The Life Care Plan should only include those services and medical procedures with a greater than 50 percent probability of occurring. Once the Plan is completed, it is then forwarded to an economist for calculation of a present net value.

values. First, if your client will suffer loss of earning capacity, the economist must calculate the “present value” of that loss.

Second, the economist will calculate the present value of the future medical and non-medical costs that have been described and itemized in the Life Care Plan. These two figures will provide a solid foundation for a fair and adequate jury award. [Taylor, *Neurolaw: Brain and Spinal Cord Injuries*, §6:36 (ATLA Press 2006).]

### Spinal Cord Injury with Resulting Paraplegia

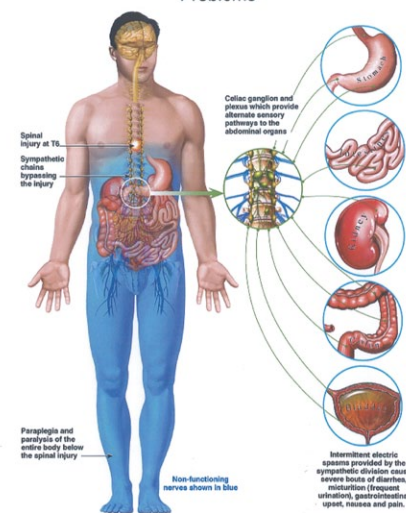


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### Spinal Injury with Abdominal Neurological Problems



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## Economist

In a spinal cord injury case the economist must provide two critical

outweighs its possible prejudicial effect. When a video represents a staged reproduction of one party's version of the facts, it should be examined with care because of the danger that the filmmaker's art may blur reality in the minds of the jury. Bernard, Peter G., Traumatic Brain Injury: Demonstrative and Real Evidence, 2010 Edition, Section 12-4(a) "Day in the Life Presentation" (Matthew Bender, Rev. Ed.); See also, Bannister v. Town of Noble, 812 F2d 1265 (10<sup>th</sup> Cir. 1987) and Pisel v. Stamford Hospital, 180 Conn 314 (1980) (After examining the videotape, with the above principles in mind, we agree with the trial court that 'the tape, while not pleasant viewing, fairly presented to the jury [plaintiff's] condition and the type of care she was required to receive.')


### Conclusion

A spinal cord injury case is by its very nature a major personal injury case. As a member of APITLA you have access to experienced litigators throughout the county to help you with these cases. If you need help handling a spinal cord injury case, or any other interstate trucking case, you can call one of the APITLA National Advisory Board members to assist you with the case or to help you locate expert witnesses. All of the Advisory Board members are listed inside the front cover of each volume of the Lawyer's Logbook.


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