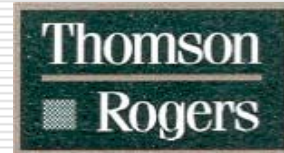


Effective Use of Technology at Trial

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USE OF TECHNOLOGY AT TRIAL

- There is a vast array of trial software that can significantly improve case presentation at trial
- A concern with using trial software is that there is often a learning curve associated with using the software and there is sometimes the need for both the opposing parties and the Court to have access and experience with the software
- This presentation focuses on practical and simple ways to effectively use *commonly available* technology at trial, rather than on trial software, and will cite examples from the Resch v. Canadian Tire case (where a jury awarded \$3.5 million in damages in a product liability case)

THEME OF PRESENTATION

- **Effective technology is technology that is practical and simple to use**

- **Amongst other things, effective technology should be used to:**
 - a) **Make your case visually appealing and persuasive**

 - b) **Simplify the quantification of the value of your case, and**

 - c) **Graphically contrast various quantifications**

3

PRACTICAL AND SIMPLE TECHNOLOGY AT TRIAL

- **Some commonly available effective technologies are:**
 - 1) **Digital Visual Presenters (Elmo), and**

 - 2) **Spreadsheets, Graphs and Charts**

4

DIGITAL VISUAL PRESENTERS (Elmo)

- **Displays:**
 - Documents
 - Records
 - Photos
 - Exhibits
 - Transcripts
- **Can magnify objects**
- **Has a memory**



5

EFFECTIVE USE OF A DIGITAL VISUAL PRESENTER

- **Commonly used effectively with witnesses to direct them to documents or portions of documents**
- **Can be used effectively during opening and closing statements by using the memory features**
- **Crucial for jury trials to ensure everyone is looking at the same thing and for its ability to magnify objects**
- **Example from Resch v. Canadian Tire (see photo that follows—we were able to zoom in on the bolts)**

6



7

SPREADSHEETS, GRAPHS AND CHARTS

- ❑ Spreadsheets programs, like Excel, are essentially sophisticated calculators
- ❑ Spreadsheet programs can be used to prepare graphs and charts for use during trial
- ❑ Spreadsheets allow for easy manipulation of figures and assumptions

	A	B	C
1	computer ledger		
2			
3	car loan		\$12,000.00
4	interest		9.60%
5	# of payments		60
6			
7	Monthly Pmt.		\$252.61

8

EFFECTIVE USE OF SPREADSHEETS, GRAPHS AND CHARTS

- Spreadsheets, Charts and Graphs can be effectively used for presenting your case at various trial stages, for example:
 1. Presenting the value of your case at a pre-trial
 2. Presenting and comparing care cost reports, and
 3. Presenting and comparing income loss calculations

9

USE OF SPREADSHEETS AT PRE TRIALS

- The following problems often occur at pre-trials when Judges offer their perspective on the value of a case:
 1. Pre judgment interest is underestimated or ignored
 2. Present Value calculations are done inaccurately, and
 3. Less significant heads of damages are neglected
- To avoid these problems effective technology should be used to provide the Court at a pre-trial with a one page damage assessment showing all relevant information (see Merkurator example)

10

WITHOUT PREJUDICE (EXAMPLE--FROM RESCH V. CANADIAN TIRE)					
Damage Assessment (as of)			12-Jan-06		
File Name			Resch v. Canadian Tire		
TR File Number			89036		
Date of Incident			18-May-1998		
DAMAGE ASSESSMENT					
GENERAL DAMAGES					
	Amount		PJI	Total	
Nathan Resch	\$175,000.00				
Less Contributory Negligence*	-\$25,250.00				
Net Amount	\$148,750.00		\$56,934.29	\$205,684.29	
FAMILY LAW ACT CLAIMS					
	Amount		PJI	Total	
Annette Crayden	\$50,000.00				
Less Contributory Negligence*	-\$7,500.00				
Net Amount	\$42,500.00		\$16,266.94	\$58,766.94	
Mark Crayden	\$25,000.00				
Less Contributory Negligence*	-\$3,750.00				
Net Amount	\$21,250.00		\$8,133.47	\$29,383.47	
PAST DAMAGES					
	Amount	Less Contrib.	Total	PJI (half rates)	Total
Past Income Loss	\$169,084.00	-\$33,392.00	\$143,721.40	\$27,524.79	\$171,225.19
Past Housekeeping/Home Maintenance Expense	\$6,000.00	-\$900.00	\$5,100.00	\$976.02	\$6,076.02
Past Health Care Expense	\$11,787.31	-\$1,768.10	\$10,019.21	\$1,917.43	\$11,936.65
Out of Pocket Expenses	\$687.90	-\$103.13	\$584.38	\$111.84	\$696.21
OHIP	\$54,928.71	-\$8,224.31	\$46,604.40	\$8,918.95	\$55,523.36
FUTURE DAMAGES					
	Amount	Less Contrib.*	Total		Total
Future Income Loss (@\$5,821 / year)	\$1,807,812.00	-\$271,171.80	\$1,536,640.20		\$1,536,640.20
Future Needs	\$2,147,838.00	-\$322,175.70	\$1,825,662.30		\$1,825,662.30
GRAND TOTAL OF ALL DAMAGES				Total PJI	Grand Total
				\$120,763.74	\$3,901,595.63
Notes					
*Plaintiff's Contributory Negligence calculated at					15.00%
Years Since Incident (to assessment date)					7.66
Applicable Annual PJI Rate in accordance with s.127(12) of CJA (not on Generate/FLA)					5.00%
Total PJI on General Damages and/or FLA claims (@ 5% per year in accordance with Rule 53.10)					38.28%
Half PJI rate--since date of incident (for past damages)					19.14%
Plaintiff's Date of Birth					28-May-1962
Plaintiff's Age (as of Assessment Date)					23
Plaintiff's Gender					Male
Plaintiff's Life Expectancy--using the McKellar's 2005 Life Expectancy Table					53.47
Present Value Multiplier (of Life Expectancy)--using the 2005 Ontario Discount Rate in accordance with Rule 53.03					35.1404

USE OF SPREADSHEETS AND CHARTS FOR CARE COST REPORTS

- The following problems often occur at trial relating to care cost reports:
 1. The plaintiffs' care cost report is so lengthy that the cost of the future care isn't effectively recorded or understood by the trier of fact
 2. The defendant's expert's care cost response isn't effectively contrasted
 3. Concessions to the care cost plan made during cross-examination of the experts are not effectively recorded and presented and the present value calculations of the amended plan are never calculated
- To avoid these problems spreadsheets and charts should be used to present and contrast cost reports and to update the care cost reports based on the evidence, with present values shown (see Resch v. Canadian Tire example)

FUTURE CARE COST ANALYSIS (EXAMPLE FROM RESCH V. CANADIAN TIRE)

Needs	Plaintiffs' Position (based on Martha Binstock's evidence)			Defendants' Position (based on Luana Troiani's evidence)			Jury's Findings Insert Present Value Totals
	One Time Cost	Annual Cost	Professor Carr's Present Values (as of Jan 31, 2008)	One Time Cost	Annual Cost	Calculated Present Values (as of Jan 31, 2008)	
Surgical Procedures							
Rhinoplasty	\$6,000.00			\$6,000.00			
Scar Revisions	\$20,300.00	Estimated 7 surgeries		\$20,000.00	Estimated 10 surgeries		
Orthodontic Treatment	\$2,740.00			\$2,740.00			
Prosthetic Treatment		\$200.00			\$200.00		
Bridge Replacement	\$10,500.00	\$1,050.00		\$10,500.00	\$1,050.00		
Contingency for Failed Implants	\$15,500.00	Believes failure more likely		\$7,750.00	Believes failure less likely		
Tissue Filler Procedure-Surgical	\$11,000.00	\$2,200.00		\$11,000.00	\$2,200.00		
Tissue Filler Procedure-Injections		\$3,919.50			\$3,919.50		
Totals	\$86,040.00	\$7,389.50	\$314,933.87	\$86,990.00	\$7,389.50	\$315,833.15	
Transitional Living Program							
Case Manager	\$7,200.00	Based on 2 Years Residential Living		\$7,200.00	Based on 1 Year Residential Living		
One month assessment in residential facility	\$24,000.00			\$24,000.00			
One month treatment at residential facility	\$16,500.00			\$16,500.00			
Months of high supervision	\$105,000.00	Based on 10 months		\$52,500.00	Based on 5 months		
Months of low supervision	\$91,250.00	Based on 12 months		\$45,625.00	Based on 6 months		
Psychology	\$8,580.00	1 hr/wk for 1/2 year then monthly for 1 yr		\$5,136.00	1 hr/wk for 1/4 yr then 1hrm for 1/2 yr		
Family Counseling	\$7,410.00	1 every 2 wks for 1 yr then monthly for 1 yr		\$3,852.00	1/2 wks for 1/2 yr then 1hrm for 1/2 yr		
Occupational Therapy	\$9,120.00	Believes cost is additional		\$0.00	Believes cost included in living cost		
Tutor	\$27,445.50	3 times/wk for 80 wks		\$8,132.00	1 time/wk for 80 wks		
Psychoeducational/Vocational Assessment	\$3,000.00	One assessment		\$4,250.00	Two separate assessments		
Totals	\$299,505.50		\$294,474.90	\$187,195.00		\$164,430.42	

13

FUTURE CARE COST ANALYSIS (CONTINUED)—EXAMPLE FROM RESCH V. CANADIAN TIRE

Needs	Plaintiffs' Position (based on Martha Binstock's evidence)			Defendants' Position (based on Luana Troiani's evidence)			Jury's Findings Insert Present Value Totals
	One Time Cost	Annual Cost	Professor Carr's Present Values (as of Jan 31, 2008)	One Time Cost	Annual Cost	Calculated Present Values (as of Jan 31, 2008)	
Medical/Rehabilitation Services--Ongoing							
Case Manager		40 hrs/yr \$4,800.00		\$8,356.00	For 2 years only		
Occupational Therapy		30 hrs/yr \$3,600.00		\$2,354.00	One time cost		
Psychologist--Initially	\$14,040.00	24 sessions/yr for 3 years		\$0.00			
Psychologist--Long term		5 sessions/yr \$975.00		\$51,360.00	Cost over lifetime		
Employment/Job Coach	\$56,160.00	8 hrs/wk for 6 months, 3 times in lifetime		\$6,750.00			
Speech Language Pathology	\$0.00	Diagn comment		\$3,081.60			
Therapy Support Worker		Addressed through community support worker		\$10,882.88	Instead of community support worker		
Community Support Worker - Best Case		12 hrs wk \$32,048.64					
Community Support Worker - Worst Case		Up to \$200 day \$73,000.00		\$0.00			
Totals	\$70,200.00	\$41,423.64	\$1,476,219.00	\$82,584.48		\$79,257.40	
Totals - Worst Case	\$70,200.00	\$82,375.00	\$2,878,885.27				
Attendant Care: Recuperation from Surgery							
Reserve for care following surgery	\$24,783.22	8 hrs/day for 2 weeks then 2 hrs/day for 1 wk	\$23,459.87	\$19,773.60	For 2 wks after each of 10 surgeries	\$18,717.76	
Equipment							
Computer and hand held organizer	\$3,335.00	\$667.00		\$2,100.00	\$420.00		
Computer Software	\$1,436.29			\$500.00			
Computer related furniture	\$5,571.29	\$80.00		\$2,000.00			
Totals	\$10,342.58	\$747.00	\$31,157.54	\$4,600.00	\$420.00	\$18,985.84	
Medication--Acetaminophen & antibiotics		\$100.00	\$3,425.20		\$100.00	\$3,425.20	
Transportation--Driving Assessment	\$2,435.00		\$2,435.00	\$1,405.00		\$1,405.00	
Homemaking--Homemaking service		\$735.68	\$25,198.52		\$735.68	\$25,198.52	
Home Maintenance--Snow Removal		\$750.00	\$25,689.01		\$750.00	\$25,689.01	
GRAND TOTAL (without management fee)			\$2,196,992.91			\$652,942.30	
GRAND TOTAL--WORST CASE			\$3,599,659.18				Does not account for travel time by service providers
Management Fee (@ 5%)			\$109,849.65				Do not comment
Management Fee (@ 5%)			\$179,982.96				
GRAND TOTAL (with management fee)			\$2,306,842.56				
Grand Total--Worst Case (with management fee)			\$3,779,642.14				

Note to calculate the present value of a benefit over Nathan Resch's lifetime, multiply the annual amount by 34.252007

14

USE OF SPREADSHEETS AND GRAPHS FOR INCOME LOSS

- The following problems often occur at trial relating to income loss claims:
 1. The plaintiffs' assumptions about earning capacity are revised based on the evidence
 2. Concessions and changes made during cross-examination of the experts are not effectively recorded and presented
 3. The present value calculations of the revised income loss perspective is never calculated
- To avoid these problems spreadsheets and graphs should be used to present and contrast positions on income loss (see *Resch v. Canadian Tire* example)

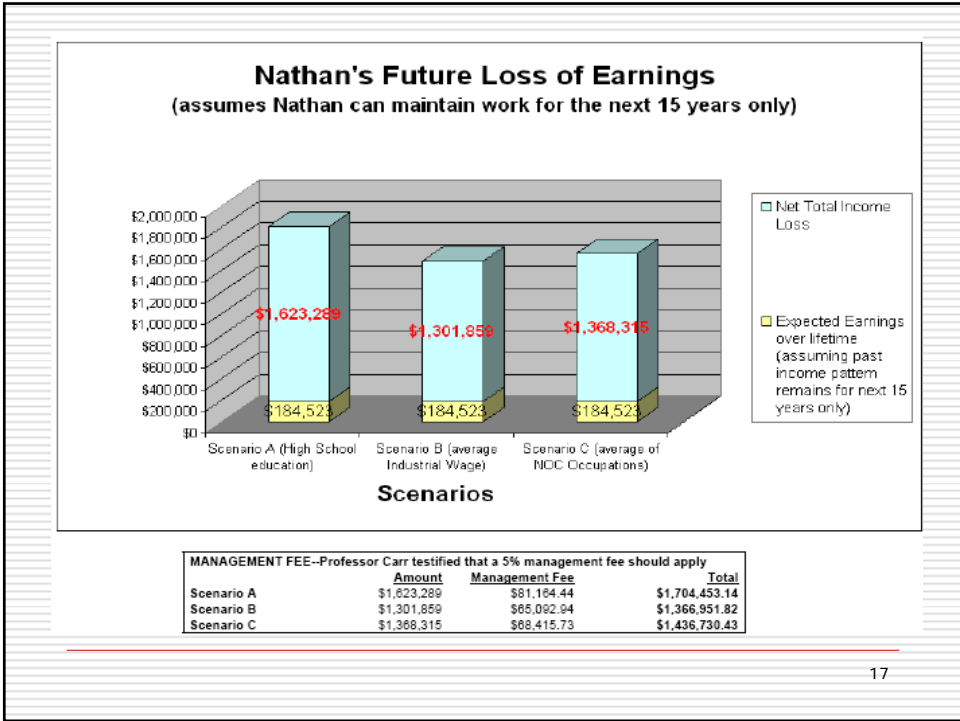
15

EXAMPLE WITHOUT GRAPH

- The chart on the page that follows graphically depicts the income loss calculations prepared by Professor Jack Carr in the *Resch v. Canadian Tire* trial
- Professor Carr made these calculation on three pages (to the right is the third of the three pages)

NET FUTURE INCOME LOSS SCENARIO 'C'	
WITHOUT INCIDENT EARNINGS	\$1,552,838.
LESS, WITH INCIDENT EARNINGS:	
A) TO AGE 62	(\$497,868.)
NET LOSS	\$1,144,970.
B) 15 YEARS	(\$184,523.)
NET LOSS	\$1,368,315.

16



CONCLUSION

- ❑ To effectively use technology at trial the technology ought to be commonly available and ought to be simple and easy to use
- ❑ While litigation software is encouraged, devices like a Digital Visual Presenter and the use of spreadsheets, charts and graphs are often more practical and can be very effective

Thank you,

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18