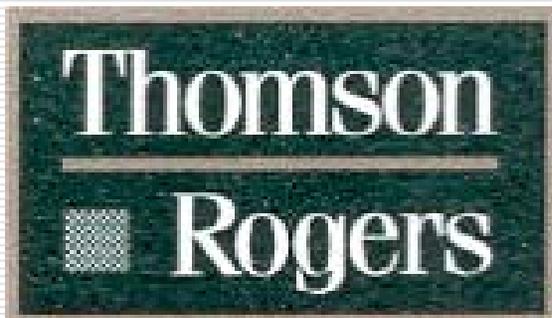


# QUANTIFYING AND ASSESSING PERSONAL INJURY DAMAGES

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# THE KEY MESSAGE

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- **It is no longer cost effective and practical to use a standard 'calculator' to assess a personal injury claim**

# THE NEW TOOL

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- ❑ Like word processors have replaced typewriters, spreadsheets have now replaced calculators
- ❑ Spreadsheet software is available on virtually every laptop computer (the most popular software is “Excel”)
- ❑ Spreadsheets are the primary tool needed by all personal injury lawyers to properly assess the value of a motor vehicle tort claim, especially when applying varying assumptions

# SPREADSHEETS

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

|   | 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    |

# USE OF SPREADSHEETS

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- The best way to explain how a spreadsheet is better than a calculator is through the use of real life examples
  
- The slides that follow introduce an example to illustrate how spreadsheets can effectively be used to:
  - a) assess a personal injury claim, and
  - b) analyze settlement proposals at mediation

# DAMAGE ASSESSMENT

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## EXAMPLE-THE FACTS:

- **David Jones was born on April 15, 1970**
- **David was injured as a passenger in an Ontario car accident on March 5, 2004**
- **In the accident David suffered serious and permanent injuries**
- **You are David Jones' lawyer. You provided notice to the defendant on December 12, 2004**
- **You issued a claim on behalf of David and his wife Debbie back on January 17, 2006. A mediation is scheduled for May 21, 2008**

# DAMAGE ASSESSMENT

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**THE PLAINTIFFS' ASSESSMENT-as Plaintiffs' counsel you assess David's claim as follows:**

- **David's gross general damages for his pain and suffering at \$115,000 gross, plus interest**
- **David's wife Debbie's claim for loss of care, guidance and companionship at \$25,000 gross, plus interest**
- **A future housekeeping claim of \$100 a week for the remainder of David's life expectancy and a past housekeeping claim from March 6, 2006 to date in the total amount of \$8,500, plus interest**
- **A future loss of opportunity claim of \$10,000 per year for the remainder of David's working life expectancy (a working life expectancy that you believe is 65 years)**

# DAMAGE ASSESSMENT

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**Question 1: What is the value of the Plaintiffs' assessment?**

(note: this is when you pull out your calculators)

- a) General damages, inclusive of interest: \$\_\_\_\_\_**
- b) FLA claim, inclusive of interest: \$\_\_\_\_\_**
- c) Past Housekeeping claim, inclusive of interest: \$\_\_\_\_\_**
- d) Future Housekeeping claim: \$\_\_\_\_\_**
- e) Loss of Opportunity claim: \$\_\_\_\_\_**
- f) Total damages, inclusive of interest: \$\_\_\_\_\_**

# DAMAGE ASSESSMENT

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**THE DEFENDANT'S ASSESSMENT-Defence counsel assesses:**

- **David's gross general damages at \$75,000 gross, plus interest**
- **Debbie's FLA claim at \$17,500 gross, plus interest**
- **David's future housekeeping claim at \$50 per week until age 50 and acknowledges a past housekeeping claim of \$5,000, plus interest**
- **David's loss of opportunity claim at \$5,000 per year until age 62**
- **David's contributory negligence at 15% for not wearing a seatbelt**

# DAMAGE ASSESSMENT

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Question 2: What is the value of the Defendant's assessment?

- a) General damages, inclusive of interest: \$ \_\_\_\_\_
- b) FLA claim, inclusive of interest: \$ \_\_\_\_\_
- c) Past Housekeeping claim, inclusive of interest: \$ \_\_\_\_\_
- d) Future Housekeeping claim: \$ \_\_\_\_\_
- e) Loss of Opportunity claim: \$ \_\_\_\_\_
- f) Total damages, inclusive of interest: \$ \_\_\_\_\_

# MEDIATION

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## EXAMPLE-ANALYZING THE DEFENDANT'S OFFER:

- **Defence counsel has just made a settlement proposal of \$225,000 plus partial indemnity costs, assessable disbursements and GST**
- **Assume the Defendant's offer includes a contribution of 15% plus GST towards your partial indemnity costs**
- **Assume your assessable disbursements are \$10,000, inclusive of GST**
- **Assume you plan on charging your clients 15% plus GST out of their damage award as your solicitor-client account**

# MEDIATION

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## QUESTIONS:

**Question 3: What do you tell your clients they would receive in their pocket if they accept the defendant's offer? \$\_\_\_\_\_**

**Question 4: Assume your clients instruct you to make a settlement proposal that results in a net return to them of \$325,000. What is the all-inclusive settlement proposal that you would make to defence counsel? \$\_\_\_\_\_**

**Question 5: Assume the defendant's final offer is for a settlement at \$350,000 all inclusive. What do you tell your clients they would receive in their pocket if they accept the defendant's final offer? \$\_\_\_\_\_**

# USES OF THE PIDC

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- The Personal Injury Damages Calculator can also do the following:**
  - Calculate Present Values of Future Care Reports**
  - Apply both the Bill 59 and Bill 198 Ontario MVA systems**
  - Prepare Directions and Accounts**
  - Prepare Basic Releases**

# OTHER TECHNOLOGIES

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- ❑ **The PIDC is just one example of a spreadsheet program**
- ❑ **Spreadsheets can be effectively used to prepare graphs and charts (see example that follows)**
- ❑ **Spreadsheets can also be used in accident benefit disputes (for example when calculating compound interest owed under the Ontario Insurance Act)**

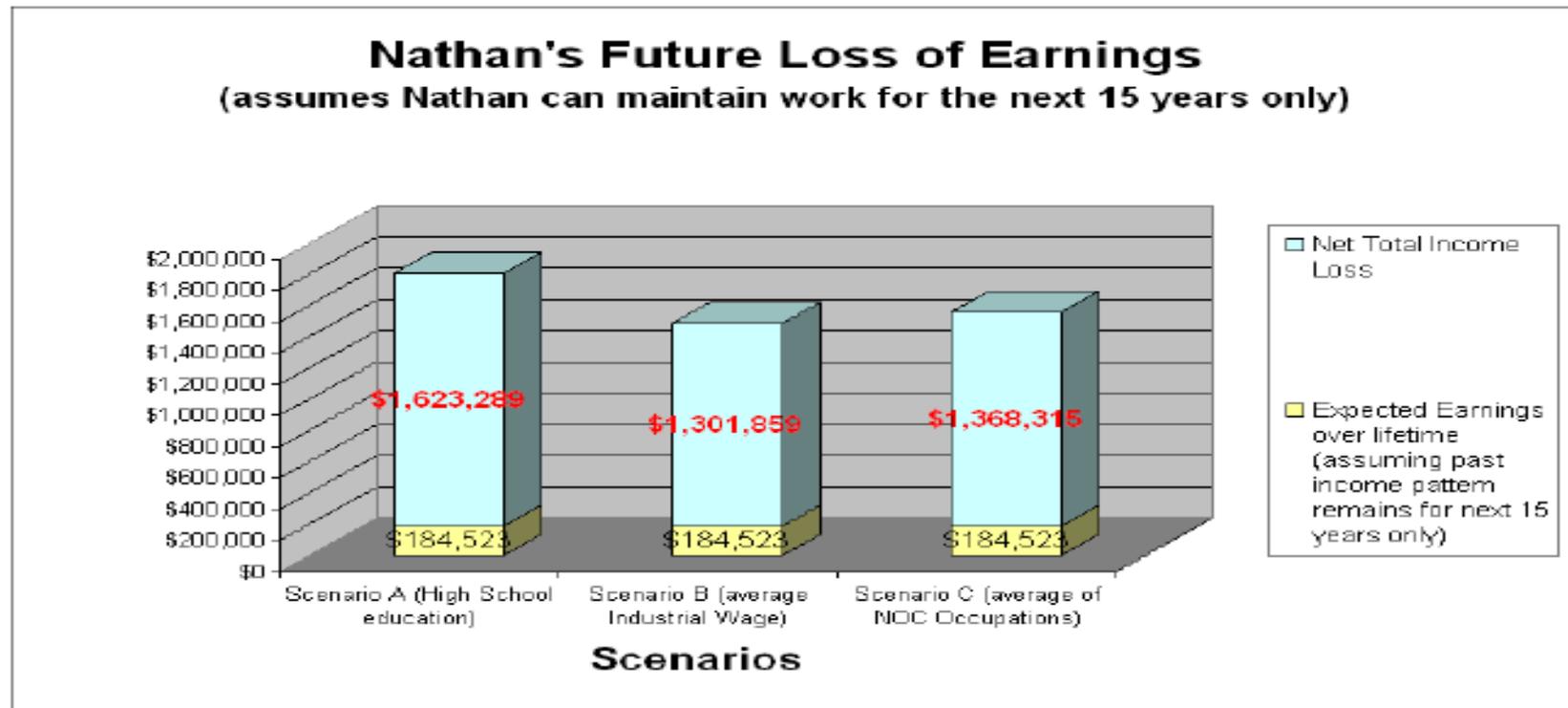
# GRAPH/CHART EXAMPLE

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- ❑ Graphs/charts can easily be generated from spreadsheet programs and are effective means of presenting important information
- ❑ For example, the document on the right is one of three pages prepared by Professor Jack Carr in the *Resch v. Canadian Tire* trial
- ❑ The page that follows graphically depicts the income loss calculations prepared by Professor Jack Carr in the *Resch v. Canadian Tire* trial

|                                     |                     |
|-------------------------------------|---------------------|
| WITHOUT INCIDENT EARNINGS           | \$1,552,838.        |
| <u>LESS WITH INCIDENT EARNINGS:</u> |                     |
| A) TO AGE 62                        | <u>(\$407,868.)</u> |
| NET LOSS                            | \$1,144,970.        |
| B) 15 YEARS                         | <u>(\$184,523.)</u> |
| NET LOSS                            | \$1,368,315.        |

# GRAPH/CHART EXAMPLE



**MANAGEMENT FEE--Professor Carr testified that a 5% management fee should apply**

|            | <u>Amount</u> | <u>Management Fee</u> | <u>Total</u>   |
|------------|---------------|-----------------------|----------------|
| Scenario A | \$1,623,289   | \$81,164.44           | \$1,704,453.14 |
| Scenario B | \$1,301,859   | \$65,092.94           | \$1,366,951.82 |
| Scenario C | \$1,368,315   | \$68,415.73           | \$1,436,730.43 |

# CONCLUSION

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- When quantifying and assessing the value of a personal injury claim, use available tools such as spreadsheet programs to help calculate the precise value of your claim and to enable you to vary your assumptions as the negotiations evolve

Thank you,

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