

BETWEEN:

(1) JOHN SMITH

(2) JANE SMITH

Claimants

and

JOE BLOGGS

Defendant

SCHEDULE OF LOSS AND DAMAGE
CALCULATED TO 30TH JUNE 2009

30 th December 1959	Mr Smith's date of birth
30 th June 1964	Mrs Smith's date of birth
30 th June 2006	Date of accident

Preamble

1. The Claimants are husband and wife. They were the driver and front seat passengers respectively of a car that was involved in a collision with the Defendant's vehicle on 30th June 2006. They each sustained physical injuries. Liability is admitted by the Defendant's insurer without allegation of contributory negligence. The matter is due for trial on 30th June 2009.

Injuries: Mr Smith

2. Mr Smith sustained serious pelvic and leg fractures. He has undergone repeated operations but remains very disabled. He is largely wheelchair-bound when out of doors. He is dependent on others for everyday care. He is unable to work. His condition is permanent. There are no long-term risks. He has a full life expectancy.

Mrs Smith

3. Mrs Smith was less seriously injured. She suffered a soft tissue injury to her cervical and lumbar spine. She has persisting aches and pains, particularly after a full day at work. She now works part time in her clerical job. That restriction is permanent. The Claimant's medical expert agrees that her reduction in hours was reasonable. The Defendant's expert contends that most people with such symptoms would be able to work full time in clerical work and that full time work would not make her symptoms worse but that it is a matter for her what levels of pain she chooses to tolerate.

4. Mrs Smith had pre-existing degenerative change in her neck and back and had occasional previous bouts of symptoms, although had been asymptomatic at the time of the accident for several years. The Claimant's medical evidence is that, whilst she would have continued to suffer occasional intermittent bouts of symptoms, she would not have suffered from the level of symptoms that she now does, had the accident not occurred. The Defendant's medical expert's conclusion is that the effect of the accident was to accelerate symptoms that she would otherwise have suffered from by a period of 5 years, is not accepted.

A PAST LOSSES

Loss of Earnings: Mr Smith

5. At the time of the accident, Mr Smith was running his own construction business. He employed two permanent staff and engaged sub-contractors as and when necessary. As a consequence of his injuries he has been unable to continue to run the business and it has ceased trading.
6. The business was a partnership, Mr Smith and Mrs Smith being the only partners. Although she was entitled to 25% of the partnership profits, in fact she was in reality a “sleeping partner” and, apart from undertaking the basic bookkeeping, did not materially contribute to the partnership’s profits. Accordingly, Mr Smith claims as his loss 95% of the partnership’s loss.
7. In the 3 years preceding the accident the partnership’s net profits were:

To 5/4/2004	£55,000
To 5/4/2005	£45,000
To 5/4/2006	<u>£65,000</u>
Average	£55,000

Assuming a 3.5% increase in subsequent years, this would produce figures of:

5/4/2007	£56,925 (say £57,000)
5/4/2008	£58,917 (say £59,000)
5/4/2009	£60,979 (say £61,000)
5/4/2010	£63,114 (say £63,000)

8. The partnership was dissolved on 30 December 2006, due to Mr Smith’s inability to continue trading. The net profit for that period was £10,000.

9. Thus, the partnership's losses to date are:

In year end 4/07:	£57,000 - £10,000 =	£47,000
In year end 4/08:		£59,000
In year end 4/09:		£61,000
Continuing		£63,000 p.a.

10. Mr Smith's losses are

<u>Year</u>	partnership's loss	x 95%	net of tax/NI
In year end 4/07:	£47,000	£44,650	£29,824
In year end 4/08:	£59,000	£56,050	£39,521
In year end 4/09:	£61,000	£57,950	£41,076
(Continuing	£63,000 p.a.	£59,850	£42,643
£ 3,554 per month x 3 months =			<u>£10,662</u>
Total loss to date =			£163,726

Loss of tax relief on pension contributions: Mr Smith

11. Mr Smith paid £500 per month/£6,000 p.a. into a private pension. He has lost the benefit of tax relief at 40% on his contributions. He claims this loss.

£6,000 x 40% =	£2,400 p.a.	
x 3 years =		£7,200

Loss of Earnings: Mrs Smith

12. Mrs Smith was employed full time as a clerical officer with a telecoms company. At the time of the accident her salary was £18,000 p.a. gross. She was absent from work for 1 month after the accident and then resumed full time work, reducing her hours to part time (2.5 days a week) in January 2007. Had she not been injured, her gross salary would have been:

1/4/2006 – 30/3/2007	£18,000 gross/£13,980 net
1/4/2007 – 30/3/2008	£18,500 gross/£14,387 net
1/4/2008 – 30/3/2009	£19,000 gross/£14,915 net
1/4/2009 -	£19,500 gross/£ 15,379 net

She would, therefore, have earned:

06-07	£13,980 @ 9 months =	£10,485
07-08		£ 14,387
08-09		£ 14,915
09-	£15,379 @ 3 months =	<u>£ 3,845</u>
Total		£ 43,632

13. In fact she has earned

1/7/2006 – 30/3/2007		£10,113 net
1/4/2007 – 30/3/2008	£9,250 gross/	£8,189 net
1/4/2008 – 30/3/2009	£9,500 gross/	£8,360net
1/4/2009 -	£2,375 gross/	<u>£2,120net</u>
A total of		£ 28,782net

Loss =	£43,632 –
	<u>£28,782</u>
	£14,850

14. In an attempt to keep the business going, Mrs Smith significantly increased the hours of work that she put into the business during the period between the accident and cessation of trading. She was not paid for such work. She estimates that she spent on average 10 hours per week during the 6 months between the accident and cessation of trading, a total of 260 hours. Allowing £10 per hour this equates to £2,600, less 25% for gratuitous provision yields £1,950.

15. Total:	14,850 +
	<u>£1,950</u>
	£16,800

Loss of pension contributions: Mrs Smith

16. Mrs Smith's employer paid 5% of her gross salary into an occupational pension fund. She claims reduction in her employer's pension contributions given her part time salary from January 2007.

	Loss of gross salary	@ 5%
January to March 2007	£3,125 (£12,500 p.a.)	£156
April 07 to March 08	£9,250	£463
April 08 to March 09	£9,500	£475
April to June 09	£2,375 (£9,500 p.a.)	<u>£119</u>
Loss		£1,213

Past personal care: Mr Smith

(i) Personal Care in Hospital

17. Mr Smith was in hospital for 3 weeks. Mrs Smith visited her husband each day, staying for 4 hours on each occasion. She found these visits emotionally draining, not least because she was unable to provide practical assistance on account of her own injuries. She relied upon her daughter to drive her to and from the hospital. Mrs Smith's attendance on her husband at the hospital is claimed at the National Joint Council pay rates for care workers employed by local authorities, Spinal Point 8 (set out in Facts & Figures 2008/9 at page 289). The aggregate rate for June 2006 was £8.18/hour.

4 hours x 21 days x £8.18/hour = £687.12

Less 25% =

£515.34

(ii) Personal Care at Home: June 2006 to December 2006

18. On his discharge from hospital, Mr Smith required a substantial amount of personal care, amounting to 12 hours per day. He required assistance with

washing, dressing, toileting, all transfers, etc. For the first 6 months, this care was provided by his daughter, who took extended unpaid leave from her job as an IT manager in order to look after her father. Prior to take this leave of absence, she had been earning £50,000 net pa. The cost of her care in this period was her loss of earnings.

6 months' loss of earnings = **£25,000.00**

(iii) **Personal Care at Home: January 2007 to June 2009 (trial)**

19. As from January 2007:-

- Mr Smith's condition had improved slightly and his care needs reduced to 8 hours/day.
- Mrs Smith reduced her working hours to part-time, i.e. 2.5 days per week, and her commitment to the business ceased. Her own injuries had improved and she was now able to provide more care for her husband. Her daughter returned to work.
- An interim payment allowed the Claimants to engage carers on a commercial basis to supplement Mrs Smith's care.

20. Gratuitous care. In the period between January 2007 and June 2009, Mrs Smith provided 8 hours care per day, for 4.5 days each week. Mrs Smith's care is claimed at the National Joint Council pay rates for care workers employed by local authorities, Spinal Point 8 (set out in Facts & Figures 2008/9 at page 289). The aggregate rate for June 2006 was £8.18/hour. Due to the fact that much of this care was of a highly personal nature, the rate is not discounted for gratuitous provision. Therefore:-

8 hours/day x 4.5 days/week x £8.18/hour = £294.48/week

2.5 years x 52 weeks x £294.48/week = **£38,282.40**

21. Cost of commercial carers. In the period between January 2007 and June 2009, commercial carers were engaged via an agency as follows:-

- On the 2.5 days when Mrs Smith was at work, for 8 hours per day
- On the remaining 4.5 days, when Mrs Smith was at home, for 2 hours per day to assist with Mr Smith's morning and evening routine.

8 hours/day x 2.5 days/week x £12.00/hour = £240/week

3 hours/day x 4.5 days/week x £12.00/hour = £162/week

2.5 years x 52 weeks x £402/week = **£52,260.00**

22. Gratuitous case management. In the period between January 2007 and June 2009, Mrs Smith was acting as her husband's case manager, spending approximately 2 hours per month dealing with the agency that supplied her husband's carers. Her services are claimed by reference to the commercial rate for a case manager of £80/hour, discounted by 25% for gratuitous provision to £60/hour.

2.5 years x 12 months/year x 2 hours/month x £60/hour = **£3,600.00**

Past personal care: Mrs Smith

23. For the first month post-accident, Mrs Smith received care from her daughter in the evenings and at weekends. The individual tasks and the times involved in each task are set out in detail in Appendix 1 to this Schedule. The total was 93 hours 15 minutes. *[Appendix 1 is not included here, but comprises 4 pages of detailed descriptions of tasks and times].*

93.25 hours x £8.18/hour = £762.79

Less 25% = **£572.09**

Past household assistance: Mrs Smith

(i) Household assistance in the first month post-accident

24. For the first month post-accident, whilst Mrs Smith recovered from her injuries, her next-door neighbour helped out with the household chores. She provided 2 hours household assistance each day. She does not wish to receive any financial reward for her assistance. Nevertheless the Claimants feel obliged to offer her recompense for her time.

31 days x 2 hours/day x £8.18/hour = £507.16

Less 25% =

£380.37

(ii) Household Assistance up to 1 year post-accident

25. Thereafter Mrs Smith was sufficiently recovered to resume responsibility for the household tasks, as she had pre-accident. However, until approximately 1 year post-accident, these tasks took her twice as long as they had done pre-accident. She therefore spent an extra 2 hours per day doing the household chores.

334 days x 2 hours/day x £8.18/hour = £5,464.24

Less 25% =

£4,098.18

Travel

26. The Claimants' daughter drove Mrs Smith to Hospital so she could visit her husband. She used their car. Mrs Smith purchased the petrol. Whilst at the Hospital she, too, visited her father. This continued over a 3 week period.

- | | | |
|----|--|------|
| 1) | Parking costs: £5 per day for 21 days | £105 |
| 2) | Mileage to hospital and back 35mls @
£0.45 p ml for 21 days | £294 |

27. 1) In addition the daughter ferried the First Claimant to various (estimated at 55) treatments or doctor's appointments, which were 15 mile round trips.
55 x 15 x £0.45 £371.25
- 2) Further she ferried both her mother and father To visit Mr Proclaim, a medico-legal expert @ 105 miles, round trip, on two occasions.
105 x 2 x £0.45 £94.50

B FUTURE LOSSES

Loss of earnings: Mr Smith

28. Mr Smith's losses continue at the annual rate of £59,850 gross/£42,103 net. He is currently aged 49 yrs and 6 months. He would have worked to age 65. His multiplier from table 9 is 12.39. His discount factor from table A (not disabled, employed, GEA) is 0.86, yielding 10.66. Thus his loss is:

$$£42,643 \times 10.66 = \textbf{£454,574}$$

Loss of pension contributions

29. The loss continues at £2,400 p.a. The multiplier is the same as for earnings, namely 10.66.

$$£2,400 \times 10.66 = \textbf{£25,584}$$

Loss of Earnings: Mrs Smith

30. Mrs Smith had only been working for the telecoms company for a short period and she expected to be promoted to the post of accounts manager within 5 years of the accident. Thereafter, she had a chance of being promoted to the post of senior accounts manager but it is accepted that the chances of this are more remote. Accordingly, Mrs Smith presents as a reasonable "career model" promotion to accounts manager and claims loss of earnings on that basis, in accordance with *Herring v M.O.D.* [2004] 1 All E.R. 44.

31. Her multiplier to age 65 is 15.40. The multiplier for a fixed period of 5 years from table 28 is 4.70, leaving 10.7 as the balance. The discount factor from table C is 0.85 (Not disabled, employed, GEA). Thus the multipliers for her 2 periods of loss are:

$$\begin{array}{ll} 4.70 \times 0.85 = & 4.0 \\ 10.7 \times 0.85 = & 9.10 \end{array}$$

32. The multiplicands for her 2 periods of loss are £19,500 gross/ £15,379 net and £25,000 gross/£19,174 net as a senior accounts manager.

£ 15,379	net x 4 =	£61,516 +
£19,174	x 9.10 =	<u>£174,483</u>
Total		£ 235,999

33. As she is only working part time, she is now unlikely to secure promotion. Accordingly, her residual earning capacity is limited to £9,500 gross/£8,475 net p.a. Her discount factor as a disabled person is 0.54, yielding a multiplier of 8.32. Her residual earning capacity is, therefore:

£ 8,475	x 8.32 =	£70,512
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34. Her future loss of earnings is:
- | | |
|--|------------------|
| | £ 235,999 – |
| | <u>£ 70,512</u> |
| | £ 165,487 |

Loss of pension: Mrs Smith

35. The loss for the first period of the multiplier is £9,500 x 5% = £475 p.a. The multiplicand for the second period is £15,500 (£25,000 - £9,500) x 5% = £775 p.a. Multipliers are as for lost earnings.

£475	x 4 =	£1,900 +
£775	x 9.10 =	<u>£7,053</u>
Total		£8,953

Future personal care: Mr Smith

36. Mr Smith's medical condition is permanent, there are no long-term risks and he has a full life expectancy. He will continue to require 8 hours of care each day for the remainder of his life.

37. Mrs Smith would like to be able to continue to look after her husband, but she struggles with the heavier aspects of his care. Future care is therefore claimed on the basis of professional carers and a professional case manager. The cost of professional carers for 8 hours per day, or 56 hours per week, will be £45,000 pa. The cost of professional case management at 2 hours per month will be £3,000 pa. Please see the report of the Claimants' care expert for full details of these future costs.

Multiplier

Mr Smith is now aged 49.5 years. Full life multiplier (Ogden Table 1) is 22.07

Carers

22.07 x £45,000 = **£993,150.00**

Case management

22.07 x £3,000 pa = **£66,210.00**

Future Accommodation: Mr Smith

38. The Claimants own their own home. It is valued at £200,000. There is no mortgage. It is a 2 storey Victorian terraced house with a narrow winding staircase. It is not suitable for Mr Smith's needs. A bungalow is required.
39. A suitable bungalow has been identified near to where the Claimant's presently live. It is for sale and could be purchased for £400,000. The costs of moving house will be £20,000. The cost of minor adaptations to the bungalow, so that it will meet Mr Smith's needs, will be £10,000.
40. The Claimants claim the extra cost to which they will be put as a result of the move, i.e. £200,000 + £20,000 + £10,000.

Therefore **£230,000.00**

Transport

41. The First Claimant is and is likely to remain virtually wheelchair bound for most outdoor trips where he will be accompanied by a carer. He claims for a Chrysler Voyager with Entervan for his wheelchair. He will need special adaptations to the car in order to drive from that wheelchair. This scheme is a reasonable one for the Claimant's injuries.

Chrysler Voyager	£35,000
Entervan	£20,000
Wheelchair	£500
Adaptations	£3,500

42. He will need to change this vehicle every 3 years. He will obtain some second-hand value for the Chrysler (£15,000), but nothing for the other adaptations.

Apply Table 1 @ 0%; and A5.

Life expectancy is 32. From A5 = $10.79 \times £43,500$ £469,365

Holidays

43. The Claimant and his wife had gone on holiday every year to enjoy a sun/beach holiday. It cost them about £3,750 for them both. The First Claimant will need special accommodation because of his need for a wheelchair, and he will also need to take a carer with him. The cost of his holidays with the Second Claimant and the carer will now be £10,750 annually on an all inclusive basis in the Caribbean. This scheme is a reasonable one for the Claimant's injuries.

Applying Table 1 @ 2.5% = $21.5 \times £10,750$ £231,125

Aids & equipment

44. The Claimant needs 3 wheelchairs. He needs a quickie” for everyday use; and a specially adapted wheelchair because of his desire to start playing paraplegic rugby. In addition he needs a spare in case his usual wheelchair breaks down. This scheme is a reasonable one for the Claimant’s injuries

Quickie	£500
Sports	£1,000
Spare	£350

45. The Quickie will need replacing every 5 years. The Sports will every 3 years (it will get damaged during competition), the Spare every 10 years.

Applying Table A5 for life expectancy of 32:

Quickie £500 x 4.4 =	£2,200
Spare £350 x 2.24 =	£784
Sports £1,000 x 7.25 =	£7,250

Peter Barrie

The Claimants believe that the facts stated in this Schedule are true.

Signed

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John Smith

Jane Smith