

Marini & Associates
Forensic Rehabilitation Consultants

Life Care Plans
Vocational Assessment Damages
Personal Injury Damages
Registered Forensic Vocational Expert

2508 Kings Drive
Edinburg, TX 78539
phone: (956) 380-6499
fax: (956) 380-6499

Vocational Evaluation Assessment Re: Paul Prance – 10/30/04

Client:	Paul Prance	Date of Birth:	07/25/51
Report:	05/21/04	Date of Accident:	03/27/01
Address:	112 Ibigail Lane Santa Maria, TX 78545	Retaining Attorney:	Randall Plane Attorney at Law 221 S. Sam Allan San Maria, TX 78545
SS#	1234-56-7890		

Client Identifying Information

Mr. Paul Prance, born 7/25/51 is currently approaching his 53rd birthday and is an approximate 5'9" right-handed dominant Hispanic male. Mr. Prance was referred by his attorney Mr. Randall Plane for the development of a vocational assessment Re: any potential future wage loss as well as loss of opportunity in the labor market. Mr. Prance was injured March 27, 2001 while working for BFW construction when he stepped into a hole sustaining permanent injuries to his knee and herniated lumbar discs in his lower back. Mr. Prance was interviewed on 5/21/04 in attorney Joseph Cristian office in Mystery, Texas.

Family History

Mr. Prance has been married for the past 30 years to wife Diana Prance and the couple currently have their 22-year-old son Eric living at home. They also have two other sons living in Chicago; Bobby Toy age 30, and Paul Prance Jr. age 29. Mrs. Prance is a secretary in the Cimeron County Courthouse. Prior to moving to San Maria, the Prance family lived in Chicago for approximately 40 years.

Educational History

Mr. Prance reports having completed high school in Ags, Mexico and took ESL courses in the United States. He maintains a valid driver's license and no other postsecondary education. He has received training/vocational skills using cutting machines to cut iron with the company called Pendix in Chicago, and has a Carpenter's license from Chicago.

Vocational History

Mr. Prance has had a number of jobs in his work life, all of which have involved physical labor in some capacity. In no specific order, Mr. Prance last worked with BFW construction March 27, 2001 and reports being unable to work since then. He indicates having worked your for approximately 7-8 months with a last reported wage of nine dollars per hour full-time. Construction Labor according to the *Dictionary of Occupational Titles* (DOT) requires very heavy lifting (over 100 lbs. maximum), occasional climbing, balancing and frequent stooping, kneeling, crouching, reaching and handling. Prior to this, Mr. Prance worked as a Porter for Baptist hospital in Hazardton where he would deliver food trays to each floor for over \$6.50 per hour. The DOT describes a Porter/Foodservice Worker as medium work (lifting a maximum of 50 lbs.) and involving occasional stooping, crouching and frequent reaching and handling. He reportedly performed this position for approximately one year during 1999 -- 2000 and left because the hospital laid him off. Mr. Prance also worked approximately six months at San Maria school district on contract/on call to do general maintenance/woodwork such as repair damaged walls. The DOT classifies this as unskilled Carpenter Repairer positioned involving medium lifting, occasional kneeling and frequent climbing, balancing, stooping, reaching and handling. Mr. Prance reportedly left this position due to the low-wage (minimum). He also worked for Roman Interior in San Maria as a Carpenter for approximately one year in which he would install corian for houses earning approximately \$8-\$10 per hour. The DOT describes a Carpenter as medium work, skilled in nature, involving occasional climbing, balancing, stooping, kneeling, crouching and frequent reaching, handling and fingering. Mr. Prance additionally spent approximately two years working for Williamson Construction again installing cabinets at Baptist hospital. He believes he earned \$10 per hour performing carpentry with this company as well, and was essentially laid off when the work was completed. Aside from working in Texas, Mr. Prance worked in Chicago for US Can where he was an iron Inspector classified as heavy work involving frequent reaching and handling and inspecting stamps (ie., coke, Snapple) for flaws and lifting the heavy iron sheets the stamps were pressed on. He estimates having earned approximately \$13-\$17 per hour for the one year he remained there. Prior to this, he worked for American Woodwork company as a wood Sander/Finisher Carpenter finishing cabinets, conference tables, cutting wood using a variety of saws etc., for 10 years earning \$20 per hour. The DOT describes this position as medium lifting work, unskilled in nature, involving occasional stooping and constant reaching and handling. He lost this job apparently due to the fact that the company moved to Wisconsin and he remained with his family in Chicago. Finally, Mr. Prance has been able to return to work after being off from March 27/01 to December, 2003 when he made a work attempt at Hope Lumber in San Maria where he worked as a Carpenter constructed door frames for approximately two months. Since the job required lifting heavy door frames he was unable to do so, the company laid him off. After checking with Manpower for another job and being off of work for one month, Mr. Prance has for the past two months been employed with Penske auto-parts in the warehouse where he is on three-month probation. This job involves several components including that of a Shipping and Receiving Clerk, Forklift Driver, and Inventory Control Clerk. In total, the combination of these jobs involve semiskilled work, medium lifting,

occasional climbing, stooping, crouching, and frequent reaching and handling. Mr. Prance is currently earning seven dollars per hour and indicates the job involves very little lifting but he is on his feet much of the shift. He works from 10 p.m. to 6:30 a.m. five days per week and reports being sore and periodically needing to take painkillers due to pain in his lower back. He questions whether he will be able to last in this job.

Overall, Mr. Prance's work history entails physical labor type jobs with pay grades between minimum wage and \$20 per hour. Although it is apparent from Mr. Prance's W-2 work history from previous years that he was indeed earning a substantial amount of money at Woodwork (1987 W-2 = \$33,250; 1988 = \$34,719; 1989 = \$38,187) in the past, he has also had years of income where he struggled such as Campo Pizzeria in 1990 for \$6,755 and the following year at two restaurants totaling approximately \$4,000. The Texas Workforce Commission 2003 indicates the national hourly median wage for Finish Carpenters is \$15.41 per hour. Mr. Prance's training and experience as well as performing carpentry work in the region for between \$8-\$10 per hour is a realistic vocational probability for where potential wage loss can be estimated. This will be discussed in a later section.

Medical History

From reviewing his medical records and interviewing Mr. Paul Prance, the following medical history is provided:

3/27/01 Mr. Prance suffered an injury to the left knee and back area while working for BFW Company in Hazardton, TX. He was on the second floor of a building when he picked up a large garbage can and turned to walk with it and fell through a hole in the floor.

3/28/01 Mr. Prance saw Dr. Marcelo Radriquez. He requested X-rays of the lumbosacral spine and left knee.

4/09/01 Had MRI done by Dr. Bunger which shows a tear of the anterior horn of the median meniscus and a tear of the lateral meniscus of the anterior horn. Left knee showed some chondromalacia Grade II on to the femoral condyle.

4/11/01 Patient is seen for an MRI. It is suggestive of degenerative changes in the medial meniscus.

4/20/01 Mr. Prance is seen for a left knee meniscal tear, lumbar strain/sprain, and a herniated nucleus pulposus by Dr. Pinez.

4/23/01 Seen by Mr. Podigo in Action Physical Therapy. Patient reports back is improving.

4/24/01 Seen by Dr. Michado in Well Care Occupational Medicine.

4/25/01 Daily note by Mr. Pedigo. Patient reports back is improving.

5/01/01 Underwent surgery for torn meniscus. A partial meniscectomy, removal of the anterior horn, and some shaving of the chondromalacia. No tear was found in the body of the meniscus.

5/6/01 Re-eval by Dr. Ridriquez in Action Physical Therapy. Incisions are healing. Patient has been let go from the company because he was unable to work. Patient is to continue walking on his knee. Return to clinic in one week for suture removal and will start therapy in two weeks.

5/08/01 Seen by Dr. Perod for a follow up one week post op orthroscopy for meniscus tear.

5/16/01 Daily note by Mr. Russo. Mr. Prance has pain with forward bending. Has made good progress.

6/01/01 Daily note by Mr. Perdigo. Knee is better.

6/09/01 Radiology report in Rio Grande Valley Imaging and Diagnostic Center. An MRI of the lumbar spine is performed in sagittal and axial planes. There is minimal spondylosis and disc desiccation involving the L1-L2 segment with minimal spondylosis involving the L2-L3, L4-L5, and L5-S1 segments. There is minimal central spinal canal stenosis at the L1-L2 and L2-L3 segments. Posterior central to slightly right paracentral disc protrusion hooded by spur and hypertrophic changes of the posterior ligament are occurring at the L5-S1 segment.

7/03/01 Two month follow up. Patient had full range of motion and extension. His back had multi-level spondylolysis from L1 to S1 and some spinal canal stenosis with disc protrusion.

7/09/01 Initial Functional Capacity Evaluation by Mr. Russo. Patient was observed sitting for 1.5 hours and showed signs of pain. Had frequent standing breaks and weight shifting. He was observed standing for 1.5 hours and there were signs of increasing pain and pain posturing through frequent weight shifting. Walking: there was a change in normal gait with prolonged walking. Crawling: patient had problems getting down onto or up from the floor and pain patterns were observed. Can lift 35lbs from floor to waist. Waist to shoulder: 17lbs.; shoulder to overhead 10lbs.; carry 25lbs; push/pull 130 lbs and lifting technique is poor.

7/17/01 Follow up with Dr. Pinez. Patient is to be scheduled for a discogram to see if he will need surgery.

7/31/01 Clinical progress notes from Mr. Romeo Escobar indicate that Mr. Prance has increased animation, stable and congruent to emotional tone. His attitude is positive and contributory.

8/16/01 Clinical progress notes from Mr. Escobar. He notes that being terminated from job initially created some stress for him but was able to overcome it by maintaining a positive attitude. He discussed his coping styles to handle stress.

8/21/01 Clinical progress notes indicate that Mr. Prance noted that effective communication can resolve issues quickly. Expressed how the lack thereof presented problems with former employment.

8/23/01 Letter from Dr. Abermiller to Mr. Balle regarding Mr. Prance's condition. Evaluation of the patient was done in regard to the lumbar spine and injury to the left knee. Assessments include: status post medial meniscal tear with partial meniscectomy of the left knee and lumbar disc protrusion. It was determined that he requires no further diagnostic tests or treatment besides the physical therapy he already receives. Mr. Prance is at maximum medical improvement. He has a 5% impairment of the whole person based on the lumbar spine. He was found to have a meniscal tear with partial meniscectomy for a 6% impairment of the whole person based on the lower extremity. Totalling an 11% impairment. Patient can return to work but needs restrictions of limited lifting, bending, pushing, pulling, and stooping activities.

8/28/01 Dr. Pinez discusses with patient the plan of a discogram and IDET. Patient will return in November.

8/29/01 Final Functional Capacity evaluation by Anthony Russo. Patient is currently functioning at light/medium physical demand level. Reports a pain level of 6 (1-10) scale on all handling activities: sitting, standing after 1.5 hrs, walking (300'), bending, reaching, squatting, kneeling, crawling, and climbing. Mr. Prance currently can pick up from waist to shoulder 25lbs, from shoulder to overhead 10lbs, carry 50lbs, pushing/pulling 160lbs, and lifting techniques is fair. Patient's movement patterns and behaviors were not consistent with pain ratings. Changes in pain behavior would indicate that patient's functional abilities are greater than were demonstrated during evaluation. Patient is ready to return to work.

9/07/01 Follow up by Dr. Pinez. He is still having back pain and is unable to return to work. Patient is to be referred to rehab to strengthen his back. Will be re-evaluated there after.

9/21/01 Dr. Pinez report indicates that the patient is at MMI without surgery. Patient has a total of 8% whole person impairment due to his disorder of the spine. He has a 4% impairment due to his total lumbar sacral motion. Patient has a 16% impairment today.

10/03/01 Report from Churchill evaluation centers by Dr. Turno on 10/3/01 indicate that Mr. Prance was found to have not reached maximum medical improvement. Patient cannot do a knee bend or bend down on his knees. Knee still locks and does a clicking sound. Cannot straighten out his left knee. Has a marked limp and a gait problem. Needs additional treatment and evaluation. He cannot go back to work.

11/06/01 Follow up by Dr. Pinez. Knee is getting better. Has some spasms with prolonged activity or lifting something heavy. Needs authorization to do discograms and further back investigation, which continues to be denied.

12/04/01 Patient comes in for a follow up for his back with Dr. Pinez.

12/24/01 Follow up by Dr. Pinez. Recommends EMG studies and facet injections for Mr. Prance.

1/14/02 Mr. Prance is seen by Dr. Charito Go. Electrodiagnostic studies demonstrate bilateral multilevel needle electromyographic findings suggestive of spinal stenosis at the level of the L2/L2, L4/L5, and L5/S1

1/31/02 Operative report from North Point Surgery Center by Dr. Pinez indicates that Mr. Prance received an injection of facets L3-L4, right and left, L4-L5 right and left, L5-S1 right and left and sacroiliac joint right and left, upper and lower. Postoperative diagnosis includes facet pain syndrome and sacroilitis.

2/05/02 Seen by Dr. Pinez. Patient has back pain, facet pain syndrome, and disc pain. He is to be treated with anti-inflammatories. Repeat injections in 3-4weeks.

2/25/02 Dr. Pinez recommends repeat injections in 3-4 weeks.

4/05/02 Report from Dr. Pinez to Kenneth Valle. Recommends a discogram with a post-procedure CT scan to further identify the nature of Mr. Prance's pathology.

4/08/02 Report from Dr. Chindradekharan in Weslaco states that no neurological deficits were found. No wasting of the muscles or fasciculation or fibrillation. Patient has mechanical back pain due to the spondylosis. The patient has reached MMI. Impairment rating due to the back is 5%. Impairment to the knee is 4%. Total impairment rating is 9%.

5/14/02 Physical examination by Mr. Willoughby. Patient is complaining of intermittent low back pain which is aggravated with prolonged sitting and walking. Left knee is doing better following surgery. Examination reveals tenderness and para vertebral muscle spasm palpated bilaterally. Patient will benefit from a discogram with post procedure CT scan. Will follow up in four weeks.

6/11/02 Recheck of low back pain by Mr. Willoughby in Southern Orthopedics Sports Medicine. Objective physical examination of the lumbar spine reveals para vertebral muscle spasm palpated bilaterally. Physical examination of the left knee shows he has a full active range of motion and exhibits good patellar retracting. He is to continue with medications and remain off work.

7/02/02 Patient is seen by Dr. Pinez for a follow up for low back injury and post lumbar injections. He states he has pain in areas L4-L5-S1 on right and left side. A discogram has been recommended to the patient.

8/07/02 Discogram at L3-L4, L4/L5 and L5/S1 by Dr. Pinez in Adinburg Regional Medical Center. Postoperative diagnosis is a herniated disc at L5-S1.

8/26/02 Dr. James Hood reports that the MRI done on Mr. Prance reveal that he incurred no new injury to the lumbar vertebral structures or lumbar disc. Changes seen are preexisting, naturally occurring, and aged related. No further treatment is owed to Mr. Prance for the effects of his work injury. This includes: physical therapy, work hardening, work conditioning, durable medical equipment, medication, or injections.

8/29/02 Required medical examination by Dr. Abermiller. Mr. Prance continues reporting back pain and knee pain. He continues to see Dr. Pinez and has had a discogram of the low back which shows no extravasation of dye from the lower disc levels. Patient is in no distress and walks with a nonantalgic gait. He is able to forward flex with his fingers. Both flexion and extension aggravate his low back pain. Recommendations indicate that the patient does not require further diagnostic testing. Dr. Abermiller suggests that a self-directed, home-therapeutic exercise program would be appropriate.

10/10/02 Dr. Pinez report indicates his disagreement with Dr. Chindradekharan regarding the impairment rating for Mr. Prance. The 16% impairment rating should stand.

11/05/02 Recheck for low back pain by Mr. Willoughby. He is continuing to have low back pain with radiation of pain in the lower extremities. Pain is present on a constant basis. Insurance company is not paying for medications, patient was given samples of Celebrex 200mg. Follow-up for left knee shows that it is positive for mild tenderness to the medial meniscus area and lateral collateral ligament.

12/17/02 Mr. Prance comes in for increased back pain. There is no noted spasm at this time to back. Patient is to continue with medication and conservative care.

2/19/03 Mr. Prance is seen for a follow up with Dr. Pinez. There is low back pain and stiffness at paravertebral lumbar area. Plan includes: Bextra 10 mg and return to clinic in two months.

2/26/03 Seen by Dr. Hiod in Beaver Oaks Pain Management. Lumbar spine examinations are positive for extreme pain on hyperextension and side bending. Impression includes: facet joint dysfunction as proven by positive response to facet joint injections. Request for lumbar branch blocks as a diagnostic test for possible facet neuretomies.

Current Medical and Living Circumstances

Mr. Prance's current status is that of being employed at Penske which handles car stereos and he completes the 10 p.m. to 6:30 a.m. shift five days per week. He goes to sleep around 7 a.m. once home from work and gets up around 3:30 p.m. to 4:30 p.m. during the week, waits for his wife to come home cook dinner, and sometimes sleeps again before work. When he does take his painkillers, he takes one in the morning and one at night. He does not like to rely on the pain medication for fear of becoming dependent on them. He reports the greatest pain first the morning which he rates as a 6/7 out of 10 (10 being extremely painful); then after pain medication he rates his pain as 4/5. Although he would like to see his orthopedic surgeon Dr. Pinez, insurance will no longer cover these visits. He reports having had past injections for pain which worked, however, insurance ceased approving these visits as well. His pain is particularly increased in the cold. Indicates his knee hurts when he walks too much such as walking in the mall. Indicates Dr. Pinez wanted to perform surgery on his back but this was not approved. Currently he sees his family physician Dr. Reddy when needed and takes over-the-counter Tylenol for pain. Dr. Pinez, in his recent 02/10/04 deposition has recommended sedentary work for Mr. Prance with restrictions in bending, stooping, climbing, walking on uneven surfaces and carrying over 15-20 lbs.

Vocational Assessment

In assessing any potential vocational damages an individual has, this process is typically broken down into two areas. The first deals with whether an individual has lost any access to their labor market (otherwise known as Labor Market Access loss). The second area assessed relates to whether an individual has/or will sustain any future earning capacity or wage loss due to an injury. I will deal with these issues in order separately.

Mr. Prance has unquestionably sustained a labor market access loss. Pre-injury, he had no significant medical history of disability which would limit him in performing the heavy type lifting work he had done in the past. Post-injury, however, I will refer to the two different reports to provide a range of labor market access loss for this gentleman. The Functional Capacity Evaluation performed a few years ago indicated Mr. Prance was capable of performing light/medium lifting work with some limitations in stooping, crouching, bending. In this capacity, Mr. Prance would sustain an approximate 30% - 40% labor market access loss excluding all heavy and very heavy lifting jobs as well as a percentage of medium lifting jobs. The other component, however, comes from Dr. Pinez's recent deposition (February, 2004) in which he opined that Mr. Prance had restrictions that would limit him primarily to sedentary type work. In this instance, Mr. Prance would then sustain an approximate 80%-90% labor market access loss. The Department of Labor source directory *Classification of Jobs* indicates that in the US national economy, approximately 9% of all jobs are performed at the heavy level, 30% of all jobs are performed at the medium lifting level, 49% of all jobs are performed at the light lifting level, and 10% of all jobs are performed at the sedentary level for reference purposes. As such, ***I would conservatively estimate that Mr. Prance's loss of labor***

market access loss ranges between 30% - 90% (average 60%) due to his physical disability based on these two reports.

In determining Mr. Prance's potential future wage loss, consideration must be given to what his past work history suggests. There's no question he has functioned as a Carpenter most of his life, and depending on what part of the country he was in, earned what Carpenter's typically earn. In Chicago, he earned as much as over \$20 per hour and in his best years as noted earlier, he made \$33,250, \$34,719, and in 1989 earned \$38,187. In the Valley, however, his earnings for carpentry work range in the \$9 - \$10 an hour range for the short-term jobs he worked without having a real opportunity to realize a wage increase. The national median average for Carpenter's in 2003 according the TWC Tracer was \$15.41 per hour and \$14.94 for the state of Texas. Realizing that there are Carpenter positions in the Valley that pay more/less than what Mr. Prance has actually worked for, it is appropriate then to provide a range using the national average as well as local figures as a basis for estimating his wage loss but not to exclusively limit him to the Valley. Mr. Prance was earning \$7 per hour with Penske and in view of the fact that he does not possess an American high school education diploma, there are a number of jobs he would otherwise not qualify for requiring a minimum high school education. In his interview, Mr. Prance indicated and demonstrated the ability to read English, however, further expressed difficulty in writing English. He is fluent in Spanish in all capacities. If he is unable to sustain the Penske position over time, especially having to drive the forklift, he may find himself out of work once again. Mr. Prance is unquestionably motivated to work as his attempts indicate, including the fact that he indicated having applied at several places who would not hire him once he indicated having a low back and knee injury. Employer discrimination to hire the disabled is not factored in this analysis, however, it cannot be denied that it does exist despite the 1973 Rehabilitation Act and ADA protection laws. Nevertheless, due to Mr. Prance's medical impairments, his education and age as a factor, should he have to once again return to the workforce (and since my interview he was fired and has worked at least other job paying \$6.50 hour), he would be looking at in all vocational probability jobs paying somewhere between \$5.15 - \$7.00 per hour (average \$6.07 hour).

As such, for my analysis, I will use the 2003 national Carpenter average of \$15.41 per hour and the Valley median for Carpenters of \$9.83 per hour to average at \$12.62 per hour as his wage loss ceiling if he were to remain in the Valley. If he were to travel elsewhere in the US for Carpentry work, he would enjoy a \$15.41 per hour mean. Comparatively for the wage loss, I will use his likely maximum seven dollars per hour as where his labor market wages will maximally remain at (if employed at all based on our recent interview), and provide a range with Valley carpenter wages of \$12.62 average as well as the national mean of \$15.41 per hour. This represents a \$5.62 - \$8.41 per hour wage loss X 40 hours per week X 260 work days a year. In total, this represents an estimated \$11,690 annual wage loss locally up to \$17,492 per year nationally. Without definitively using an economist, this translates into a lifetime \$147,289 - \$220,399 (average = \$183,844) wage loss to a worklife expectancy of 12.6 more years or 65.6 years (Scoog & Ciecka, 2004).

It is therefore my opinion with a reasonable degree of vocational probability that Mr. Prance has sustained an approximate 30%-90% loss of his labor market access (60% average), as well as a wage loss ranging from \$11,690 - \$17,492 per year,

in present day dollars or a lifetime loss over 12.6 years ranging from \$147,289 - \$220,399 (average = \$183,844) in present day dollars. It is my hope that this analysis is helpful in resolving this gentleman's vocational damages.

Sincerely,

Irmo Marini, Ph.D., CRC, CLCP, FVE®
Certified Rehabilitation Counselor
Certified Life Care Planner
Registered Forensic Vocational Expert