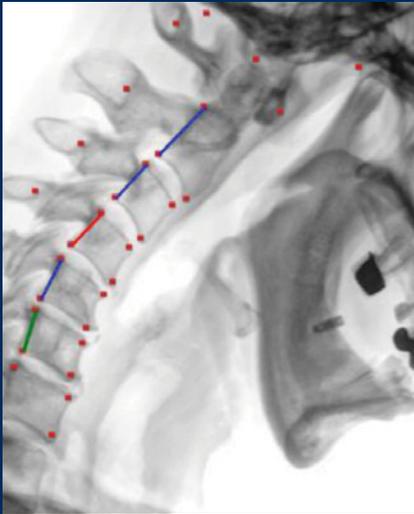


# The \$66,000 Neck Injury...

And How Not To Be Misdiagnosed

## 65% of Accident Victims Have This Overlooked Injury



### This Injury Remains Undetectable By The Human Eye



**Called AOMSI – The AMA Rates This Injury Severe and It Carries a:**

- **25% Impairment Rating by AMA**
- **\$66,000 Settlement Reserve by Insurers**

**CONTRIBUTING AUTHORS:  
FRANK LIBERTI D.C. | RICHARD FALCONE, D.C.**



## About Frank Liberti D.C.

Dr. Liberti says misdiagnosing or missing this injury rated as “severe” by the AMA Guides, can have dire consequences to the injured and the injury case. Yet it has happened with more frequency than one would imagine. Failure of the human eye to detect this injury has led to it being missed 35% to 45%, until now.

Known as “alteration of motion segment integrity” (AOMSI), this severe spinal injury has been routinely misdiagnosed until a recent diagnostic procedure. It’s hard to imagine missing this major injury, given the “AMA Guides to the Evaluation Of Impairment Rating” assigns this injury a 25% whole person impairment.

In many cases of vehicular collisions, including low-speed accidents, G-Forces are sufficient to produce a tear in the ligament that stabilizes the vertebra thus altering the integrity of spine and leading to this serious injury, according to AMA Guides, 3rd, 4th, 5th and 6th Editions. This by itself, is a serious situation, and when overlooked, may lead to the injured returning to activity that may further injure or damage the spine.

Dr. Liberti has teamed up with **Richard Falcone, D.C.** as a local ally in the battle to prevent this injury from being overlooked and eliminate disputes, denials and undervaluation of this injury type in Allegheny County.



## About Richard Falcone, D.C.

One thing we can all agree on is that unfair injury settlement valuations exist and we must all try to do all we can to prevent insurance companies and their adjusters & IME’s from disputing, denying, discounting and defending unfair settlement valuations. The last thing we need is for a doctor to miss a diagnosis that leads to a loss of the valuation of the case. A former Superintendent of Insurance at Allstate, James Mathis, stated that a Diagnosis of AOMSI assigns a case settlement reserve value of \$66,000.

To rate this injury, the AMA requires a special computer program used to plot specific measurements of alteration between vertebra that cannot be seen by the naked eye. This software is not a usual component in a doctor’s office. When a physician wants to determine if his patient has suffered from this injury, a specialized computer program must be used to determine if the ligaments have been torn. Most MRI centers do not even have this software. This requires a precise, diminutive measurement termed DIAGNOSTIC RADIOGRAPHIC MENSURATION ANALYSIS. The computerized version is accurate to within 0.01mm and 0.01 degrees and basically has a negligible error rate.

This information is not only designed to enlighten you regards this injury type; it will give you relief from the worry of it being missed as you now have a local provider who specializes in accident cases and is trained to detect this injury under strict protocol of AMA Guidelines.

As this information may be new to you, it isn’t necessary for you to understand all the medical subject matter that is contained within. What is important is that you now have a local provider who can detect it in order for it to translate into added settlement valuation and what is being done to compel the insurers to allocate valuations that are within their case settlement reserve or set-aside valuation for this injury severity type.

# INJURY TYPE MISSED IN AUTO ACCIDENT CASES MAY BE MALPRACTICE AND SEVERELY DAMAGE THE INJURY CASE!

**35% TO 45% OF THIS INJURY IS MISDIAGNOSED IN ACCIDENT CASES.**

*Attorney and chiropractor Steven Eggleston explains the seriousness of misdiagnosing this injury in accident cases – see below.*

It's hard to imagine missing this major injury, given the high impairment rating by the AMA Guides, yet subtle factors have led to this injury being 35% to 45% undiagnosed.

**AMA Guides Rates This Injury at 25% Whole Person Impairment: Torn Cervical Ligament causes "Alteration Of Motion Segment Integrity"**

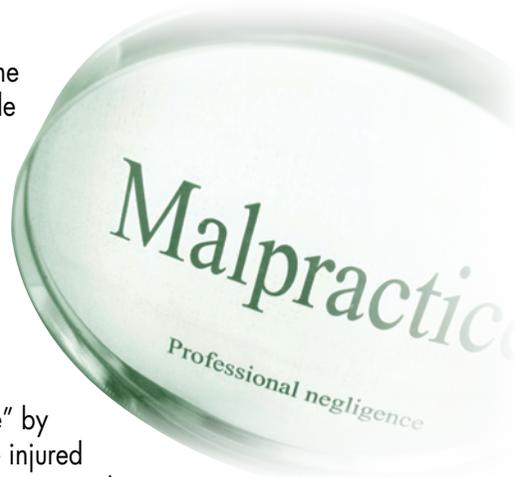
Misdiagnosing or missing this injury rated as "severe" by the AMA Guides, can have dire consequences to the injured and the injury case. Yet it has happened with more frequency than one would imagine.

Known as "Alteration Of Motion Segment Integrity" (AOMSI), this severe spinal injury has been routinely misdiagnosed until a recent diagnostic procedure.

**A former Superintendent of Insurance at Allstate, James Mathis, stated that a Diagnosis of AOMSI assigns a case settlement reserve value of \$66,000.**

In many cases of vehicular collisions, including low-speed accidents, G-Forces are sufficient to produce a tear in the ligament that stabilizes the vertebra thus altering the integrity of cervical spine and leading to this serious injury, according to AMA Guides, 3rd, 4th, 5th and 6th Editions.

This by itself, is a serious situation, and when overlooked, may lead to the injured returning to activity that may further injure or damage the cervical spine. The other factor is that the loss of this diagnosis leads to a loss of the valuation of the case.



## Ligament Tear is rated as a 25% Whole Person Impairment by AMA Guides

In the early 90's, the AMA developed the INJURY MODEL of spinal assessment. Its findings and criteria are published in its new DRE (Diagnosis Related Estimate) categories. There are five (5) DRE Categories, each representing injuries by degree of Whole Person Impairment (WPI).

In a Colossus accident claim, the Whole Person Impairment Rating (WPI) carries 25% value of the medical claims worth.

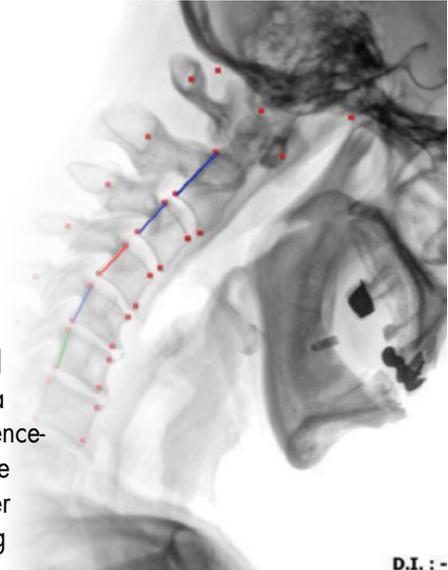
This rating and valuation is significant in cases where litigation is involved as well as in the treatment of the injured victim. In fact, ligament tear is rated in DRE Category IV and is required to exist along with nerve damage to reach the highest DRE Category V.

Ligament tear is one of the most serious and significant injuries in the AMA DRE Categories.

### Ligament Tear is also referred to as:

- ▶ Ligament Laxity
- ▶ Loss Of Segment Integrity
- ▶ Alteration Of Motion Segment Integrity
- ▶ Translation Between Adjacent Vertebra
- ▶ Angular Motion Between Adjacent Vertebra

The AMA had taken a position that such injuries and spinal subluxation's could cause significant, consequential and permanent loss of function leading to a reduction in a patient's health status. DRE Categories represent the evidence-based data that establishes the preponderance of evidence and meets evidentiary burdens of proof to win the "Greater Weight" challenges and eliminate varying opinions among administrators and evaluators.



D.I. :-

**Make no doubt about it; this injury should not be taken lightly as determined by AMA.**

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# WHY IS LIGAMENT TEAR MISSED BY EVALUATORS IF IT IS SO SIGNIFICANT? CHANGES IN THE AMA GUIDES MAY BE RESPONSIBLE FOR EVALUATORS OVERLOOKING THIS INJURY.

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Changes in AMA Guides helps plaintiffs' attorneys to represent injuries and meet burdens of proof.

To rate this injury, the AMA requires a special computer program used to plot specific measurements of alteration between vertebra that cannot be seen by the naked eye.

This software is not a usual component in a doctor's office.

When a physician wants to determine if his patient has suffered ligament laxity, he must then send the x-ray films to a lab or diagnostic center that has the specialized computer program and can read the x-rays to determine if the ligaments have been torn. Most MRI centers do not even have this software. This requires a precise, diminutive measurement termed **RADIOGRAPHIC MENSURATION ANALYSIS**. Sometimes referred to as "Computerized Radiographic Mensuration Analysis" or CRMA and sometimes Digital Radiographic Mensuration Analysis or DRMA.

In 1919, A. George published "A Method for More Accurate Study of Injuries to the Atlas and Axis" in the Boston Medical and Surgery Journal. This was later renamed The New England Journal of Medicine. George developed a procedure named "Georges Line" that was used in the years preceding the Injury Model. To measure Georges Line, physicians used mensuration and principles of trigonometry to physically plot measurements by drawing lines on vertebra and comparing the degree of angular motion between adjacent vertebra. This procedure was known to have a 26% error rate. After the development of the Injury Model, the AMA changed the requirements making it mandatory to establish the angles of motion by computer VS the former hand drawn lines. The computerized version is accurate to within 0.01mm and 0.01 degrees and basically has a negligible error rate.

## Attorney Eggleston Gives Advice on How The Plaintiff Attorney Can Represent This Injury



In his article published in Dynamic Chiropractic – March 26, 2010, Vol. 28, Issue 07, attorney and chiropractor Steven Eggleston explains in words and diagrams what the physician absolutely must do for every trauma patient in order for the patient's lawyer to be able to explain the injuries to the insurance company.



Eggleston reported: "The AMA's Guides to the Evaluation of Permanent Impairments uses George's Line to rate neck impairments. A moderate (3.5 mm) break in George's Line on the flexion and extension lateral X-ray films is a permanent impairment, equivalent to a post-surgical fusion of two cervical vertebra. Most chiropractors see small anterolisthesis and/or retrolisthesis on the films and ignore it or fail to appreciate its significance".

***"Approximately 35 percent to 45 percent of car-accident patients have a partial rupture of the ligaments with translation instability that manifests as a break in George's Line. These patients are the ones who never heal".***

## **Unlimited Treatment By Colossus**

**Eggleston also reveals;** *Modernly, the AMA Guides uses this key landmark as the basis for rating permanent spine impairments. It is extremely valuable for the treating chiropractor to have a working knowledge of ligament laxity in the cervical spine. It is a diagnosis code (M53.2X2) recognized by Colossus that allows essentially unlimited treatment in trauma patients. Unlike sprain/strain (S16.1XXA), which causes Colossus to cut off treatment after three weeks, or subluxation (S13.101A), which causes Colossus to cut off treatment after 12 weeks, Colossus (and med-pay) has no arbitrary cut-off date for a patient with a true ligament laxity demonstrated on X-rays.*

**Eggleston further reported:** Since 35 percent to 45 percent of trauma patients have this injury, it is very likely you have failed to diagnose it many, many times. By failing to diagnose this injury, you have failed to accurately, thoroughly and honestly describe your patient's injuries to the claim adjusters and attorneys, who will use the facts in your patient chart as the basis for the personal-injury settlement. The injured need both the doctor and attorney to assemble all the facts so a fair settlement can be reached. The jury also needs to understand whether the patient had this injury in order to decide how much to award your patient in a trial verdict.

**Also stated by Eggleston;** *Total translation of greater than 3.5 mm in the cervical spine is a DRE Category IV permanent impairment of 25 percent to 28 percent whole person in the AMA Guides. This is the same percentage of impairment for a patient who has had spine surgery to fuse two vertebrae.*

*The physiological result of this excessive movement is that the body tries to stabilize the injured joint by splinting the muscles to guard the injured joint. These chronic muscle spasms continue for several years until degenerative arthritis can stabilize the joint. The neck joints with partial ligament ruptures will develop DJD within a few years (visible on X-rays within seven years).*

**And finally:** *"These patients are the ones who never heal"*

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# MANY FAIL TO UNDERSTAND THE SIGNIFICANCE OF GEORGES LINE OR RADIOGRAPHIC MENSURATION ANALYSIS. *MISDIAGNOSIS, MALPRACTICE AND SEVERE DAMAGE TO THE PERSONAL INJURY CASE MAY ENSUE!*

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Surprisingly, this injury has been around since the onset of seat belts, yet it is only now becoming recognized for its true significance.

In personal-injury cases, AOMSI is one of the most important diagnoses a physician can establish and DRMA is one of the most important diagnostic tests to order when examining an accident patient with neck pain.

## **Steven Eggleston, D.C., Esq.:**

*“If you fail to accurately assess your patient’s neck ligaments with the proper use of George’s Line, you have probably misdiagnosed your patient, COMMITTED MALPRACTICE AND SEVERELY DAMAGED YOUR PATIENT’S PERSONAL- INJURY CASE”.*

## **The doctor should order this radiographic diagnostic procedure when trauma is suspect to cause this injury.**

The doctor should assess and notify the attorney when your client has tested positive for one of the highest rated injury types recognized by the AMA and known as “Alteration Of Motion Segment Integrity” (AOMSI). According to The AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, AOMSI is in the exact same category as a severe spinal compression fracture with vertebral collapse of more than 50% and congenital/surgical spinal fusion. The AMA Guides has strict criteria for diagnosing this injury type. Individual factors forming the basis of the diagnoses representing this injury type existed as a result of the aforementioned accident should be adequately documented by the physician and presented to the attorney for representation.

A former Superintendent of Insurance at Allstate, James Mathis, stated that a Diagnosis of AOMSI assigns a case settlement reserve value of \$66,000.

It is prudent for a doctor to adhere to strict protocol of the AMA to determine this injury type and impairment and assign the 25% Whole Person Impairment Rating which is considered by the AMA as being equal to an amputation of a foot. (Positive studies in two regions (cervical and lumbar) are equal to a 44% Whole Person Impairment Rating).

Supportive data is presented in TABLE Format indicating the Injury Type, AMA Guide Edition, Chapter, Table and Page of the assessment criteria used to determine this injury type. This is done to present Memorandum Of Points, Statements of Undisputed Facts, meet Authorities and present exhibits. Such evidence is submitted as evidentiary burdens of proof in admissible format to establish the preponderance, eliminate varying medical opinions and show the Greater Weight of the evidence exists in diagnosing this injury type. One purpose is to produce enough evidence based data by one side to create a belief that its version is more likely true than not. If such evidence based data comes under dispute, such dispute must show that the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

The physician should insure that the case is evaluated in this fashion so that the attorney can seek to determine whether there is any reduction of value for this diagnosis that the insurer or adjuster has discounted, disputed or omitted. The attorney can inform the adjuster that he/she will seek to ensure that he/she (the adjuster) inputs the evidence-based data to establish the Greater Weight of the evidence and show that this injury is causally related to the accident in question and eliminate any basis for any dispute, discount, omission or reduction.

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# THE TORT ARENA



## **Attorney and chiropractor, Steven Eggleston, D.C., Esq., speaks to physicians about diagnosis & Tort**

- ▶ Since 35 percent to 45 percent of trauma patients have this injury, it is very likely you have failed to diagnose it many, many times.
- ▶ By failing to diagnose this injury, you have failed to accurately, thoroughly and honestly describe your patient's injuries to the claim adjusters and attorneys, who will use the facts in your patient chart as the basis for the personal-injury settlement.
- ▶ These people need you, the doctor, to give them all the facts so a fair settlement can be reached. The jury also needs to understand whether your patient had this injury in order to decide how much to award your patient in a trial verdict.

While some patients recover uneventfully from a spine injury, a significant number will have pain which may last indefinitely. AOMSI is a permanent injury according to AMA Guides. There is no treatment once this ligament has been stretched or torn. It will not return to its normal size or shape and the instability is permanent with dire consequences. Even insurance companies accept future treatment for this injury of duration of three (3) years.

- ▶ Spinal impairment caused by spinal ligament injuries is not identified by physical examination, rather by standardized, objective radiographic mensuration criteria utilizing precise measurements as mandated by AMA Guides.
- ▶ By utilizing the AMA Guides criteria, the Diagnostic Radiographic Mensuration Analysis is accurate to within 0.01 mm and 0.01 degrees of measurement.

- Adherence to this quality standard (QS) of mensuration produces an opportunity to minimize the adversarial nature of the injury tort arena when attempting to confirm or rule out AOMSI.
- AOMSI is assigned a 25% Whole Person Impairment Rating.

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## **PLAINTIFF'S EXHIBITS FOR INJURY CLAIM REPRESENTATION**

### **It's No Secret:**

Anyone who has made an injury claim against an insurance company has experienced the insurers' claim software's used by insurers as a cost containment method to undervalue injury claims.

A former Superintendent of Insurance at Allstate, James Mathis, stated that a Diagnosis of AOMSI assigns a case settlement reserve value of \$66,000. Yet, it requires thoroughly educating the insurers, adjusters and IME's of the AOMSI injury severity type in order to compel them to assign the case settlement reserve their own software's value the claim to be worth.

Insurers' assign a 25% valuation of the entire claim based on the Impairment Rating so the first data to present is the Whole Person Impairment Rating. The doctor must adhere to strict protocol of the AMA to determine this injury type and impairment. AOMSI carries a 25% Whole Person Impairment rating which is equal to an amputation of a foot. (Positive studies in two regions (cervical and lumbar) are equal to a 44% Whole Person Impairment

### **What The Physician Can (and should) Do:**

The physician is charged with providing a whole person impairment (WPI) rating utilizing any chapter, table, page or method in the AMA Guides 5th Edition that most accurately reflects the injured 's impairment. The opinion must be substantial evidence. (Almaraz-Guzman II En Banc Decision).

### **1,2,3: Narratives, Table Formatting and Mirroring:**

Many are unaware that the insurers' created what is known as; "Business Process Improvement" (BPI) with three (3) significant changes.

1. In this new environment, narratives no longer have to be accepted as evidence and they are not. Most doctors' take great pride in their narratives yet as of BPI, adjusters do not have to and therefore they do not accept medical narratives as evidence. This also applies to demands that are in narrative style. They no longer have to and therefore they do not accept demands that are drafted in narrative format.

2. The data needs to be presented in a Table Format. Particularly the impairment rating needs to be in this table format as shown below. The Table should cite the body part involved and the AMA Guide; Edition/ Chapter/ Table and Page of the assessment criteria used to determine the impairment rating.

This is done to present Memorandum Of Points, Statements of Undisputed Facts, meet Authorities and present exhibits. Such evidence is submitted as evidentiary burdens of proof in admissible format to establish the preponderance, eliminate varying medical opinions and show the Greater Weight of the evidence exists in diagnosing the injury severity types.

If there is any reduction of value for a diagnosis or an impairment that the insurer or adjuster has discounted, disputed or omitted, especially discounting the high valuation for AOMSI, one should then seek to ensure that the adjuster input the evidence and did not omit data or engage any of the unfair claims settlement practices to lower the valuation that the software determines the case to be worth.

3. The only place the adjuster has to accept data is from the medical records (not the narrative). Insurance companies refer to the medical notes as "Triggering Factors" because they trigger the input of value. HOWEVER, the attorney must "MIRROR" the medical records in the demand. The doctor should send his medical records to the attorney so they can be mirrored in the demand.

When all 3 of the above are present, this evidence will win the Greater Weight of the evidence challenges, show by Table that the injury converts into impairment and theoretically eliminate any basis for any dispute, discount, omission or reduction.

**Sample TABLE:**

<b>III D - Impairment Evaluation Accord. to AMA Guide</b>				
<b>Body Part/System</b>	<b>Guide</b>	<b>Chapter</b>	<b>Table#</b>	<b>Page#</b>
Ligament Tear. Loss Of Motion Segment Integrity/ AOMSI	5th Edition	15	15-3a	424
Unilateral Spinal Nerve Root Impairment Loss of Strength	5th Edition	15	15-16	324
Nerve Root/ Loss Of Sensation/ Extremity	5th Edition	15	15-15	324
4% Impairment Due To Sleep Disorders	5th Edition	13	13-4	317
TMJ limits diet to semi-soft or soft foods	5th Edition	11	11-7	262
Impairment Due to Anxiety Emotional Or Behavioral disorders	5th Edition	13	13-8	325

**This represents the new table formatting required  
to input value into Colossus.**

## Unfair Claim Settlement Practices:

The only way the AOMSI injury case settlement reserve can be lowered and the reserve not met by the insurance company, is if the adjuster manipulates the data in the table and engages one or more of the following Unfair Claims Settlement Practices:

1. Manipulation Of The Trauma Line
2. Reduced Severity Non-Rate Action Plan
3. Benchmark Tuning Bias
4. Dragging The Injury Severity Point
5. 2nd Guessing The Medical Provider
6. Omitting Data

**There are 13 Unfair Claims Settlements Practices** that insurers and adjusters engage to lower settlement valuation. One should be suspect when the adjusters' valuation falls outside the range their claims handling software's determine the value of the claim to be worth.

Insurers' also use a "Scattergraph" to plot the lowest settlement valuation assigned per zip code over a 12 month period and they won't value a new claim above the lowest valuation for that zip code. Or they'll use Benchmark Tuning Bias to simply "dial-down" the valuation arbitrarily. CNN out of Atlanta, conducted an 18 month investigation across state lines and found insurers grossly manipulate claims' valuations by arbitrarily dialing down (tuning) the claim valuation referred to as Benchmark Tuning Bias. It isn't criminal so they continue to do it but it is "civil disrespect" which carries a regulatory fine. Insurers' have even been fined tens of millions of dollars for doing it but they save an estimated 200 million annually so they continue to do it. Fines start at 10 thousand dollars and can increase to 25 thousand per incidence.

Regardless of what software or unfair claims settlement practice they use, you can be certain that insurers, adjusters and IME's will dispute, deny, devalue and even omit factors of a claim until the valuation is both outside the range their software's determine the claim to be worth and so that a reasonable mind cannot understand.

## Violations Of The Ethics Codes Of The Adjuster:

The Unfair Claim Settlement Practices Act prohibits certain acts in the handling of claims of this type. These are not the same as "Bad Faith", but can be precursors. There are also however, Ethics Codes Of The Adjuster by which the adjuster is sworn to uphold and yet five (5) of them seem to come into question on a frequent basis as:

1. **Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled.** (How can a reasonable mind accept a low valuation on an AOMSI injury when the insurers themselves have assigned a \$66,000 dollar case settlement reserve)?
2. Refusing to pay claims without conducting a reasonable investigation based upon all available information. (It seems as though some adjusters sometimes just omit data. Physicians trained in the Colossus environment usually provide sufficient data in the form of medical records that contain the "Triggering Factors". They also have the option to refer the medical file for a 2nd opinion, audit & review by an independent, disinterested, 3rd medical party to validate. This is referred to as: "Independent Medical Validation". They assemble the factors of the claim in the right language, sequence and format so the attorney can "MIRROR" it in the demand and input added valuation into a Colossus claim. One purpose is to produce enough evidence based data by one side to create a belief that its version is more likely true than not.

If such evidence based data comes under dispute, the dispute must show that the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. If the adjuster is ethical, he will look at and input all the available information as part of his code of ethics).

3. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. (It certainly seems "unfair" to arrive at a valuation that is far below the reserves set by the insurance companies for the injury severity types).
4. Compelling the insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insured. (When an offer is compromised and falls well below the valuation the software's have determined the claim to be worth, without any factual or legal basis as to leave no other option but to litigate, it is a violation of the ethics codes of the adjuster).
5. Failing to promptly provide a reasonable explanation for the offer of a compromise settlement or of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim. (When asked what their legal and factual basis is for so low a determination, most adjusters have no response because they either engaged unfair claims settlement practices, or violated their own ethics codes or both).

# Legal & Factual Basis For Low Valuation

When we experience IME or adjuster disputes or denials on fees or compromised valuations that don't make sense, we have asked adjusters to explain what the legal and factual bases are for their determinations, especially when we realize the adjusters are 2nd guessing our medical opinions of which they are not licensed to do. Adjusters often lie as they refuse to admit using claims software which all insurers use on every case and they refuse to tell the range of valuation their software's have determined the claim to be worth. With access to an injury calculator that Colossus is based upon, it isn't difficult for us to understand when claim valuations have been manipulated.

With the right line of questioning, adjusters' often slip-up and admit to manipulating the claim including which unfair claims practices they engaged.

## For example:

Colossus has set-aside a "Case Settlement Reserve" of \$66,000.00 for ASOMSI Injury.

Getting adjusters to pay on or near the settlement reserves is dependent on whether you educate them thoroughly enough to understand that you are presenting evidence-based data that establishes the preponderance by case law. The physician can send his medical records for the process of Independent Medical Validation which follows case law to win the Greater Weight of the evidence challenges.

## Sample Language To Compel Adjusters' To Pay At Or Near The Reserve:

- ✓ I am submitting evidence-based data to meet evidentiary burdens of proof issued within various Court orders which case law and legal precedent establish the preponderance of the evidence.
- ✓ If such evidence comes under dispute, I will challenge that you must produce yet another doctor who can show that the findings are so against the Great Weight as to be clearly wrong and manifestly unjust, not by opinion, rather by adherence to the Quality Standards (QS) of independent medical validation set forth by legal authority provided by various statutes and case law which provide legal precedent and findings of other courts to establish the preponderance.
- ✓ To meet burdens of proof, this file was referred for the process of Independent Medical Validation. (See Exhibit). For your understanding, a thorough report with a Table Of Authorities is provided within the first five (5) pages providing full explanation that the Independent Medical Process Validation is

a key element in assuring that the medical evidence-based data is met for validating medical principles, their determinations and goals, to establish preponderance, eliminate varying medical opinions and show the Great Weight of the evidence.

- ✓ PLEASE TAKE NOTICE that such process of Independent Medical Validation and Medical Determination, with Memorandum Of Points, Statements of Undisputed Facts, Declarations, Exhibits and legal authority provided by various statutes and case law, to show by a preponderance of the evidence, the burdens of proof to eliminate varying medical opinions and show the Great Weight of the evidence.
- ✓ One of its purpose's is to produce enough evidence based data by one side to create a belief that its version is more likely true than not. If such evidence based data comes under dispute, such dispute must show that the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.
- ✓ Additional data from Depositions, Motions to Compel Discovery and/or upon such other and further oral and documentary evidence, may be presented at hearing on this claim.
- ✓ The process of independent medical validation with medical determination is to present documents, witnesses, and/or expert testimony, for administrative, legal & medical purposes to meet court accepted evidentiary burdens of proof of regulatory requirements for process controls, to assure with the highest probability that medical services and/or determinations meet specifications, have uniform quality by a preponderance of the evidence to eliminate Great Weight Challenges and show that each of these elements existed.
- ✓ The Quality System (QS) of regulation defines medical validation process as;...'establishing by objective evidence that a medical process consistently produces a result or end product, meeting its predetermined specifications, stating how validation will be conducted, including evaluation parameters and what constitutes acceptable test results'.

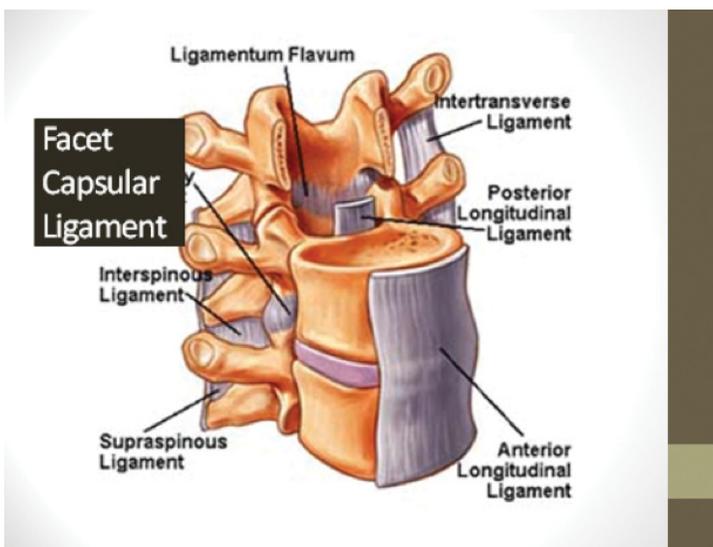
- ✓ Courts of law have provided legal precedent stating... 'the impairment report of a designated doctor shall have presumptive weight (Great Weight) and the impairment rating will be based on that report unless the preponderance of the other medical evidence is to the contrary'. [TEX. LAB.CODE ANN. § 401.001 et seq. (1989 Act) Section 408.1225(c)].
- ✓ The A.M.A. Guides States:... 'The evaluator who more closely follows the AMA Guides will be the evaluator whose opinion is accepted as choice' and 'If the preponderance of the medical evidence contradicts the Impairment rating contained in the report, another doctor can be called upon to dispute according to the A.M.A. Guides'.
- ✓ The Courts Define the Preponderance As: a). 'Evidence that has greater weight or is more convincing in comparison to the evidence introduced by the defendant'; b). 'The majority of the evidence favors one side or the other as described by other courts and authorities'; c). 'Enough evidence has been produced by one side to create a belief that its version is more likely true than not'.
- ✓ 'In reviewing a 'Greater Weight' challenge among varying medical opinions, one may examine the entire record by process of Medical Validation to determine: 1. 'If the finding under medical validation is conclusive of the 'Greater Weight' and preponderance of the evidence is clearly medically validated and just"; 2. 'If the 'Greater Weight' and preponderance of the evidence are shown to be medically validated and support its existence'.
- ✓ Notwithstanding any unfamiliarity you may have with the process of Independent Medical Validation (IMV), I will seek to determine from your offer whether there is any reduction of value for the 'Injury Severity Types' represented by ICD diagnoses that you discounted, disputed or omitted.
- ✓ We have gone to great lengths to meet evidentiary burdens of proof of evidence and submit in admissible format, including a Table representing the Whole Person Impairment Rating. I will seek to ensure that you accept the evidence-based data of the physician's findings which have been independently validated by precedent established by court issue as the approved method and assign

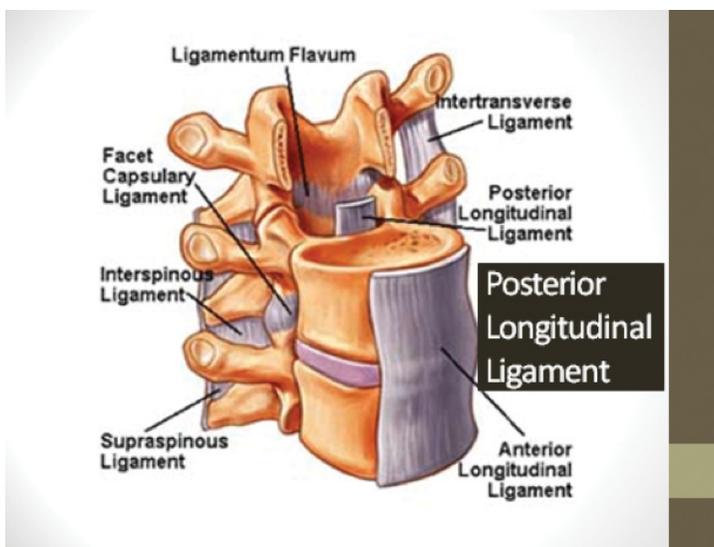
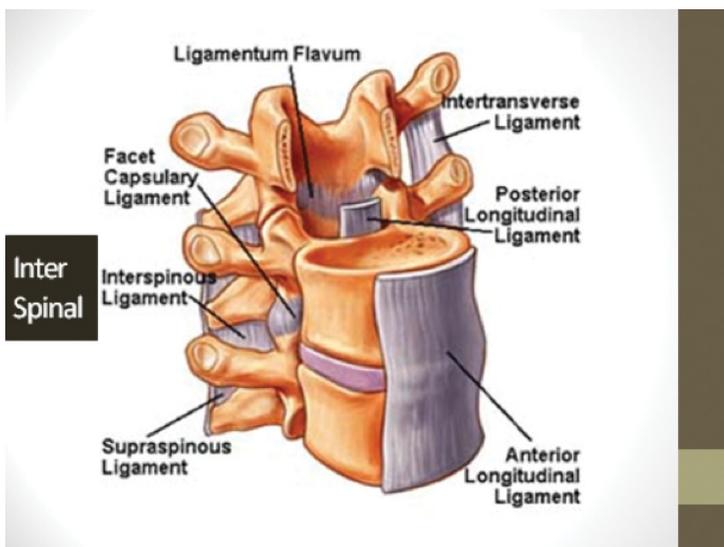
- these injuries as causally related to the accident in question and explain any basis for any dispute, discount, omission or reduction.
- ✓ My client has tested positive for one of the highest rated spinal injury types as recognized by strict criteria of the AMA Guides for diagnosing this injury referred to as "Alteration Of Motion Segment Integrity" (AOMSI).
  - ✓ I am presenting this additional data to you as many adjusters have not heard of AOMSI or the AMA criteria to accurately diagnose this injury. One reason may be that the diagnostic test of using computers to prove ligament laxity, ligament tear and alteration of vertebral segments - traumatically induced, referred to as Computerized Radiographic Mensuration Analysis or Digital Radiographic Mensuration Analysis, has not been available until a few years ago.
  - ✓ Individual factors forming the basis of the diagnoses representing the injury severity types have been documented by the physician and presented to you within.
  - ✓ The physician is charged with providing a whole person impairment (WPI) rating utilizing any chapter, table, page or method in the AMA Guides 5th Edition that most accurately reflects the injured 's impairment. The opinion must be substantial evidence. (Almaraz-Guzman II En Banc Decision).
  - ✓ Substantial evidence has been defined as "more than a mere scintilla," or "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." Further, the Board will not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable."
  - ✓ The AMA Guides state that AOMSI is a rare occurrence without severe trauma.
  - ✓ According to a former Superintendent of Insurance at All State, James Mathis, the diagnosis of AOMSI (Ligament Laxity) assigns a case settlement reserve value of \$66,000.

- ✓ I will seek to ensure that you accept the evidence-based data of the physician's findings and assign this AOMSI injury as causally related to the accident in question and explain any basis for any dispute, discount, omission or reduction.

## Capsular & Spinal Ligaments

- The Facet Capsular ligaments are the main stabilizing structures of the facet joints in the cervical spine and have been implicated as a major source of chronic neck pain.
- The main ligaments involved in AOMSI Injuries;
  - Facet Capsular
  - Interspinous and
  - Posterior Longitudinal





## Capsular Ligament Laxity

- Studies revealed that in many cases of chronic neck pain, the cause may be underlying joint instability due to capsular ligament laxity.
- Currently, curative treatment options for this type of cervical instability are inconclusive and inadequate.
- Based on clinical studies, there has been little curative treatment options for chronic neck pain related to capsular ligament laxity and underlying cervical instability.

[Open Orthop J.](#) 2014; 8: 326–345. Published online 2014 Oct 1

### **Diagnosis Of Cervical Instability**

Cervical instability was a diagnosis based primarily on a patient's history (ie, symptoms) and physical examination because there was yet to be standardized functional X-ray or imaging able to diagnose cervical instability or detect ruptured ligamentous tissue without the presence of bony lesions [24].

That has now changed with diagnostic radiographic mensuration analysis.

### **Diagnostic Radiographic Mensuration Analysis As Proof Of Evidence**

For example, in one autopsy study of cryosection samples of the cervical spine, [42] only one out of ten gross ligamentous disruptions was evident on x-ray. Furthermore, there is often little correlation between the degree of instability or hypermobility shown on radiographic studies and clinical symptoms [43-45].

**Even after severe whiplash injuries, plain radiographs are usually normal despite clinical findings indicating the presence of soft tissue damage.**

However, diagnostic radiographic mensuration analysis and digital motion x-ray (DMX) are able to adequately depict cervical instability pathology [46, 47]. Studies diagnosing soft tissue ligament or post-whiplash injuries have demonstrated the ability of this technique to show AOMSI.[48, 49].

This is especially pertinent when patients have signs and symptoms of cervical instability, yet have normal MRIs in a neutral position.

AOMSI can occur instantaneously as a single macrotrauma, such as a whiplash injury, leading to capsular ligament laxity and excess motion of the facet joints, which results in cervical instability.

The capsular ligaments surrounding the facet joints are highly innervated by mechanoreceptive and nociceptive free nerve endings. Hence, the facet joint has long been considered the primary source of chronic spinal pain [36-38].

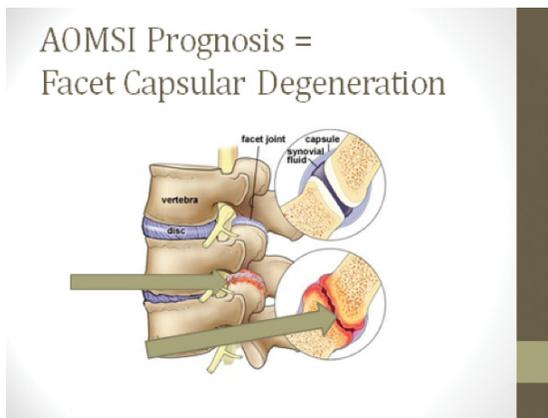
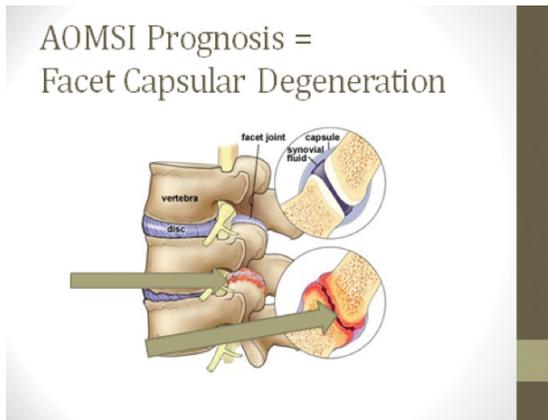
Additionally, injury to these nerves has been shown to affect the overall joint function of the facet joints [39].

Therefore, injury to the capsular ligaments and subsequent nerve endings could explain the prevalence of chronic pain and joint instability in the facet joints of the cervical spine.

## **AOMSI Causes A Degenerative Cascade**

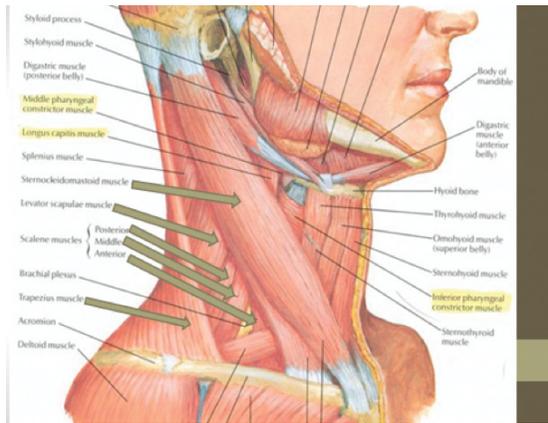
There are compelling reasons to believe that facet joint/capsular ligament injuries are the anatomic basis for spinal instability in the cervical spine and responsible for a degenerative cascade in cervical spondylosis.

An anatomic basis for spinal instability: a porcine trauma model. Oxland TR, Panjabi MM, Southern EP, Duranceau JS J Orthop Res. 1991 May; 9(3):452-62.



# AOMSI Causes Muscle Injury

Muscles Also Undergo Damage In An AOMSI Injury With Resultant Injury To The Nerves Located Within Them



With G-Forces significant to cause AOMSI, the six muscles and branches outlined above also undergo the force of trauma enough to injure the nerve bundles that lay in-between them called Superior Cervical Sympathetic Ganglia & Chain Injury occurring with AOMSI.

## AOMSI Causes Injury To The Nerve Bundles Located Within The Neck Muscles

The cervical ganglia are paravertebral ganglia of the sympathetic nervous system. The bilaterally symmetric sympathetic chain ganglia, also called the paravertebral ganglia, are located just ventral and lateral to the spinal cord. The nerve ganglia (bundle) are located on both sides of the neck within the muscles indicated above.



## Upper Nerve Root Ganglia Injury

If the upper roots, C2, C3 and C4, are irritated they may complain of occipital headaches, often typical of migraine, with pain radiating to the eyes and behind the ears, blurring of vision, dizziness and nausea especially when attempting to lie down, numbness of the side of the neck, tension and “knots” in the neck and shoulder muscles, and swelling and stiffness of the fingers.

## Middle Nerve Root Ganglia Injury

If the fourth and perhaps the fifth nerve roots are irritated they may complain of shortness of breath, palpitation of the heart, pain in the chest, and localized pain in the muscles between the neck and shoulder joint, or between or about the shoulder blades. Irritation of the fifth nerve root is most common and other symptoms are: pain at the tip of the shoulder, in the middle of the arm, sometimes near the elbow in the extensor muscles of the forearm, and numbness and tingling of the thumb and/or index finger. Stiffness of the shoulder and/or weakness of the arm with inability to comb the hair, fasten a brassiere, or to reach the hip pocket are frequent complaints.

## Lower Nerve Root Ganglia Injury

Irritation of the sixth and seventh nerve roots may cause pain in the shoulder, arm, forearm, wrist, chest and numbness and tingling of the index, middle and perhaps the ring fingers.

## Summary of Concomitant AOMSI Injuries

This whip-lash type of injury, as described by Ruth Davis, MD, is responsible for the greatest percentage of cervical nerve root irritations. This type of injury is caused by a sudden forceful movement of the neck with subluxation of the articular processes and **stretching, tearing, or avulsion of, and varying amounts of hemorrhage into, the ligamentous and capsular structures.**

***Automobile accidents are responsible for the greatest number of such injuries.***

*Jackson R. The cervical syndrome. Dallas Med J. 1949;35:139-146.*

# Direct Exam Questions For Deposition

## DIRECT DEFENSE EXAM QUESTIONS FOR AOMSI INJURY TYPE

**Q:** Doctor - Good day

**A:** Good day

**A:** Doctor, are you duly licensed and in good standing to practice in this state?

**A:** Yes

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## SKIP INTRODUCTION AND QUALIFYING QUESTIONS GO TO DIRECT

**Q:** Doctor, you stated that the patient has tested positive for one of the highest rated spinal injury types recognized by the AMA known as “Alteration Of Motion Segment Integrity” or AOMSI. How were you able to make that diagnosis and is it your opinion or fact?

**A:** I follow the strict criteria of The AMA Guides to the Evaluation of Permanent Impairment, 5th Edition where the procedure for determining the presence of this injury is found in chapter 15, page 379, Table 15-3a-c

**Q:** Doctor, what does the AMA guide say about this injury

**A:** It states that AOMSI is in the exact same category as a severe spinal compression fracture with vertebral collapse of more than 50% and congenital/surgical spinal fusion.

**Q:** Is there any other description of this injury?

**A:** Yes. AOMSI (Alteration of Motion Segment Integrity), is also referred to as; “Spinal Segmental Instability”, “Loss Of Structural Integrity”, “Ligament Tear”, “Ligament Laxity” and “angular motion and translation of adjacent vertebra - traumatically induced”.

**Q:** What do you mean by “Traumatically induced”?

**A:** The AMA Guides state that AOMSI is a rare occurrence without severe trauma. The joint has lost its integrity and lost normal movement, caused by an injury that produces the damage.

**Q:** You mean this injury cannot develop any other way than trauma?

**A:** The AMA Guides and research supports that AOMSI itself is caused by trauma and not from ageing or degeneration.

**Q:** How did you know that this injury was present

**A:** I didn't. You can't see it without special computerized assessment. Based on the history as well as my experience, I suspected the possibility that my patient had a severe injury in the cervical spine, (neck) therefore stress x-ray views of the spine were ordered and submitted for specialized analyzation.

**Q:** Why do you need specialized analyzation?

**A:** Because you cannot see this injury with the naked eye. The diagnostic procedure is established by the AMA and is called Diagnostic Radiographic Mensuration Analysis. It's required by stringent AMA guidelines in order to determine the presence of the AOMSI injury severity type.

**Q:** What did the special computerized analysis say about this patient?

**A:** My patient was tested positive for AOMSI and was given a Whole Person Impairment (WPI) Rating of 25% according to the AMA Guidelines, 5th and 6th Editions.

**Q:** Can you translate what that means so we understands?

**A:** It means I adhered to the strict protocol of the AMA Guides to determine the presence of AOMSI injury type and impairment. The measurement done according to the 5th and 6th Edition AMA protocol via the Diagnostic analysis protocol is performed by computer and is accurate to within 0.01 mm and 0.01 degrees and basically has negligible error rate. The AMA Guides assigns a 25% Whole Person Impairment to this injury type. A 25% Whole Person Impairment Rating is equal to an amputation of a foot. Positive studies in two regions (cervical and lumbar) are equal to a 40% Whole Person Impairment Rating.

**Q:** Well I can see how an amputation of a foot is serious but why is this as serious as an amputation of a foot?

**A:** AOMSI is considered just as bad an injury type as a severe spinal compression fracture of greater than 50% or a surgical spinal fusion, according to the AMA Guidelines. What those injuries all have in common is that they all lead to the same type of advanced degeneration, and that's what my patient is and will suffer with greater than a 50 percent reasonable medical probability, the same sequel as these other serious injuries cause as a result of this accident.

**Q:** You mean this injury type is rated by the AMA as just as bad an injury as an amputation of a foot or severe spinal compression fracture of greater than 50% or a surgical spinal fusion?

**A:** Yes. AOMSI is potentially very crippling in the future, just like a severe spinal compression fracture or surgical spinal fusion. Spinal degeneration can cause a person to become hunched over and have difficulty standing erect over time.

**Q:** Is that to say that the defendant is going to hunch over and have difficulty standing erect later on in life?

**A:** The reason the AOMSI injury type is considered so serious, is that there is no treatment to return a spine with an AOMSI to its pre-injury state, and this permanent injury almost always leads to advanced spinal degeneration.

**Q:** You've done a good job of describing this injury and I appreciate it but can there be 2 sides to the story here?

**A:** One of my fiduciary responsibilities is to produce enough evidence-based data by one side to create a belief that its version is more likely true than not. If such evidence based data comes under dispute, such dispute must show that the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

**Q:** Doctor, please explain what you mean by Greater Weight and manifestly unjust?

**A:** Case law states the impairment report of a designated doctor shall have presumptive weight (Great Weight) and the impairment rating will

be based on that report unless the preponderance of the other medical evidence is to the contrary and so against the greater weight as to be manifestly unjust..[TEX. LAB.CODE ANN. § 401.001 et seq. (1989 Act) Section 408.1225(c)]. The AMA Guides has strict criteria for diagnosing AOMSI. I have shown greater weight the Individual factors forming the basis of the diagnoses representing this injury type exists as a result of the aforementioned accident and as documented by the strict criteria of the AMA Guidelines and I presented them as evidence in TABLE format within my records.

**Q:** What is a Table format?

**A:** Supportive data is presented in TABLE Format indicating the; Injury Type, the AMA Guide Edition, Chapter, Table and Page of the assessment criteria used to determine this injury type. Memorandum Of Points, Statements of Undisputed Facts, Declarations, Exhibits and Authorities have also been submitted to present evidentiary burdens of proof in admissible format to establish the preponderance, eliminate varying medical opinions and show the Greater Weight of the evidence exists in diagnosing this injury type.

**Q:** Now you sound like the lawyer. Why do you have to go through so much trouble in diagnosing this injury?

**A:** The physician is charged with providing a whole person impairment (WPI) rating utilizing the chapter, table, page or method in the AMA Guides 5th Edition that most accurately reflects the injured's impairment. The opinion must be substantial evidence. (Almaraz-Guzman II En Banc Decision).

**Q:** Are you saying your opinion is substantial evidence?

**A:** It is commonplace to find that insurance company adjusters, even some physicians and administrators have not heard of AOMSI or the fact that it carries a 25% to 40% whole person impairment rating or know of the special analysis to detect it because the computerized and digitized radiographic diagnostics have not been available until a few years ago and most doctors did not even screen patients for AOMSI prior because it required manual measurements on x-ray films that carried an error rate of 26% according to research – until now.

**Q:** What do you mean – until now.

**A:** Prior to the special diagnostic tests, The measurement was done by eye and had a 26% error rate. Only when it is done according to the 5th or 6th Edition AMA protocol via the special diagnostic analysis performed by computer, is it accepted to be accurate to within 0.01 mm and 0.01 degrees and basically has negligible error rate.

**Q:** You stated that this injury has only recently come into awareness because the computerized and digitized radiographic diagnostics have not been available until a few years ago but now it is considered a serious injury according to the AMA?

**A:** Notwithstanding any unfamiliarity evaluators or adjusters may have, according to a former Superintendent of Insurance at All State, James Mathis, the diagnosis of AOMSI assigns a case settlement reserve value of \$66,000.

**Q:** Thank you doctor.

### **Settlement Cases:**

06/18/13 #12-CA-0011711 Initial offer \$7,000

Won Daubert Challenge

[AOMSI, 4 cervical bulges]

\$100,000 Jury award

10/11/11 #1000-1422 initial offer \$7,000

[AOMSI, 2 hernia's]

\$75,000 Jury award

05/08/12 #08-CA-030416 initial offer \$40,000

[AOMSI, 3 bulges, prior lumbar surgery]

\$212,000 after deposition

07/03/13 #11-07311-CI-8 Initial offer \$11,000

[AOMSI, 4 bulges, no chiropractic care, no injections, no surgery]

\$42,000 after deposition

## **Expert Witness**

One problem is that until recently, doctors didn't even perform the procedure due to the high error rate as the software is not a standard component of a doctor's office or even an MRI facility. Therefore, the doctor is required to send the x-rays to a lab for analysis where the error rate is negligible.

The National Highway Traffic & Safety Administration (NHTSA) reported;

The total costs of motor vehicle crashes in 2000 at \$230.6 billion, with medical expenses of \$32.6 billion.

For every demographic area consisting of 100,000 lives, there's an estimated 2,500 vehicular accidents a month.

1,625 of those accident victims have AOMSI Injury

45% of those AOMSI injuries are missed by doctors

In One Sample Of 100 Patients Involved In Sudden Impact Injuries:

All 100 Patients had 1 level of ratable AOMSI impairment

199 vertebral units were torn producing abnormal joint laxity. (More than 1 level per patient).

In Another Sample Of 588 Patients Involved In Sudden Impact Injuries:

65% demonstrated one level of ratable impairment.

26% demonstrated two or more levels of ligament instability.

My primary goal is to thoroughly examine my patients for the detection of AOMSI.

Recognizing this is an injury that often involves litigation, my fiduciary duties also require the skills to provide evidence-based data and to help all parties of record to understand this injury, future treatment requirements and prognosis.

I make myself available to meet with medical and legal representatives of such injuries and I welcome the opportunity to provide my knowledge and services.

I am available to present CLE Accredited Courses on this and other topics related to "Injury Severity Types" associated with vehicular collisions.

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