

### Colossus to the Courtroom- Part 3

in Colossus to the Courtroom Part 1, I focused on the courtroom aspect of managing cases and also introduced the following four categories utilized by software programs to evaluate claims:

1. 25% -neurological damage-inclusive of disc injuries
2. 25%-whole person impairment
3. 25% duties under duress (functional loss)
4. 25% loss of enjoyment of life (functional loss)

in Part 2 of colossus to the courtroom I discussed neurological damage which included the myriads of neurological symptoms and residual damage that can be caused by accidents. I discussed various diagnostic methods we can use to objectively demonstrate these damages used in settlements or in trial. MRI testing is one of the most commonly used diagnostic studies we can utilize, and I showed the importance of being able to age date herniations and colorize these images to allow easy visual demonstrable evidence that correlates with the accident symptomatology, impairment and persistent functional loss.

Today I will discuss #2 which is Whole Person Impairment.

#### Impairment (Whole Person Impairment)

On page two of the AMA guides to the evaluation of permanent impairment, the guides **“define impairment as “a loss, loss of use, or derangement of any body part organ system, or organ function” A medical impairment can develop from an illness or injury.**

An impairment is considered permanent when it has reached **“Maximum Medical Improvement”** (MMI), meaning it is well stabilized and unlikely to change substantially in the next year with or without medical treatment. (1) According to the guides, determining whether an injury or illness results in permanent impairment requires a medical assessment by a physician. **An impairment may lead to functional limitations or the inability to perform activities of daily living (ADL’s).** Consequently, Whole Person Impairment percentages estimate the impact of the impairment on the individual's overall ability to perform activities of daily living.

Furthermore, you must have an Impairment Rating, to unlock Functional Losses, which are up to 50% of settlement offers. For example, CPEC or Colossus require an impairment rating to have functional losses. I understand that many attorneys and law offices that practice personal injury do not believe that impairment is utilized in settlement offers regarding personal injury and is only used in Workers Compensation. However, the computerized programs to evaluate claims must utilize the most objective basis of Impairment which are the AMA Guides to the Evaluation of Permanent Impairment. Moreover, as described above, there is a direct connection between impairment and functional limitations (and losses) which include the inability to perform activities of daily living. **Remember-no Impairment = no functional losses!**

I have been a Qualified Medical Evaluator (QME) in the state of California since 1992 and have performed hundreds of medical legal evaluations. On January 1st, 2005, the Workers Compensation System adopted the AMA Guides to the Evaluation of Permanent Impairment to determine the percentage of Impairment rather than solely relying on work restrictions to assess disability. Consequently, I have been determining impairment levels for all my QME's for almost 20 years and I thoroughly understand how to assess impairment, which unlocks the key to 50% of our personal injury settlement cases which are functional losses.

For example, with regards to neck, mid back and lower back accidents and injuries, I will routinely use chapter 15 in the AMA guides on pages 384, 389 and 392 which are the criteria for rating impairment of the lumbar, thoracic and cervical spine. On these pages I utilize the DRE categories which are the Diagnosis Related Estimates which utilize symptoms, signs, and appropriate diagnostic test results to evaluate impairment levels. I routinely use DRE categories II, III, and IV which may or may not include disc herniations.

Most importantly for attorneys to understand is that in lieu of a herniated disc, you can have loss of Motion Segment Integrity aka Alteration of Motion Segment Integrity (AOMSI) which can lead to significant impairment and if utilized can significantly increase settlements and verdicts in trial. On pages 378 and 379 of the AMA guides, it describes Motion Segment Integrity as follows; motion of the individual spine segments cannot be determined by physical examination but is evaluated with flexion and extension roentgenograms (digital x-rays). Loss of motion segment integrity is defined as an anteriorposterior motion of one vertebra over another that is greater than 3.5mm in the cervical spine, greater than 2.5mm in the thoracic spine, and greater than 4.5mm in the lumbar spine. Loss of motion segment integrity can also be defined as a difference in angular motion as well, especially in the lumbar spine. Also, in the guides on page 379 they

described that when routine X-rays are normal and severe trauma is absent, motion segment alteration is rare, thus flexion and extension X-rays are indicated only when the physician suspects motion segment alteration from history or findings on routine X-rays.

Furthermore, loss of Motion Segment Integrity is very common in motor vehicle accidents when the mechanism of injury is flexion/extension or a lateral flexion whiplash injury in a T-bone style crash. **Impairment rating for alteration of motion integrity (AOMSI) is 25% to 28% Whole Person Impairment in the cervical spine.** This is equal to bilateral multi-level radiculopathy as well as an amputation of the ankle. **Importantly, this significant impairment does not include a herniated disc.**

Alteration of motion segment integrity can be easily measured with digital flexion/extension X-rays of the neck as well as the low back utilizing digital x-rays along with a software program called Symverta which yields impairment ratings based on the AMA guides to the evaluation of permanent impairment. Also, the Symverta program can prorate impairment ratings based on a percentage of AOMSI. If indicated, I always include impairment ratings in my narrative reports primarily utilizing chapter 15 in the DRE criteria for rating impairment.

## **Summary**

Impairment ratings are 25% of the Computer Programs to Evaluate Claims (CPEC) algorithms in settling claims. You must have an impairment rating to unlock 50% of the settlement algorithm which includes functional losses defined as Loss of Enjoyment of Life and Duties under Duress. Impairment ratings as described above in the AMA guides to Evaluation of Permanent Impairment are utilized by these computer software programs because they are the most objective form of impairment that have been studied and implemented.

I have been performing impairment ratings for the past 19 years as a QME in the state of California and also utilize these ratings in my personal injury narratives. Also, in lieu of a frank herniated disc, you can have significant impairment, especially in motor vehicle accidents pertaining to Alteration of Motion Segment Integrity (AOMSI) which has the same impairment rating as an amputation at the ankle level in the lower extremity.

In my next topic I will discuss functional losses which include Loss of Enjoyment of Life and Duties under Duress which yield up to 50% of settlement offers.

## **Reference**

1. Cocchiarella, L., Anderson G., (1988), *Guides to the Evaluation of Permanent Impairment*, 5th edition. pp. 2-7