

Colossus to the Courtroom-part 4

in my previous article, I discussed 25% of settlement claims in the category of Whole Person Impairment (WPI). It is important to stress that you must have a WPI to unlock functional loss which is 50% of the settlement algorithm. It is fair to say that without WPI you do not have up to 75% of a potential settlement based on the CPEC which is the carriers Computer Programs to Evaluate Claims. I discussed in detail the definitions of Impairment and the AMA Guides to Evaluation of Permanent Impairment and which pages and processes I go through when I perform my narratives as well as evaluations as a Qualified Medical Evaluator for the State of California.

Furthermore, I talked about Alteration of Motion Segment Integrity (AOMSI) which can be used especially in motor vehicle accidents and can garner a 25% Whole Person Impairment, which is as much as an amputation of an ankle or bilateral multiple level disc herniations. It is important to note that AOMSI is a significant ligament-based impairment that **does not require a herniated disc.**

Remember the insurance carriers' settlements are based on the four main categories and percentages as follows:

1. 25% -Neurological Damage
2. 25% Whole Person Impairment
3. 25% Duties under Duress (functional loss)
4. 25% Loss of Enjoyment of Life- (functional loss)

Today, I will discuss numbers 3 and 4, which are inclusive of a functional loss.

Functional loss (inclusive of 50% of accident settlements)

As indicated above, functional loss consists of two components which include Duties under Duress and Loss of Enjoyment of Life.

Definitions

1. Duties under Duress

That which can be done, but to a lesser degree due to pain and will persist indefinitely after care has been concluded.

2. Loss of Enjoyment of Life

“That which can no longer be done after a reasonable course of care has concluded”

Remember, functional losses such as duties under duress and loss of enjoyment of life are only valid if the patient has reached Maximum Medical Improvement (MMI). Remember **that Loss of Enjoyment of Life are activities that the patient/client cannot do at all after MMI has been reached. In other words, what they can no longer do versus what they could do before the accident.** Whereas, in Duties under Duress, they can perform their activities but in a modified way. In other words, they must modify their lifestyle. This is the single biggest issue in a report to the medical legal community and needs to be clearly articulated in our reports.

In both instances, they are permanent losses, and they will never be able to go back to their pre-crash status. The key phrase is **functional loss** and is the most directly quoted section from judges when ruling on cases, thus verifying the merit of following the plan as stated above and in the last two articles. However, when guiding patients/clients through the process, we need to ask them in detail what they **can no longer do** since the accident as to what they could do before the accident. And if they can still do an activity, but are limited, we need to delineate in what way their activities are burdened or must be modified in the future because of the motor vehicle crash.

Functional permanent losses need to be reported in the following five categories, when applicable:

1. Work
2. Domestic: cooking, cleaning
3. household: lawn mowing, painting

4. social
5. studies: anything that interferes with schooling at any level.

The following are categories and losses under the category loss of enjoyment of life as follows:

Work

1. loss of status within the organization
2. loss of job security
3. loss of promotional prospects
4. difficulty in performing duties
5. reduced quality of work
6. other

School

1. Loss of attending class
2. loss of attending functions
3. loss of attending gym class
4. loss of studying
5. other

Domestic

1. Loss of interior cleaning
2. loss of interior maintaining
3. loss of interior preparing meals
4. loss of attending to spouse
5. loss of attending to children
6. loss of entertaining
7. loss of interior decorating
8. loss of pet care
9. other

Household

1. Loss of exterior cleaning
2. loss of exterior landscaping
3. loss of exterior maintenance

4. loss of exterior decorating
5. loss of pet care
6. other

Hobbies

Sports

Pre incident level:

1. played socially
2. play competitive
3. played regionally

current level

-----, Cannot play regionally

1. I cannot play competitively.
2. I cannot play socially,
3. I cannot play the original sport
4. I cannot play any sport

Duties under duress

Work

Study

Domestic

Household

Social

These activities are limited due to the following:

1. Difficulty with stability/ mobility
2. Difficulty with postural difficulties
3. difficulty with dexterity
4. fatigue

5. anxiety/ depression
6. reduced concentration
7. pain (must interfere with work or studying capacity)

Summary

Functional loss consists of Loss of Enjoyment of Life and Duties under Duress which consists of 50% of the Computer Programs to Evaluate Claims (CPEC) algorithms. It is important to delineate the difference between Loss of Enjoyment of Life, which means that the patient is unable to do the activity in any way that they were able to do prior to the accident or crash. Duties under Duress means that they can still do the activities but are limited in a significant way which modifies their lifestyle. The above examples clarify which losses can occur and how to quantify them. It is important when guiding patients through this process to ask them to key on what they can no longer do since the accident that they could do before the accident. If they can still do the activity but are limited, we categorize that in Duties under Duress.

To summarize the last four articles, we have described Colossus to the Courtroom and the carriers' algorithms they use in their computer software programs. It is important not only to prepare to go to court but also to prepare for 99% of the time when there will be a settlement before trial. Consequently, it is important to understand the four main categories as I have described in the last three articles. As a law office, you need someone who is going to have the time, understanding and nuance to craft narratives that will allow just settlements for patients and your clients. If you have any questions about the Colossus to Courtroom topics, please do not hesitate to contact me. In the next several articles I will discuss important issues that can make or break potential settlements.