

# FIVE FACTORS THAT DRAMATICALLY INFLUENCE THE SETTLEMENT VALUE OF A PERSONAL INJURY CLAIM

**Acknowledgements:** Trial Guides, Aaron DeShaw, David Berardinelli

## **The Age of Computers**

Since the mid-1990's, insurers have been using software to help determine the settlement value of their personal injury cases.

The most well know of these is **Colossus**.

However, there are 86 different programs that are used by insurers.

- Colossus – recently added impairment for pain
- \*XM – developed by the writers of Colossus
- ICE
- MYND
- TEACH (State Farm)
- Mitchell Medical

Every PI attorney and doctor should read the book, “From Good Hands To Boxing Gloves” by David Berardinelli, Esq.

In his book, Berardinelli explains how the insurance companies went public in the mid-1990's that lead to them reaping billions in profits.

**As a result, their fiduciary obligation changed from policy holder to the shareholder.**

This has resulted in insurers making billions of dollars in profit.



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### **Allstate:**

1985 – 1995: \$820 million in profit

1995 – 2006: \$33 billion in profit

They achieved this by using a process called Claims Segmentation.

1. First Call
2. Special Investigations
3. MIST
4. Policy Limits
5. **Colossus**

**Colossus** and other software determines the settlement value of an injury claim using factors known as **value drivers**.

There are over 14,000 value drivers.

The top five (5) value drivers:

1. Diagnosis
2. Duties Under Duress
3. Loss of Enjoyment of Life, Hobbies, Sports, School and Work
4. Future Medical Care/Prognosis
5. Permanent Impairment Rating



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## Diagnosis

Every injury has one or multiple diagnosis.

\*Update diagnosis – “jurors love it”

Formula: Each injured body part X # of diagnosis = claim value

Use ICD-10 codes

## Concussion – mTBI

## Fact Syndrome – Primary pain generator

The #1 soft tissue Value Driver is **ligament laxity**.

This yields the ICD-10 diagnosis of **S13.4**

Ligament laxity occurs in 35% - 45% of all whiplash patients.

The diagnosis is made using stress x-rays **and** physical examination.

## Stress x-rays:

- Flexion – looking all the way down
- Extension – looking all the way up
- AP open mouth in lateral flexion – mouth open and bending L and R



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The x-rays are analyzed utilizing Computerized Radiographic Mensuration Analysis (CRMA).

Research has found CRMA to be more reliable, repeatable and objective than measuring by hand.

Courts have ruled in favor of its use on **Daubert** and **Frye** challenges.

- In fact, one court ruled that a defense Motion *in limine* did not qualify for a Daubert challenge because CRMA is not a novel diagnostic test but rather a mere technological advancement of previously accepted methods of diagnosing ligament laxity found in the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> editions of the AMA Guides to the Evaluation of Permanent Impairment.

NOTE: It is broadly considered medical malpractice if the doctor does not examine and x-ray a patient for this diagnosis.

Ligament laxity is both **diagnosable** and **impairable**.

Colossus only accepts impairments >2%.

- Cervical Spine: >3.5mm in flexion-extension
- Thoracic Spine: >2.5mm in flexion-extension
- Lumbar Spine: >4.5 mm in flexion-extension

This results in an impairment of **25-28% WP**.

A disc herniation with symptoms or a positive needle EMG results in **10-13% WP**.



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If the ligament laxity is impairable, the patient can also be diagnosed with spinal subluxation - S13.1X0 (X being the level of subluxation)

**Colossus** will not assign a Value Driver for at least 90 days because this is considered permanent.

2. **Duties Under Duress** – These are activities of daily living that claimants cannot perform or can perform with pain. Each item has a value. Have the form completed at the beginning, monthly and at the end of the case.

3. **Loss of Enjoyment of Life, Hobbies, Sports, Work, School** – These are activities that a person cannot perform that has resulted in a loss of the quality of life of the claimant.

4. **Prognosis** – This is an opinion about future medical treatment and quality of life.

5. **Permanent Impairment Rating** – This is performed according to the 5<sup>th</sup> edition of the AMA Guides. This is what is in Colossus.

### Impact On The Settlement Value

The impairment rating, duties under duress and loss of enjoyment of life comprise **65% of all non-economic damages** on a claim.

The bottom line: more money at settlement results in more money to pay doctors' bills and pay claimants.

