



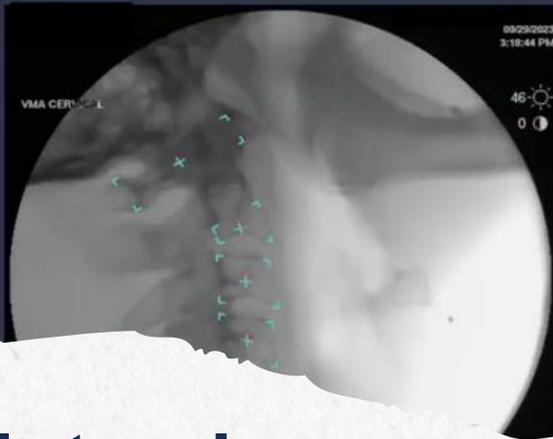
**Dr. Scott Tauber (Chief Clinical Advisor)
Interview with James Mathis**

THE IMPORTANCE OF SPINAL LIGAMENT INJURIES IN PERSONAL INJURY CASES

**IDENTIFYING, OBJECTIFYING, AND
OPTIMIZING CASE VALUE**



**DRIVING FORCE
COMPANY**



VMA Technology Benefits

- Controlled Patient Movement
- Spine (cervical and lumbar) is Isolated
- Allows for Sufficient Movement
- Over 150 Images Evaluated Throughout
- Not Reliant on Film Quality



Interview:

Dr. Scott Tauber:

If you've been doing personal injury for any length of time, you should know who James Mathis is. But for those of you who don't, he's a nationally renowned speaker on insurance claims practices. He's an auto insurance expert. He's worked for State Farm as a superintendent of claims and Allstate as a litigation supervisor. He implemented Teach in 1992, which is the software that's used by State Farm and implemented Colossus, which I'm sure everybody's familiar with in 1996 for Allstate.

He owns several companies, including Sequoia Visions, Mathis Insurance and he's presented seminars for trial lawyers and chiropractic associations in every single state. Presented over 217 educational seminars, testified in over 250 trials, published manuals and books for trial guides. I can go on and on.

We are really excited to have a discussion about this topic and take it to another level, whether you're a provider or a PI attorney, this is something that you want to pay close attention to and start applying into your cases.

Welcome and thank you for taking time. I'm sure I missed a lot in your bio, so I don't know if you want to expand on that or, you're just the expert, basically. Everybody should know who you are. But anything that, that I missed?

James Mathis:

Nothing that is significant for today.

I've been around for 34 years in the PI world on both sides and that significant in understanding what the insurance industry is going to accept and properly, evaluate for settlement values, which is important to the plaintiff attorney. And, of course, it's important to the treating physician in a lot of cases because, payment for the treatment that you have provided, a lot of times it depended upon the amount of settlement.

Dr. Scott Tauber:

You know, most providers and attorneys are really comfortable with MRI and disc issues in PI. Obviously that technology's been around, but what are attorneys and providers missing in their settlements when they overlook a patient's or a client's spinal ligament injuries?

James Mathis:

For attorneys I see that they're missing the significance of ligaments. I see a lot of diagnosis for muscle strains, but I don't see a lot of diagnoses included for ligament injuries. And what's significant about a ligament injury, it is a permanent injury, which means we're going to have to address future care.

We're also going to have to address, the impairment rating. And according to the AMA impairment guide, ligament injury, is between 20 and 25% whole body. And if you compare that to a broken arm at 8% impairment, this is a significant injury, but we're not emphasizing the impact the ligament has on other parts of the body, and how it weakens and scars that tissue so that it becomes more susceptible for future injuries.

Let me give you an example. I just saw a demand that had several cervical disc injuries and two lumbar disc injuries. There were no muscle, tendon or ligament injuries diagnosed. The first thing that happened is the adjuster said, well, the disc injuries are probably preexisting.

For the disc injuries, they offered a total settlement of \$7,000, and I believe there were over \$15,000 in treatment cost, including injections, into this area.

And they lost all of the future treatment for the ligament injuries because they weren't there. So, you lost the disc injuries, you lost the surgical cost of the disc injuries today and in the future to the adjacent disc injuries. I mean we had a \$100,000 policy and the attorney settled that for \$7,000.

So, if you don't have the ligament injury, if they're not objectified, and you don't have a medical doctor, validating that you lose all of that.

A disc injury without muscle, tendon, ligament is most likely going to be considered preexisting, and it's going to reduce the value that you could have seen for the disc injuries by more than 70% and that's huge.

Doctors have to be sensitive to the fact that in every state we have PIP and MedPay and PIP and MedPay right now are practicing what's called medical cost containment.

On the first party side, your client may have PIP or MedPay to pay for the ongoing medical treatment, but the insurers are denying treatment for a lot of injuries. If you don't have the ligament injury diagnosed as well, and it's validated by a medical doctor and objective testing, if you have that, then you receive full, payment under the PIP or MedPay coverage that is available to your client.

If you get that covered under PIP or MedPay, then the subrogation notice that is sent from your client's carrier over to the adverse carrier support that this is an objective, validated injury.

And the ongoing and current medical treatment costs are considered reasonable and necessary, and the price, would be considered as customary as well. All of that is dependent upon one thing that you have objective and validated testing outcome, that there is a ligament injury. And keep in mind, ligament injuries are forever. They don't go away.

You're going to have an impairment and you're going to have a disability rating. Both of those are significant. Keep in mind also that impairment ratings and disability, disability ratings in the PI world have no value unless you have documented Duties Under Duress and Loss of Enjoyment.

That is what brings value to the claim. And it's magnified by the degree of impairment rating. If you have an 8% to up to 12% whole body impairment rating, you get X amount.

For the Duties Under Duress and Loss of Enjoyment, factors, if you have 15% to 19% impairment rating, then you get X plus another multiplying factor on all of the Duties Under Duress and Loss of Enjoyment, factors that have been documented.

And then of course, if you get up above 20% whole body impairment rating, then it almost doubles the value of Duties Under Duress and Loss of Enjoyment for general damages, and it supports future treatment as well. And this can all be done with an objective identification of ligament injury.

But even if your chiropractor, you still have to have medical validation because the insurance industry will not accept it from a chiropractor.

Dr. Scott Tauber:

What do you consider the best time in the patient's plan of care to evaluate for spinal ligament instability, that sweet spot timeframe?

James Mathis:

The VMA is going to provide an objective, defensible, diagnosis of the ligament injury and the severity of that injury. Now, what I have proposed in the past, I've supported a ligament injury diagnosis occurring at 10 days post-accident.

Now, I'm not so sure anymore because of your system that we have to wait that 10 days because you have an objective identification of the ligament injury.

Dr. Scott Tauber:

How does this impact the attorneys that are writing the demand?



James Mathis:

You're going to be able to settle your claims between 90 and 120 calendar days from the date of the accident for policy limits, because you're going to establish a severe injury in the cervical and lumbar reads.

The ligament injury has destabilized the spine, supports the identification of disc injuries, prolapse or herniation, dislocation, fracture, displacement, which means you're going to get the possibility of surgical response to those injuries as supported being caused by this accident because you had the ligament injuries to support that.

Then you need to have providers work up the manifestation that's going to happen to the adjacent levels as well, because the ligament has been weakened, it's been scarred, which is going to destabilize the spine at the adjacent level, which then opens the opportunity for additional disc injuries occurring.

What we need is doctors to first have a defensible objective diagnosis of ligament injury and the severity of that ligament injury and then recognize that's a permanent injury.

So, it's going to have to be treated to end of life. The next step is to identify the adjacent levels that that's going to impact. And if you have a disc injury as well, that means you're going to have the possibility. Now, it's not a possibility, it's a probability of a disc needing a surgical response at 8 to 12 years. You have to have that worked up as well.

I don't understand why if we have a disc injury and ligament injury diagnosed and it's objectively diagnosed; I have no idea why we're not getting value in the \$250,000 to \$500,000 range.

Keep in mind, you have to educate the adjuster because the adjusters are being told, the ligament is nothing more than a muscle sprain, it goes away in six weeks.

The only time an attorney has an opportunity to educate the adjuster is when they submit the demand. And if you have objective findings and medical research to support the lifelong severity of that injury and how it's going to impact adjacent levels, you're ultimately going to be educating the adjusters that you work with on the next case. And on the next case, and on the next case.

Attorneys that have done this in the past have realized that it becomes almost no negotiations on a claim where we have ligament injury.

Whereas if you have nothing more than spasm, muscle injury that's being treated by adjustments by a chiropractor, you're having a hard time getting even \$5,000 in terms of settlement.

So, if you can take the information of a ligament injury, especially if you have objective diagnosis of ligament injury and its severity, and then educate your adjusters, you're going to find it easier and easier to settle your claim, as well as document the future treatment, which could include surgical response to the adjacent levels. In 8 to 12 years, it's going to directly impact the adjacent levels and have that surgical cost and rehab cost and medication cost worked into this demand today.

Dr. Scott Tauber:

What is the source of the permanent injury multiplier that you referenced?

James Mathis:

The insurance industry has agreed upon universally to determine at a 10, 15, 20, percent whole body impairment rating provided in the software such as Colossus or Injury IQ, where that is an automatic multiplier.

Dr. Scott Tauber:

What valuation increase would say a 25% VMA ligament impairment have on the settlement?

James Mathis:

Because you have different software being used and you have different adjusters, there's a lot of different considerations that have to take into place. But let's just take it on face value, a young client in the 25-age bracket, and you have this objective finding of ligament injury in the cervical and the lumbar, lumbar sacral regions. That's going to impact the value of that claim anywhere from three to five times greater value.

Dr. Scott Tauber:

Sometimes attorneys, will say, this is all interesting, but I'm only going to use this on my big cases, but I'm not going to use it on my smaller minimum limit cases. What would your response be to not using it on, on smaller \$25,000 or \$30,000 minimum policy cases and only waiting for the \$100,000 or \$200,000 cases to test for spinal ligament instability or injury?

James Mathis:

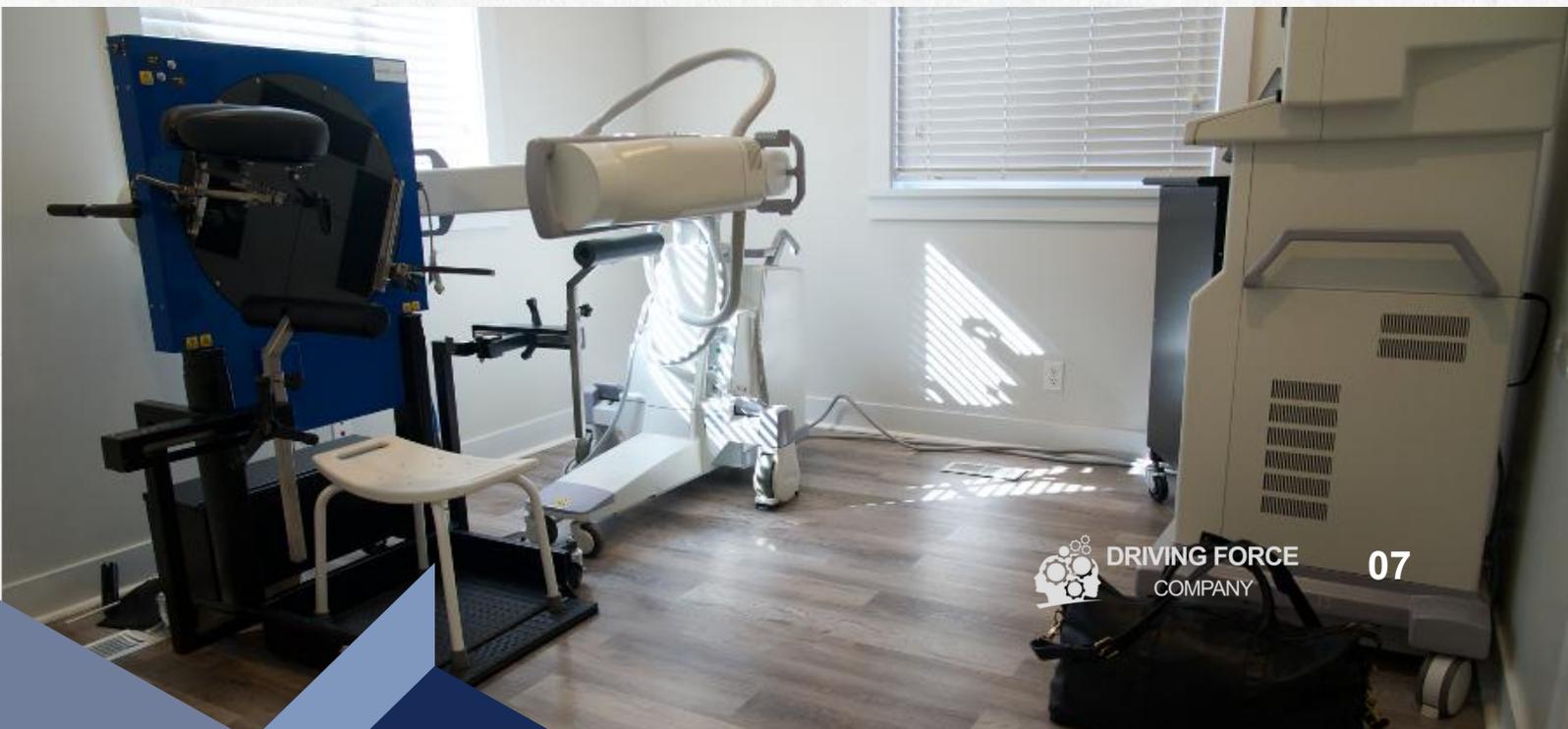
It becomes a difficult situation, to consider, but the testing and diagnosis is necessary for the wellbeing of the patient. You may not get anything more than whatever policy is available, but it is necessary for the client or the patient to understand that they had this injury and they can go to their health insurance or Medicare post settlement in order to get the treatment necessary for the injury.

The \$25,000, \$50,000 policies I would do that for several reasons. One, you have to let the client know what injuries they have and the severity so that they can get treatment.

Second, every time you complete the objective testing that supports the finding, you educate the adjuster and as you educate the adjuster, you are working with the same adjusters over and over again. But if you can educate the adjuster, the severity of the ligament injury as supported by objective finding, that's going to assist in the settlement of the next claim and the next, and the next.

Re-educate the adjusters from the disinformation that they're being fed by their supervisors and management that ligament injuries, muscle injury, tendon, those heal within six weeks. They don't mean anything. That's what the adjuster's being fed. We need to reeducate the adjusters.

We haven't had the objective finding of ligament injury and injury severity that we now have the capability of doing.



All we had was flexion and extension x-ray and MRI, and that wasn't an accurate or a complete diagnosis and finding.

Because we have an objective and complete identification diagnosis of ligament injury, we can then settle that claim probably between 60 and 90 days for policy limits on your \$50,000 or less policy.

If we have that ongoing and we, have it validated, documented by a medical doctor, and we have already, completed some education of the adjuster, we can reasonably see a settlement value in the \$250,000 to \$500,000 range. And that'll bump us into the UIM policy as well.

Dr. Scott Tauber:

In the demand letter, you've gone over how attorneys can present this and the adjacent segment and the disc if it's there and the ligament and the long-term effects. But in general, go back over what are some of the common carrier arguments that attorneys can expect from, these claims adjusters that are being, told that this is not really a big deal? And how to overcome them, what's the best pushback?



The adjusters are receiving misinformation about a ligament injury, so they need to be educated. The only way we're going to do that is by ongoing demands, identifying the severity and objectifying the injury for the adjusters, actually give medical documentation and medical opinions as well as objective findings to support our point of view rather than the misinformation that they're receiving from their supervisors and superintendent.

That has to happen. Second, we have to have a valid objective diagnosis of an injury instead of findings of an MRI. And the flexion extension x-rays were absolutely not objective. So, the adjusters could argue, well, maybe that's true, maybe it's not. I think it's just a muscle strain or sprain, so I'm going only going to offer you three to five regardless of what the treatment cost is.

It will take repeated demands and several negotiation processes. The other thing that's going to happen is the adjusters are trained

to always, always bring up that there were pre-existing, there was a prior accident, so this isn't related to this accident. And you need to then have doctors document, we had a possibility of a ligament injury in the prior accident, but they only had flexion extension x-ray. Now with the VMA testing opportunity, we're able to identify the exact ligament and severity of the injury.

That means that we have a more significant injury, or we have an injury that has been exacerbated or aggravated by this accident based on the objective testing that we can provide today. So, it increases the value.

But those are some of the arguments that adjusters are going to bring up. The insurance industry back in the eighties decided that we were going to change our evaluation of the claim. So, we educated our adjusters to discount any muscle, tendon, ligament injury as being nothing more than a six-week maximum.

It's continued because they took Colossus, Injury IQ, TEACH, all of those programs and set up the mathematical algorithm so it discounted the muscle, tendon ligament injuries automatically. We can change that if we have objective valid diagnostic testing.

Dr. Scott Tauber:

Do you know how attorneys can look behind the curtain to understand how to argue or demand the multiplier discussed earlier at the pre-suit demand stage?

James Mathis:

It's down to how early the demand is being sent out, how complete the demand is to identify and educate about the complete severity of the injuries. If you're putting out a five-page demand, that's what attorneys have been putting out for 20 years. It doesn't do anything for your career. It doesn't do anything for your relationship with the adjuster. It doesn't do anything to represent, fully represent how your client has been victimized. If you are putting out a complete and thorough, demand analysis with the supporting opinions of the severity and value of that claim, this gives your clients a 20-page or 30-page demand.

Dr. Scott Tauber:

What other ways can PI attorneys use spinal ligament injury findings in their cases? For example, causality and other ways that you would suggest attorneys use this in their demand and in their PI cases?

James Mathis:

Well, that's easy. If you have disc injuries and you don't have ligament injury, the adjuster is going to then not have the settlement authority that you need for the client. That's it. Bottom line, it's going to be discounted because the disc injuries, no matter what they are, are going to be perceived as being preexisting.



The second thing is, you're not going to be able to work up the disc injury into its future manifestation and cost to your client without the ligament supporting the adjacent level instability in the spine.

Which means you won't have the ability to work up the future treatment, the future cost of possible surgery for the disc injuries that were caused by this accident into their next

level where they're going to have to have the surgery at a minimum. Also, to address the adjacent disc levels because the spine is now unstable, because the ligament injuries no longer can support that or they're scarred.

So, this means that you're not getting your full amount represented by the settlement that they're offering and you may have to litigate it.

All of those different manifestations going forward are eliminated by not having an absolute objective identification of the ligament injury and the severity of the ligament injury.

Dr. Scott Tauber:

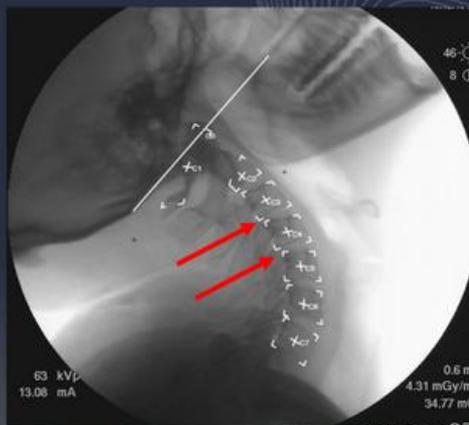
Talk a little bit about frequency and duration. From a provider's perspective and how that works and attorneys using that same frequency and duration concept.

James Mathis:

Well, to have a muscle injury, you're going to be limited to a maximum consideration of reasonably necessary at six weeks. That's maximum anything beyond that is going to be discounted as not being reasonable or necessary. They're not going to include it in their settlement offer.

If you have treatment for a muscle injury where the frequency of treatment exceeds what they have determined as being reasonable and necessary and for the muscle, I hate to tell you this, but they don't feel that any treatment, by an outside source or a third party to the victim is necessary.

Objective & Quantified Medical Evidence



	IN ANY VIEW?	MAX TRANSLATION	CHANGE BETWEEN VIEWS?
C0/C1			
C1/C2			
C2/C3			
C3/C4		3.6 mm 25%	
C4/C5		3.5 mm 26%	
C5/C6	-1.6 mm -11%		9%
C6/C7	-1.4 mm -8%		0.8 mm 5%



Their software determines that muscle or tendon injury, unless it's a torn tendon or a ruptured tendon, can be resolved without any third-party treatment. Again, it's being discounted, to where you get zero value or almost zero value for the treatment duration and frequency, which means that your client is automatically upside down on their claim.

They're not going to get enough settlement dollars to pay for the treatment. If you had the ligament injury into that equation, you're now going to be able to present a permanent injury, which is going to support a significantly higher settlement value, increase the value determination on frequency of treatment, which means that it is all going to be accepted as reasonable and necessary once you have the objective finding of a ligament injury.

Dr. Scott Tauber:

Discuss how, in the right scenarios, spinal ligament injuries, being the permanent injury that they are affects, life care plans and future medical expenses?

James Mathis:

Well, attorneys are handcuffed to their treating physicians. If the treating physicians don't diagnose, objectively, if the treating physicians don't discuss the medical necessity of future treatment and current and past treatment, if the treating physicians don't understand the severity as well as the long-term impact of a ligament injury, the attorney can't submit that to the insurance carrier.

Attorneys need to talk to all of their treating physicians, and to let them know we need to get involved in the objective finding of this ligament injury. Because if we can substantiate the severity and significance of the ligament injury over a lifetime, we can settle every single claim for policy limits. All attorneys are handcuffed to the doctors if the doctors can't do it.

The ligament injury is a significant long-term lifetime injury that, that will require consequences medically for that patient establishing spinal instability for the life of the client.

