

# Settlement Reports

DMX provides visual, objective proof of painful, progressive and permanent ligamentous injuries.



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DMX PROVES INJURY,  
JURY AWARDS PLAINTIFF \$1,600,000.00

**March 2003**  
**SETTLEMENT REPORT FROM**  
**Court of Erie County, New York**

A jury in Erie County, New York has awarded a 40-year old female \$1.6 million to compensate for injuries she sustained in a frontal impact vehicle collision in 1999. The Plaintiff was slowing in traffic when a car pulled in front of her causing an impact.

After the crash, the Plaintiff suffered from headaches, dizziness, and posterior neck pain that did not resolve with either medical or chiropractic care.

The Plaintiff attempted to obtain a fair settlement for her injuries from the Canadian insurance company which represented the driver of the other vehicle. No acceptable settlement was offered.

Just before the case went to trial, attorneys defending the Canadian insurance company again offered an unacceptably small settlement, claiming their MRI evidence showed only minimal injury to a disc and that the ligaments were not affected.

In dramatic contrast, the Plaintiff's attorney used a projector and large screen to demonstrate evidence from a Digital Motion X-ray (DMX) study done by Daniel Cox, DC. Dr Cox, who appeared in Court as an expert witness, projected the Plaintiff's Digital Motion X-ray study to the jury. The jury saw for themselves the injuries to ligaments at multiple levels which were the true cause of the Plaintiff's continuous headache and neck pain. A board certified surgeon testified that no procedure exists to repair these ligaments, and that the Plaintiff's injuries were permanent.

**After hearing testimony and seeing the Digital Motion X-Ray study, the jury awarded the Plaintiff \$1,600,000.00.** Following the trial the Plaintiff's attorney said that without question the DMX study made a "huge" difference in the outcome of the trial.

**Summary:**

Type of Action:	Claim for injuries following a personal injury Auto accident
Defendant:	Canadian Insurance Company
Settlement Awarded:	\$1,600,000.00
Critical Evidence:	Digital Motion X-Ray

**SETTLEMENT REPORT**  
**Arapaho County, Colorado**

**ALLSTATE INSURANCE PAYS \$850,000.00**  
**JURY AWARD**  
**AFTER DMX CONFIRMS LIGAMENTOUS INJURY**

In 2000, the Plaintiff was traveling down a two-lane highway. He pulled to the side of the road and stopped to avoid a pickup truck pulling a trailer that had jack knifed. His vehicle was hit from behind by another vehicle traveling at approximately 45 miles per hour.

The Plaintiff immediately developed symptoms of headache, dizziness and nausea. He sought treatment from his medical doctor who stated that he was “fine”. Plaintiff then went to Dr. Scott Jones for chiropractic treatment over an 18-month period. Plaintiff then treated with another medical doctor who administered facet and trigger point injections. The underlying cause of his headaches and neck pain had not been found and did not diminish even though he was getting the best of care.

In August of 2002, a DMX study was ordered by Dr. Scott Rosenquist despite the fact that the Plaintiff’s PPO denied the Plaintiff that care. The Plaintiff had had an MRI and CT which were unable to detect the cause of injury, however the DMX found the cause of his ongoing headaches and neck pain.

**In September 2002, the DMX video study was played in court to the Judge and Jury.** The DMX study established that the Plaintiff had suffered a permanent ligamentous injury in the upper cervical spine, allowing for a 3.5mm of unilateral translation of C1 on C2 that correlated to the body/head positioning in the impact analysis.

**Summary:**

<b>Type of Action:</b>	<b>Claim for injuries following a Personal Injury Auto Accident</b>
<b>Defendant:</b>	<b>ALLSTATE Insurance Company</b>
<b>Verdict:</b>	<b>Jury Verdict Arapaho Country Court</b>
<b>Settlement Awarded:</b>	<b>\$850,000.00</b>
<b>Critical Evidence:</b>	<b>Digital Motion X-ray</b>

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THOMAS PATRICK BECK

1100 EAST GREEN STREET  
PASADENA, CALIFORNIA 91106-2506

FACSIMILE  
(626)449-9933

(626)795-8333

**Re:** *Cognata, et al. v. Wisehaupt, et al.* Los Angeles County Superior Court  
Case No.: BC243305

**Settlement: \$750,000.00**

**Facts:**

My client, Sabrina Cognata, age 19, was involved in a SUV roll over solo automobile accident on January 1, 2001. At the hospital she was administered a CT scan which revealed a non-displaced fracture of the right pedicle and lamina of C5. After several days in the hospital, she was discharged and continued treatment with a neurosurgeon, orthopedic surgeon and chiropractor. Though her cervical fracture healed, the source of her ongoing pain was undiagnosed by conventional static imaging technology.

**Because of persistent cervical pain, her chiropractor recommended that she undergo a cervical spine videofluoroscopy. Due to the lack of imaging quality of this medium, a definitive diagnosis could not be achieved. As a result of his advances into newer technologic imaging, John Postlethwaite, D.C. (creator of the Digital Motion X-Ray machine) was requested to administer a DMX series of motion digital x-rays in August, 2001 which revealed several levels of cervical instability and osteo-vertebral abnormalities, including but not limited to severe lateral translation at C1-C2, multiple levels of facet joint dysfunction, possible compression fracture and interspinous/longitudinal ligamentous injuries.**

A follow-up DMX series was administered in January, 2002 under the direction of Julie Honaker-Zimmerer, D.C. (biomechanical trauma specialist) who found further worsening of the translation abnormality at C1-C2, as well as permanency of the facet joint dysfunction, ligamentous injuries and cervical instability.

After reviewing the DMX series, her neurosurgeon, orthopedic surgeon, and Arthur C. Croft, D.C., M.S., M.P.H. (cervical spinal trauma specialist) opined that further diagnostic testing by way of bone and SPECT scans of the cervical region were necessary. The bone and SPECT scans revealed objective findings of intense accumulation of radioactivity throughout the C2-C5 region. Due to these findings, Dr. Croft advised a cervical spine CT scan with coronal views and reconstruction for possible endplate fractures. This subsequent CT scan revealed a compression fracture of the inferior aspect of the C5 vertebral body and rotational subluxation of C5 in relation to C6.

As a result of the DMX findings, the neurosurgeon recommended stabilization surgery at C1-C2. The neurosurgeon advised that that the DMX series explained her chronic cervical pain and headaches. The neurosurgeon also opined based on the DMX series that she would experience cervical pain for the rest of her life regardless of the need for further surgical intervention, such as fusion at C5-C6, because of the multiple levels of facet joint dysfunction and ongoing vertebral instabilities.

**Conclusion:**

**Due to the objective proof of injuries verified by the DMX series and the persistence of her team of doctors to determine the exact cause of her pain, as well as the continuing need for diagnostic confirmation of her accident-related injuries and symptoms originating from the utilization of DMX imaging, this claim settled at mediation in June, 2002 for \$750,000.00.**

*By:* **Thomas Patrick Beck, Esq.**

Special thanks to the following individuals:

Dr. John Postlethwaite—creator of the DMX machine (Tampa, FL)

Dr. Julie Honaker-Zimmerer—biomechanical trauma specialist (Canyon Lakes, CA  
and of Phillips, White Chiropractic Clinics, Redlands, CA)

Dr. Arthur C. Croft – cervical spinal trauma specialist (San Diego, CA)

Dr. Jeffrey L. Rush – neurosurgeon (Los Angeles, CA) Dr. Charles Sadler—orthopedic surgeon (Los Angeles, CA)

# JURY TELLS ALLSTATE TO PAY PLAINTIFF \$285,000 AFTER DMX PROVES PERMANENT INJURY

## March 2003 SETTLEMENT REPORT FROM Lehigh County Court, Pennsylvania

A jury in Lehigh County, Pennsylvania awarded a 50-year old female \$285,000 to compensate for injuries she sustained in an auto crash in 1999.

The Plaintiff's vehicle was stopped and hit from behind by a car going 35-miles per hour. After the crash, the Plaintiff was taken to the hospital where she was x-rayed and released with only a prescription for muscle relaxants.

The Plaintiff continued to suffer from headaches, posterior neck pain and numbness in her left hand that did not resolve with medical care. The Plaintiff was referred to Dr. Mark G. Kohn for a Digital Motion X-Ray (DMX) which showed permanent ligamentous damage to her cervical spine.

Allstate's offer of \$20,000 to compensate the Plaintiff for these injuries was rejected because the Plaintiff will require ongoing care and treatment for her permanent injuries.

The case went to trial before a Jury. During the trial the Plaintiff's attorney projected the DMX study on a 12 foot screen. With help from expert witness Dr. Mark G. Kohn, he had prepared a graphic of white lines superimposed on the DMX. These lines compared the anterior longitudinal ligament and posterior longitudinal ligaments to a "train track look". The visuals helped the Jury easily understand the abrupt shift in the "track" caused by the Plaintiff's injuries. The Plaintiff's attorneys then explained the permanent and progressive nature of ligamentous injuries which cannot be repaired by surgical or medical intervention.

**After hearing testimony and seeing the Digital Motion X-Ray study, the jury awarded the Plaintiff \$285,000.**

### Summary:

Type of Action:	Claim for injuries following a personal injury Auto accident
Defendant:	Allstate Insurance
Settlement Awarded:	\$285,000
Critical Evidence:	Digital Motion X-Ray

**Superior Court of California  
County of San Diego, North Country Division**

**Case Number: GIN015169**

**DMX EVIDENCE DISPELS MYTH OF  
"NO CRASH/NO CASH", JUDGE UPHOLDS  
\$42,223.50 JURY VERDICT**

A 26-year-old female with no prior injuries was involved in a rear end auto collision. The damage to her car was only \$442.00. Accident reconstructionists hired by Farmers Insurance Company claimed that the collision was "below the threshold for injury"... the classic "no crash/no cash" position taken by many insurance companies in low speed accidents.

Julie Honaker-Zimmerer DC, FAFICC, MS, QME was called to testify to the jury about the results of the Digital Motion X-Ray that was taken of the Plaintiff. Dr. Zimmerer showed the DMX study and explained to the jury that the ligamentous injuries they were seeing were permanent.

The jury went into deliberation and came back with a verdict of \$42,223.50. The jury was polled after the verdict and asked why the judgement was above policy limits. Jurors stated that they made the award because they "could see the ligament injury with the DMX".

Farmers insurance then filed a motion with the court asking for a new trial, stating that the jury was "too sympathetic". This motion was denied by Judge Thomas P. Nugent on October 10, 2002 saying that there was "sufficient evidence to support the verdict", and that "the Court further finds that the award of damages was not excessive".

**Summary**

**Type of Action:** Claim for injuries following a personal injury auto accident

**Defendant:** Farmers Insurance Company

**Verdict:** Jury Verdict, Superior Court of California

**Settlement Awarded:** \$42,223.50

**Critical Evidence:** Digital Motion X-Ray

**SETTLEMENT INCREASED FROM  
\$ 10,000. TO \$ 52,600.**

**El Dorado Superior Court, CA**

***In Re: Taylor vs. Conk***

Plaintiff was broadsided at 40 mph by a Ford Expedition. The patient had complains of headaches, neck pain, upper back and extremity pain. The treatment rendered consisted of 4 month of Chiropractic and 26<sup>th</sup> visits. The plaintiff underwent 3 years of treatment with Kaiser, consisting of TENS, Accupunture, Accupresure, Physical Therapy trigger point injections.

**Summary:**

<b>Type of Action:</b>	<b>Claim for Injuries following Personal Injury Auto Accident</b>
<b>Injuries Sustained:</b>	<b>Significant Connective Tissue damage, Facet Joint injury</b>
<b>Defendant:</b>	<b>Mercury Insurance Company</b>
<b>Original Settlement Offered Plaintiff:</b>	<b>\$10,000.00</b>
<b>Settlement Verdict by the jury after viewing DMX:</b>	<b>\$ 52,600.00 plus addition fees and costs were awarded to Plaintiff's Counsel</b>
<b>Attorney for Plaintiff:</b>	<b>Travis Black, Esq.</b>
<b>Plaintiff's Experts:</b>	<b>Chuck Davis, DC, Patrick Henry, MD Dr. Gatterman, DC,DACBR</b>
<b>Judge:</b>	<b>Wagoner</b>
<b>Critical Evidence:</b>	<b>Digital Motion X-ray performed by Patrick Walborn, DC</b>
<b>Additional Evidence:</b>	<b>Two prior negative cervical MRI's</b>