

ORIGINAL FILED

JUL 13 2011

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

**CHATSWORTH METROLINK
COLLISION CASES**

*LEAD CASE: Magdaleno v. Southern
California Regional Rail Authority dba
Metrolink*

Case No. PC043703

**FINAL JUDGMENT RE:
ALLOCATION OF INTERPLED
FUNDS**

Judge: Hon. Peter D. Lichtman
Dept.: 4

**THIS DOCUMENT RELATES TO ALL
CASES**

Introduction

This Court's opinion and order of allocation is outlined through a series of topical sections designed to permit the reader to experience the collision, its aftermath from the perspective of the passengers and the Court's methodology for allocation. The totality of the discussion will then permit the reader to understand the analysis implemented in arriving at the allocation.

1 On January 20, 2011 in the Los Angeles Superior Court, Judge Highberger ordered
2 the cases transferred to the Honorable Peter D. Lichtman, Judge presiding for all purposes.
3 Judge Lichtman was given full authority to allocate the interpled funds among the claimants
4 and to adjudicate all equitable issues to final judgment.

5
6 Three weeks later in the United States District Court, Judge Wu entered final
7 judgment in the Interpleader Action on February 10, 2011, declaring that “[t]he allocation of
8 the interpleader fund as to each claimant is transferred to and assumed by the Superior
9 Court of the State of California for the County of Los Angeles.”

10
11 Additionally, Judge Wu ordered the interpleader funds and all interest accrued
12 thereupon transferred into a qualified settlement fund (“QSF”), and declared that upon
13 deposit into the QSF, jurisdiction over the funds and accrued interest would be transferred
14 to the Los Angeles Superior Court. Judge Wu further ruled that “[t]he Los Angeles Superior
15 Court shall assume authority to adjudicate and shall oversee the allocation of the
16 Interpleader Funds, making all determinations regarding the allocation of the Interpleader
17 Funds and accrued interest, or any portion thereof, to the individual Claimants.”

18
19 In accord with the federal directives and in conformity with the mandate to allocate
20 the interpleader funds, this Court, on March 7, 2011, issued its order with respect to the
21 procedure and protocol that would govern the individual hearings so as to enable the
22 allocation to be undertaken. A portion of that order is set forth below in *haec verba* in
23 furtherance of transparency as to how the process would commence and conclude:

24
25 *“The trial as to these related actions is deemed to present uncontested*
26 *requests by the plaintiffs for this Court to determine the allocated share of the*
27 *interpled funds. The proceedings are open to the public. The Court has*

1 *begun to receive and review the materials submitted by the various claimants.*
2 *The hearings will commence on March 11, 2011, and it is anticipated that the*
3 *hearings should conclude sometime during the month of May 2011. Due to*
4 *the monetary limitation presented as a result of the fixed amount of interpled*
5 *funds, this Court must hear from all claimants before a determination of*
6 *allocation can be made as to each claimant. The allocated amounts will not*
7 *be issued by way of seriatim orders since the Court is confined to those*
8 *monetary limits of the interpled funds and percentage reductions may become*
9 *necessary.*

10 *These proceedings are equitable in nature and are uncontested from the*
11 *standpoint of the defendants. Accordingly, no court reporter will be made*
12 *available for the presentation of damage requests unless specifically*
13 *requested by counsel for the interested party. Any party that requests the*
14 *services of a court reporter for the hearing shall submit a written request to*
15 *the Court no later than three [3] court days in advance of the scheduled*
16 *hearing. The requesting party shall be responsible for the court reporter's*
17 *fees as set forth in Government Code § 68086 (a) (1)-(3)."*

18
19 The hearing process where evidence was introduced by the passengers and their
20 counsel of record is now concluded.³ A discussion as to those facts and evidence is set
21 forth below.

22 //

23 //

24 //

25 //

26 _____
27 ³ The hearings concluded on June 10, 2011.

1 It has been estimated that Metrolink #111 was traveling at 40 miles per hour
2 (64 km/h) before it suddenly came to a dead stop after the collision. The National
3 Transportation Safety Board (herein "NTSB") reported that the passenger train was
4 traveling at 42 miles per hour (68 km/h). The Union Pacific freight was traveling at
5 approximately the same rate of speed after its engineer triggered the emergency air brake
6 only two seconds before the actual impact. The Metrolink engineer never applied the
7 brakes on his train.

8
9 Both trains were on the same section of single track that runs from the Chatsworth
10 station through the Santa Susana Pass. It then becomes double track as it enters Simi
11 Valley.

12
13 The force of the impact due to the weight differential and speed caused the Metrolink
14 locomotive to telescope into the passenger compartment of the first car thereby killing all
15 passengers seated in approximately the first $\frac{3}{4}$ rows of both the upper and lower levels. All
16 three locomotives, the leading Metrolink passenger car and seven freight cars, were
17 derailed and both lead locomotives and the passenger car fell over. All but two of the
18 deaths occurred in the first passenger car.

21 **Aftermath and Consistency of Facts**

22 **A. The Scene**

23
24 The consistency of the testimony of the surviving passengers provides the best
25 description of what happened upon impact. What follows is based on the actual testimony
26 of the survivors themselves.

1 The sound of the crash was deafening only to be replaced by complete, total and
2 eerie silence. Almost all of the passengers that remained conscious through the ordeal and
3 even those that were briefly rendered unconscious speak of this silence as being surreal.
4 Many of the passengers thought that they had simply passed away and were experiencing
5 death since the silence coupled with debris floating in the air along with the sun reflecting
6 through the debris provided a sensation of another dimension. This silence was short lived
7 however, and was quickly followed by cries for help, screams of pain, cursing, wailing,
8 moaning, howling, and sobbing. For those passengers that survived in the first car,
9 descriptions of what was observed would make the most hardened of first responders feel
10 uneasy. Severed limbs were strewn all about and blood was pooled everywhere. The first
11 car had flipped on its side and fire started to erupt. Only two car seats remained intact. A
12 description of this scene is provided by one of the survivors of the first car. Set forth below
13 is her unedited observation and account of what transpired immediately post impact.

14
15 *"The stairwell to the upper deck was detached on the ground next to me at*
16 *a cross angle, flipped upside down. As I continued looking to my right, I*
17 *noticed a large open space (empty of the train chairs), the severed arm of a*
18 *young female, and part of a larger dark metal [sic] different than the beige*
19 *Metrolink metal color.*

20 *On the upper floor there was an elderly lady, slumped over one of the train*
21 *tables. The top of the roof was torn open like a peeled banana, split metal*
22 *and a gaping hole.*

23 *Next to me were the crumpled train seats and a large metal box, an air vent*
24 *had come down and crushed a man underneath. His mangled legs were all*
25 *I could see, but his cries for help were very loud. Eventually he must have*
26 *died, as he was calling out for his mother and then no more sounds. Next,*
27 *was the smell of fuel, flames burst, and smoke started coming into car 1. I*
28 *was pinned down and the loss of control was terrifying. At this point I was*
trying to decide if I would die by fire or suffocation of smoke."

29 Narratives similar to the one above were relayed to the Court at virtually every
30 hearing. These descriptions served to assist the Court in understanding the nature, extent
31 and depth of Post Traumatic Stress Disorder (herein PTSD) that every single survivor
32 endured and to this day continues to endure. While this syndrome will be discussed at

1 length below, suffice it to say that it still remains the single greatest harm to each surviving
2 passenger and their families. Unfortunately, no one can determine when, if at all, this
3 disorder will abate.

4 5 **B. A Sign of the Times**

6
7 As each passenger was attempting to assess his or her own physical condition as
8 well as trying to understand what had just happened, an interesting behavioral pattern
9 developed. What every conscious passenger did next is clearly a sign of the times we now
10 live in. With 100% continuity, each passenger (who was able) immediately began the
11 search for his or her cell phone and if not found, started grabbing any cell phone available
12 to inform their loved ones of what they thought had just happened.

13
14 To this Court, the conduct of the passengers was unquestionably reflexive and
15 instinctive. The first thoughts were to call their loved ones and make sure that they would
16 not be worried, once news got out. Notwithstanding serious physical harm and horrific pain,
17 these acts were completely selfless and admirable. Nothing else seemed to matter other
18 than making sure the family was to be informed and told not to worry.

19
20 Even those passengers who were lucky enough to have escaped with minor injuries
21 began assisting other passengers less fortunate whose entreaties and pleas were to help
22 find their cell phone and assist in calling a loved one on their behalf. Based on the
23 testimony of those passengers who survived and who were likewise physically able to
24 assist the less fortunate, cell phones were strewn all over the cars. Many of the cell phone
25 calls to loved ones were initiated by other passengers wanting to inform these strangers of
26 what had just happened and to provide information so as to mitigate the anxiety that was
27 sure to follow.

1 Let there be no doubt that these were selfless acts by those passengers who were
2 able to walk away but did not. The first reaction was not to flee but to stay and render
3 assistance even if it was something as simple as a phone call on behalf of a fellow injured
4 passenger.

5 C. The Seating

6
7 The specific car that a passenger selected and the location of the seat determined
8 life or death and injury or no injury. After conducting approximately 120 separate hearings,
9 the testimony from each of the passengers made it very clear that seat selection dictated
10 the circumstances of one's fate. While it is true the first car was the most damaged and
11 obvious to all those individuals who sat in the second and third cars that they had a better
12 chance of surviving; what was not so obvious, yet uncannily consistent was the effect of the
13 collision on those passengers who sat facing the opposite direction of travel. Most
14 attorneys and even the passengers themselves were unaware of the fact that there were
15 15 survivors in the first car. Out of those 15 individuals, 2 passengers were "walk aways".
16 To imagine that there existed any "walk aways" from the first car is inconceivable.

17
18 The key to that success was facing the opposite direction of travel in one's seat.
19 Each individual who sat facing the opposite direction of travel sustained far less injuries
20 than any other passenger. In this regard, 100% of the "walk aways" had one thing in
21 common which was the fact that they all faced the opposite direction of travel. It made
22 perfect sense for the majority of the "walk aways" to have been seated in the third car.
23 Distance from the locomotive and facing the opposite direction of travel appeared to be the
24 combination necessary to survive this horrific collision.

25
26 Unfortunately, the same cannot be said for those who sat at the tables. Almost every
27 table passenger sustained and suffered horrible abdominal injuries that cannot be

1 medically resolved. Almost all of one's vital organs were implicated for those who sat at the
2 tables. A further description and review of these types of injuries will be detailed below and
3 medical illustrations will be attached to this opinion so as to depict the types of injuries one
4 could expect from a table victim.

5
6 Closely related, but by no means less significant, were the bench passengers. The
7 injuries sustained by each of these individuals were equally horrific. The only difference
8 was that instead of abdominal organs being implicated it was one's head and face that
9 received the brunt of the collision force.

10
11 All of the bench passengers were launched head/face first into a bulkhead. The
12 effect was to remove the skin from one's scalp and inflict gruesome injuries to the face and
13 eyes. Eyes and eye sockets were damaged and scalp wounds were commonplace. Many
14 passengers described holding the skin of their face in place while waiting to be triaged. One
15 woman managed to free herself from the wreckage and found a mirror in the back of the
16 train only to get a glimpse of the fact that she was holding the skin of her face in her hand
17 and when she removed her hand from her head she saw only bone. For the bench victims
18 descalping injuries were commonplace.

19
20 These injuries likewise implicated the brain and almost all of these passengers
21 suffered traumatic brain injuries to varying degrees. The cognitive deficits that resulted
22 were entirely consistent with each bench passenger.

23 24 **D. The Physical Injuries**

25
26 Through each hearing this Court was able to reconstruct not only what physically
27 happened in each of the passenger cars but also the types of injuries that a passenger

1 would face depending on the seat chosen and the direction of travel the passenger was
2 facing.

3
4 The biomechanics of the collision itself has revealed another consistency with
5 respect to the injuries suffered. Interestingly, most of the injuries sustained were
6 predominantly left sided. While there is no doubt many people suffered horrific injuries to
7 both sides of their body, there did emerge a unique pattern that demonstrated injuries that
8 were singularly left sided.

9
10 For example, the left shoulder, left arm, left leg and left ankle seem to have always
11 been implicated. Specifically, if fractures resulted in these areas, the evidence presented
12 demonstrated extreme difficulty in healing and almost always resulted in unresolved
13 residual effects.

14
15 In this regard, the Court found the shoulder and ankle injuries to be the most
16 problematic. The answer seems to lie within the forces placed upon the body in the collision
17 itself. Many victims presented the testimony of their orthopedic treating physicians which
18 established that while the medical profession has become extremely adroit at resolving
19 weekend warrior mishaps and sports injuries with a high degree of success in returning
20 either athletes or non-athletic individuals to pre-accident status, that success rate falls
21 precipitously when the body is faced with very high impact injuries such as the ones
22 inflicted by the collision.

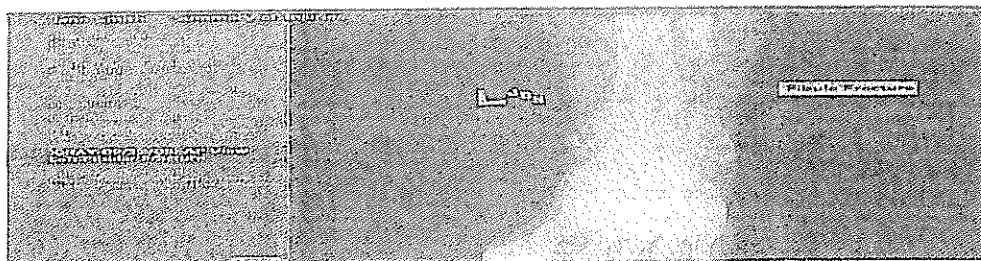
23
24 In other words, while the injured areas of the shoulder and ankle could be repaired
25 surgically, the ability to return those parts of the body to pre-accident status was
26 challenging at best. The residual pain and loss of range of motion were significant and
27 commonplace. The ability to return a passenger to pre-collision status, in many cases, was

1 simply not possible.

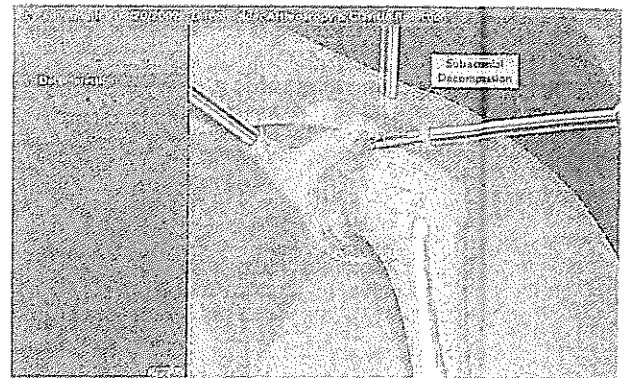
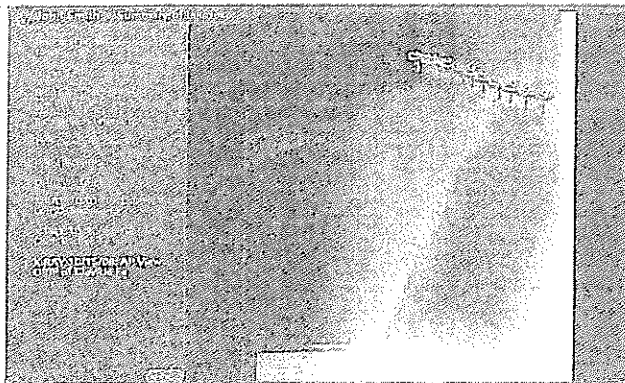
2
3 In this collision, the passengers were catapulted into seats, bulkheads, dividing walls,
4 as well as other passengers at over 40 miles per hour. The bones in the body were crushed
5 and compressed to the point of fragmentation. Many of the victims testified to helplessly
6 watching their bodies fly through the air knowing that they were going to hit either someone
7 or something.

8
9 While it is true that many of today's orthopedic surgeons have experience with
10 battlefield wounds, the injuries sustained here were simply not those injuries. Once again,
11 in this instance bodies were either thrown against immovable objects or the infrastructure of
12 the train itself was bent around a person's body such that many victims had their legs and
13 arms pinned for hours. In the case of one passenger, the train's metal hand hold pole was
14 run through the passenger's leg and had to be cut away from the wreckage and travel with
15 the passenger to the emergency room with the shaft still inside the leg.

16
17 In the case of ankle injuries, ankle replacement surgery is still considered
18 experimental. The gold standard for these types of injuries is fusion and that protocol, in
19 many instances, results in the loss of a normal walk/gait. The loss of a normal walk, in turn,
20 puts stress on other parts of the body, which results in chronic pain. Set forth herein below
21 are some medical graphics which demonstrate the types of injuries that this Court found
22 most consistent.



1 With the shoulder, specifically the clavicle and the shoulder joints themselves, there
2 was so much force placed upon the acromion section that it almost always resulted in
3 acromial impingements and tears in areas that were very difficult to reach. In most
4 instances, victims faced many surgeries with minimal pain relief and marginal improvement
5 with range of motion. Once again, the medical illustrations best provide an understanding of
6 what many passengers faced.



7
8
9
10
11
12
13
14
15
16 The fact of the predominant left sided injuries, while irrefutable, left this Court with the
17 nagging question of how did this occur. Since the attorneys representing their individual
18 clients did not have the benefit of hearing from all of the victims and thus receiving a
19 panoramic view, biomechanical evidence explaining the reason for this phenomenon
20 seemed elusive. Interestingly, the answer came quite unexpectedly from one of the first car
21 passengers whose occupation was that of a registered nurse specializing in neonatology.
22 Her words confirm that which the court had noted over and over again through the
23 testimony of the victims.

24
25 *"Collisions that occur on an arc or curve result in injuries on the side*
26 *facing the "C" if you are seated properly. Our direction had the "C"*
27 *facing left, so I knew more damages would be left-sided."*

1 This train collision occurred while both trains were coming around a blind curve.
2 With respect to the table victims, the experience was like being on the receiving end of a
3 blunt edged guillotine. The impact would force a passenger's body to fold over the edge of
4 the table with the edge being driven deep within the abdominal cavity. The result of which
5 was to have every internal organ crushed, lacerated, or severed. These injuries were so
6 severe that this Court had to create a new category of victim called the "table victim" in its
7 methodology for allocation.

8
9 The directional forces placed upon the body left each of the survivors with a need for
10 lifelong medical care. Two passengers underwent distal pancreatectomies. With one victim,
11 the surgery left the survivor Type I insulin dependent. Because the other organs of that
12 passenger's body were so badly damaged, leaving one kidney in complete failure, the
13 degree of success in managing the patient's blood sugar level remains to this day difficult
14 at best. In 7/10ths of a second the passenger became a Type I diabetic. His future medical
15 care will be disruptive as to all aspects of his life.

16
17 The injuries sustained by the bench victims have been briefly addressed. Suffice it to
18 say that these victims not only sustained a multitude of physical injuries but also horrific
19 brain trauma. Unfortunately, this head trauma was not confined to bench passengers. Any
20 passenger whose head was implicated in any part of the train received this same trauma.

21
22 Accordingly, cognitive deficits were routine with every passenger that was rendered
23 unconscious no matter what the duration. Even those not rendered unconscious testified to
24 some form of deficit if a head wound resulted. Singularly, the most damaging deficit took
25 the form of robbing the individual of the ability to multi-task. In hearing after hearing the
26 testimony for those passengers that received head wounds was identical. Corroborative of
27 this fact was the testimony provided by co-workers, spouses and children.

1 Once the victim returned to work, this deficit became pronounced and acute. The first
2 thing to be noticed was the inability to execute more than one task at a time coupled with
3 the inability to remember. This inability to multi-task led to many forced and early
4 retirements and untold torment and frustration as to why they could not return to the way
5 things once were. Once the physical side of the equation started to stabilize the mental side
6 began to take its toll.

7
8 At first blush, the testimony might seem incredulous, but what was amazing to this
9 Court was the level of consistency with respect to this deficiency. With 76 different law firms
10 representing victims from all different walks of life, ages and professions, the cognitive
11 deficits described did not lend themselves to being rehearsed or incredulous. The high
12 degree of consistency lent itself to only one conclusion. The harm is real and still remains.

13
14 The inability to execute multiple assignments coupled with one's lack of memory is
15 the greatest source of outrage, frustration and anger that many of the passenger victims
16 still confront to this day.

17
18 The cognitive deficits discussed and described were compelling to say the least, but
19 when combined with PTSD, the situation has become unbearable for many of the victims
20 and their families. In the short term, the victims concentrated on stabilizing the physical
21 injuries. Most of the victim's time and energy was spent on healing the physical side of the
22 equation. However, once the physical side of the problem either healed or abated to the
23 point of realizing nothing further could be done, the mental side became the greater evil.
24 The insidious nature of PTSD will be discussed further, but for now more detail is needed to
25 understand the physical injuries.

26
27 While the discussion has been spent on some of the more consistent aspects of the
28

1 collision, i.e., the types of victims and the hemispheric nature of most injuries, more detail
2 as to the commonplace injuries needs to be set forth so as to provide a greater
3 understanding of the challenges that this Court faced. While many of the injuries previously
4 mentioned involve lacerations, fractures and severed internal organs, the injuries to one's
5 mouth and teeth carried another and particularly interesting problem.

6
7 For those passengers that sustained either broken or knocked out teeth, there is
8 another complication. On the dental side comes a completely unforeseen problem. The
9 roots in many teeth take approximately 3 to 5 years to die. In other words, passengers with
10 this type of injury may require further root canal surgeries and not yet know it. Since one's
11 dental root takes a very long time to decay and die this injury is simply not ripe for
12 quantification. This fact, among many others, only compounds this Court's assessment of
13 what is to be allocated. Unfortunately, facial and dental injuries were quite common.

14
15 Provided below is a list of the injuries that most passengers received in the collision
16 regardless of train car or seat selection.

- 17 1. Facial fractures, inclusive of nasal area and orbital areas of the eyes
- 18 2. Clavicle and scapular fractures (Comminuted) & (Bilateral)
- 19 3. Sternum, manubrium and rib fractures (Generally 4th through 12th and bilateral)
- 20 4. Cervical fractures (Generally C-3 through C-7)
- 21 5. Thoracic fractures (T-1 through T-3)
- 22 6. Transverse process fractures at all levels
- 23 7. Lumbar fractures, lamina fractures and spinous fractures
- 24 8. Compression fractures
- 25 9. Spinal cord compressions
- 26 10. Leg fractures of every type and variety (inclusive of the femurs)
- 27 11. Arm and wrist fractures of every nature (Distal Radius and Distal Ulnar)

1 12. Ankle and foot fractures of every nature, type and size

2 13. Scalp lacerations and facial lacerations

3 14. Traumatic head injury

4 15. Pneumothoraxes and hemothoraxes (bilateral)

5 16. Skull fractures

6 17. Nerve impingements

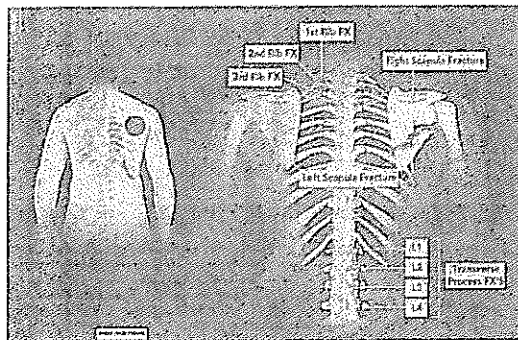
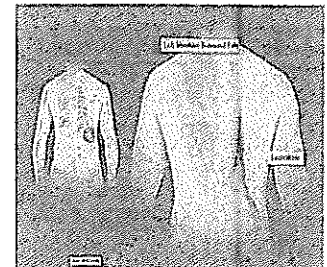
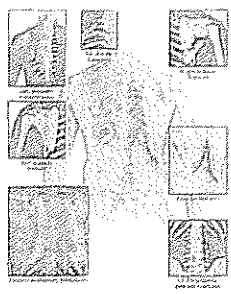
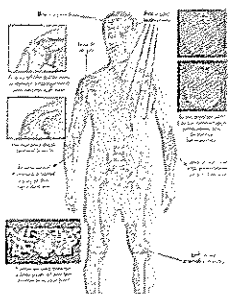
7 18. Denervation of many limbs

8 19. Dental fractures of every nature

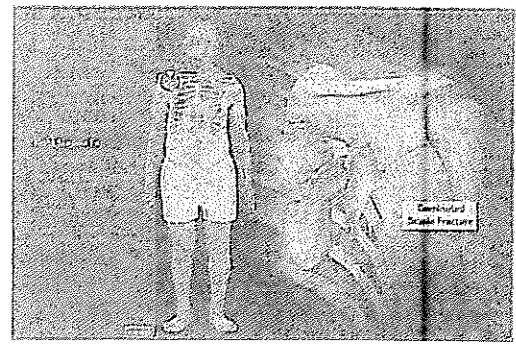
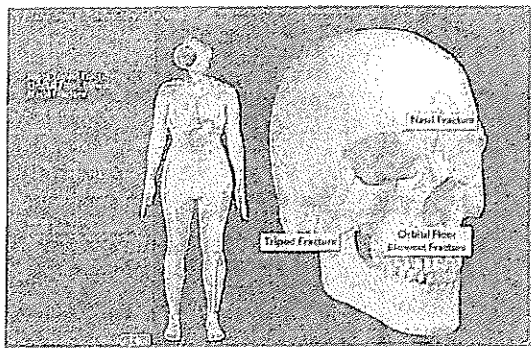
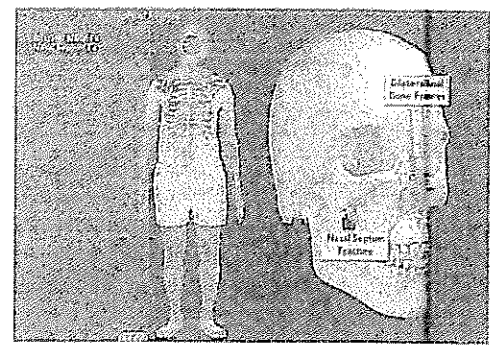
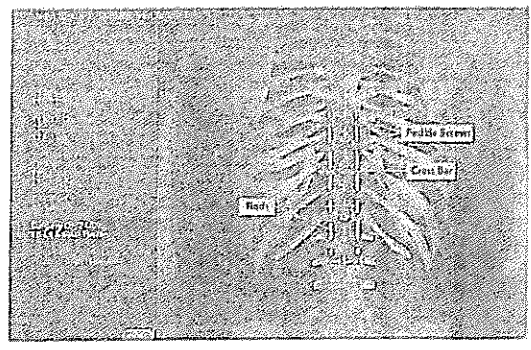
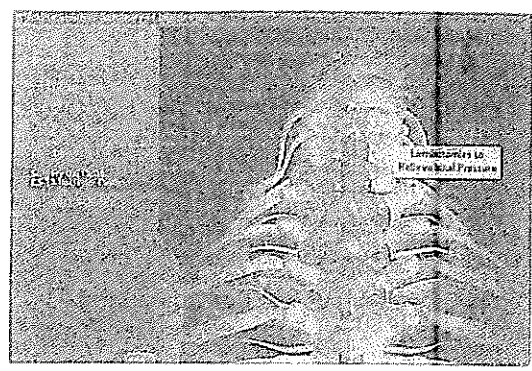
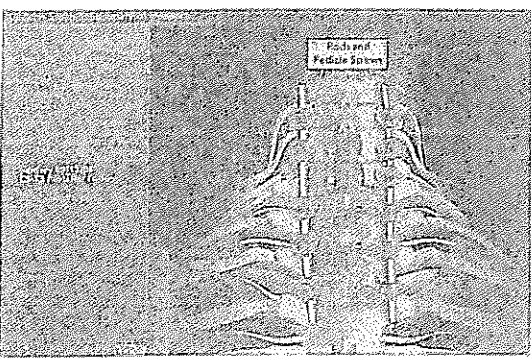
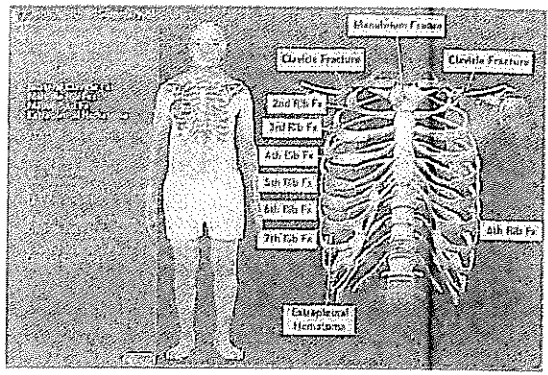
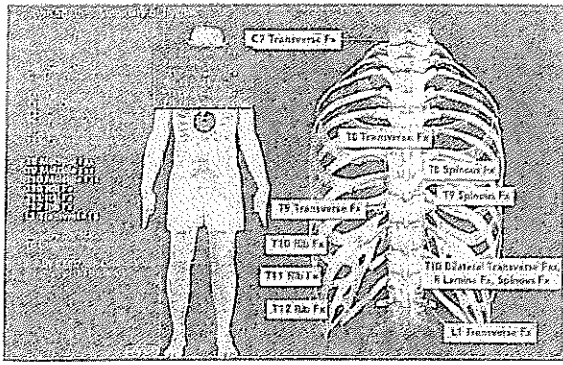
9 Surgical procedures undertaken to resolve many of the problems run the gamut.

10 Many of the injuries sustained were not confined to one injury per person. In fact, just the
11 opposite occurred. Large numbers of the passengers suffered from a multiple dose of
12 broken ribs, arms, legs and pneumothoraxes to one degree or another. It simply defies
13 description to explain the full extent of the injuries many of these victims sustained.

14 Imbedded medical illustrations provide a better understanding.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 E. Post Traumatic Stress Disorder
2 (The Invisible Elephant)
3

4 Upon the conclusion of each and every hearing, this Court repeatedly stated that
5 PTSD was the elephant in the room. While the healing process from the physical viewpoint,
6 i.e., the mending of broken bones and lacerations, can be observed and followed there is
7 no way to follow the damage done to one's psychological state. With complete uniformity,
8 each victim testified with the same refrain "*I am not the same person that I was before the*
9 *accident*".
10

11 The reference to not being the same person was meant more for the mental side of
12 the equation rather than the physical. While each passenger did describe the heartfelt loss
13 regarding the inability to return to those physical activities once routinely done, the greater
14 harm was the new found fears and phobias that the collision bestowed upon them.
15

16 The consistency of the testimony became so striking that this Court was able, in
17 many instances, to anticipate what the victims would say next. Once again, with victims
18 testifying from all walks of life and being represented by so many different law firms, and
19 with the children of the victims representing different age groups, the ability to introduce
20 rehearsed testimony was non-existent. The conclusion was that the Court was listening to
21 the unvarnished truth.
22

23 Simply put, the testimony was tragic. Passenger after passenger testified to
24 nightmares, the inability to communicate the horror of not only what was seen but also what
25 was done to them. Many of the victims can no longer sleep in beds but only recliners since
26 the simple act of going to bed brings on the fear of nightmares. Sleep patterns have been
27 completely altered and disrupted.
28

1 Each passenger now walks around with an aura or shroud of anxiety, frustration,
2 fear, hyper vigilance, isolation and hyper agitation. The spouse or domestic partner who
3 was riding the train is simply non-communicative, seeks isolation and has a complete lack
4 of patience for everyone, but especially for the non-riding spouse or domestic partner and
5 co-workers. There exists an overwhelming feeling of anger and bitterness that this has
6 happened to them.

7
8 The non-riding spouses or domestic partners are no less victims in their own right.
9 While each of the spouses or partners occupies the same household space, they mentally
10 and emotionally reside in different rooms. There is a shroud between them. The mental
11 connection and emotional intimacy they once enjoyed is gone. It has vanished. Victims can
12 relate to other victims but not to others, not their children or loved ones. The non-riding
13 spouse/partner can likewise relate to other non-riding spouses/partners but, unfortunately,
14 not to other individuals who have had no similar experience.

15
16 Children of these passengers have noticed the difference perhaps in a more stark
17 fashion. Either dad or mom is just different. The "go to" person can either not be found and
18 if found, they are not to be disturbed. The sheer weight of seeking advice puts too much of
19 an emotional stressor on the victim. Mom or dad is a hollowed out individual. Essentially,
20 the children are now missing a parent.

21
22 Both the children and the non-riding spouse/partner are at a complete loss as to how
23 to help his or her loved one/father/mother. The degree of helplessness, frustration, and loss
24 felt by the family is simply without description. The stress placed on the marriage is
25 challenging at best.

26
27 Additionally, when PTSD is coupled with traumatic brain injury the result is complete
28

1 role reversal. Where either mom or dad was viewed as the strong one and the glue to the
2 family, the other parent has had to pick up this void. In many instances this has created
3 further stresses and strains and has likewise created more psychological hurdles for the
4 family. Intimacy, continuity and the overall family balance have been disrupted entirely.
5

6 Notwithstanding the fact that certain individuals were lucky enough to escape
7 physical harm, no one escaped PTSD. In many instances those passengers that escaped
8 physical damage suffered most from PTSD. The reason for this appears to be quite
9 simplistic, while the physically injured were concentrating on getting well, those that did not
10 have that problem spent more time concentrating on the mental side of the equation, i.e.
11 what they saw and heard and their own conduct. Hence, the issues of survivor guilt are
12 quite acute.
13

14 This Court has struggled greatly with this particular harm. During one hearing, one
15 of the plaintiffs brought in a professor of psychology from UCLA specializing in PTSD to
16 discuss the harm inflicted and to assist the Court in comprehending this disorder. The
17 colloquy between the Court and the professor led the Court to ask the professor to put
18 some of his thoughts in writing concerning the generic aspects of PTSD in conjunction with
19 this accident. Rather than distill those remarks, they are being set forth below.
20

21 *"This tragic accident had an enormous impact on survivor*
22 *perceptions. Visually, survivors could see death around them, and they were*
23 *very much aware of their precarious physical state. Their auditory senses*
24 *were overwhelmed by the initial crash noise, and then thereafter, the sounds*
25 *of pain and dying, and the frantic calls for help. The fire and smoke was*
26 *obvious; the diesel smell too. These sensations, and the resultant cues (as*
27 *noted above) are notorious for eliciting flashbacks in PTSD.*

28 *Most prominent of all, of course, was the fear of imminent death*
(which relied on input from all senses.) Survivors were overwhelmed by what
they felt and saw - and were often convinced that a similar fate awaited them.
Even when it became apparent that they would survive, the survivors were
faced with another trauma, namely, their inability to help those who had died,
or were in severe pain, the latter often trapped beyond reach.

1 *Most survivors are still depressed, often for "no reason", except*
2 *that they understand it to be about "big picture" questions, in particular*
3 *survivor guilt issues. Others are depressed by overwhelmingly depressing*
4 *consequences: the presence of extensive and chronic physical injuries; the*
5 *lack of mobility; the loss of income and employment; the disintegration of a*
6 *marriage; the dysfunction of the family; and so on.*

7 *Anxiety and uncertainty prevail too. Panic attacks; generalized*
8 *stress; fears about the future, such as, will I ever get better? Will my family*
9 *survive? Will I walk again? Will I work again? How can I afford treatment? Pay*
10 *a mortgage? And so on.*

11 *Since these symptoms persisted to this very day, it is readily*
12 *apparent that the impact of the accident, and the prevailing PTSD, has been*
13 *chronic and pervasive in the lives of survivors."*

14 Any attempt to assess this disorder is like turning over a carton of eggs and letting
15 them fall on the floor. Trying to determine which egg is cracked more is futile. It is
16 impossible to quantify. Yet the disorder does exist with each survivor and is quite
17 pervasive. The challenge to this Court is how to assess the weight it is to be given when
18 juxtaposed with the future medical challenges that many of the passengers face along with
19 the monetary cap that this Court has to work within.

20 F. The Deaths

21 Abraham Lincoln said it best in his letter to Mrs. Bixby of 1864 in attempting to relieve
22 her grief over the loss of her sons during the Civil War:

23 *"I feel how weak and fruitless must be any words of mine which should*
24 *attempt to beguile you from the grief of a loss so overwhelming."*

25 This Court is powerless to express any words concerning the 24 souls that lost their
26 lives that day. Each one of the victims was remarkable. Many families were left without any
27 providers, not to mention the loss of a mom or dad. There were a number of families that
28 lost their sons and daughters as well. The average age of the children who died was 19

1 years old. The families of those children are not interested in money; they want their
2 children back. Two of these young victims had their first and last train ride that day. The
3 lives of the parents are shattered and nothing can assuage that grief. The first car alone
4 had 22 of the deaths. Two others were in the second car.

5
6 The second car had the only complete family that was riding the Metrolink. It
7 consisted of mom, dad and their only son. They were returning home from vacation and
8 they took the Metrolink from Union Station with their luggage on board. The father was
9 badly injured and taken to County USC where he succumbed to his injuries and died in
10 front of his wife and son. The mother and son each sustained injuries in their own right.
11 They each acquired *Dillon v. Legg* rights as well.

12
13 Several of the passengers that died left behind special needs children at home with
14 an already stretched budget and caregiver. The list of woes, financial needs and emotional
15 devastation is simply inexplicable. Once again, all of these factors had to be weighed and
16 assessed by the Court in determining the allocation of the monies.

17 18 The Methodology for Allocation

19
20 This Court approached the task of allocation through three different protocols. The
21 first was to request from each attorney at the time of the hearing the monetary amount they
22 were seeking on behalf of their client. This method would provide the Court with a guideline
23 as to what the overall value of the collision would be as well as establishing what the
24 potential verdict range of the cases might be.

25
26 It was expected from the outset that the relief requested by counsel would probably
27 not be successful in resolving the dilemma of allocation. Nonetheless, the information was

1 essential in attempting to establish the overall value of the collision itself. As the hearings
2 progressed, this Court knew for a certainty that there was simply not going to be enough
3 money to award the relief requested by counsel. In the end, the totality of the monetary
4 requests by all counsel exceeded the cap by approximately \$120,000,000 to \$150,000,000,
5 since most counsel provided monetary ranges.

6
7 In this Court's view, after having conducted all of the hearings, the total value of the
8 collision was appropriately in the range set forth above, i.e., \$320,000,000 - \$350,000,000.
9 If each of the cases were tried separately to a jury, the verdict potential of all cases would
10 be close to that number, if not greater.

11
12 The next protocol was for this Court to issue tentative awards once each hearing was
13 concluded and the evidence and testimony was centered in the Court's mind. Each plaintiff
14 would not know the tentative award, but the amount would be used by the Court to
15 establish a record of whether the Court's award matched the request by counsel as well as
16 being consistent with the damages presented.

17
18 Once again, this Court had its suspicions that even its tentative number would
19 exceed the cap. Upon conclusion of the hearings, this Court's own tentative awards
20 exceeded the cap by approximately \$64,000,000. This method of analysis, while not
21 providing the necessary formula for relief, was absolutely critical for the final stage of
22 allocation.

23
24 This final stage boiled down to judicial triage. Triage is a medical term and not a legal
25 doctrine. The origin is French and means to sort or select. In today's parlance it means to
26 ration medical care when resources are limited. This Court was forced to do precisely what
27 the first responders did on the day of the accident. It had to categorize the injuries and

1 victims and make the awards on the basis of what the future would hold for many of the
2 families and victims.

3
4 The first category, designated most critical, dealt with the survivors of the first car.
5 The passengers seated in the first car suffered the worst and all deaths except for two
6 occurred there. Much to everyone's surprise, there were 15 survivors in the first car. Out of
7 the 15 survivors, one individual was a physical "walk away" and the other was very close to
8 that description and category. As mentioned above, the key to that success was being
9 seated in the opposite direction of travel. Notwithstanding the remarkable physical outcome
10 for those two individuals, the remaining first car passengers were not so fortunate.

11
12 Focusing, for the moment, on those first car passengers that did survive and likewise
13 excluding the physical "walk aways", the past and future medical care for the first car
14 survivors was simply astronomical. Many of these individuals presented emergency room
15 and hospital care bills that exceeded \$1,000,000.00. Total past medical bills were in a
16 much higher range. Future medical care will likewise exceed high 6 figures and on
17 occasion reached 7 figures.

18
19 As to those first car passengers that survived, this Court was left with the dilemma of
20 simply trying to find the money necessary to care for future medical necessities. This
21 means that awards for PTSD in many cases simply did not exist. Loss of consortium
22 awards, while valid and real, had to be lumped in with the award to the passenger/spouse.

23
24 In that regard, this Court specifically mentioned at each and every hearing that there
25 would be no separate allocation for loss of consortium. In other words, there would not be
26 an allocation within an allocation. This would be left up to the plaintiffs themselves and their
27 counsel of record to determine how the monies would be divided. There is no question that

1 the claims were real. The problem was that this Court did not wish to make the decision for
2 the family as to how much should go for future medical care and how much should be
3 awarded to the non-riding spouse. Since there was a shortage of funds to begin with, this
4 Court felt it appropriate for the family to make that decision on their own. To do otherwise
5 would create the appearance, if not a reality, of the spouses competing for the limited
6 funds.⁴

7
8 As for the death cases, with minor exception, all of the passengers who died were
9 very close in demographics as to age, earning capacity, life expectancy and family
10 members left behind. Accordingly, with respect to those passengers who were providers be
11 they husbands or wives, the number the Court reached was \$4,200,000 for each death.

12
13 In those cases where the adult victim had a spouse or domestic partner and likewise
14 left a claiming mother and father, the formulated amount went to the adult victim's
15 spouse/domestic partner and children. A small award was then made to the claiming
16 parents of the adult victim. While the claims of the parents were no less real, the problem
17 was once again, having to provide for the spouse and family that their son or daughter left
18 behind.

19
20 With respect to the teen children and slightly older, there was no way to justify
21 different or disparate awards amongst the group. It is impossible to distinguish among an
22 exceptionally bright group of young people. To do otherwise would be an insult to the
23 families. Each of them faced great futures and each of the families suffered and continues
24 to suffer horribly. The loss of a child is unspeakable and incalculable. The parents who

25
26
27 ⁴ There was one exception to this rule and that was with a family that was in the process of a divorce and the matter
28 would simply be returned to this Court for the allocation of that asset.

1 appeared did not want money, but rather pleaded for their son or daughter to be brought
2 back. At the hearing concerning the deaths of the teen child, the act of crying does not
3 describe the emotions presented on that day. Inconsolable wailing would probably be the
4 better description. If this Court had the power to return the child it would do so in an instant
5 and the parents would be ecstatic with that result. Money will in no way alleviate the
6 suffering.

7
8 Unfortunately, the fact remains that none of the children had the economic damage
9 to merit the same death awards set forth above. Accordingly, this Court arrived at the
10 formula of \$1,200,000 for each child.

11
12 To demonstrate the horrific job that this Court had to face with respect to allocation,
13 one need only understand the following math: *if one were to calculate the monies for the*
14 *deaths in the first car and the awards necessary for the survivors of the first car, the dollar*
15 *amount exceeds \$120,000,000.* Hence, this Court was faced with having very little monies
16 available for the remaining passengers in cars 2 & 3.

17
18 With so little money remaining, the problem of allocation is even more acute. Using
19 the triage method, this Court had to create two new categories of victims. The first was the
20 "table victim" and the second the "bench victim". These two categories, regardless of the
21 train car selected, were next in line for the greater awards. Like the first car survivors, the
22 table and bench victims were left with lifetime future medical care and lifelong chronic pain
23 and illness.

24
25 The state of emergency medical care was fantastic. In many respects, it was and is
26 ahead of its time and quite frankly ahead of human tolerance and suffering. The care
27 rendered by the first responders, emergency room doctors and surgeons was nothing short

1 of miraculous. Out of all of the injuries, there was only one limb amputation and no
2 hemiplegics, paraplegics or quadriplegics. This result is truly remarkable, but by the same
3 token, the aftermath of recovery inclusive of future chronic pain and suffering is off the
4 charts. There is not enough money to compensate the victims for future medical care and
5 past pain and suffering. Many of these victims are now habitually and medically addicted to
6 pain narcotics. In almost all instances, the quality of one's life is at its nadir and without
7 narcotics life would be unbearable. Attached to this opinion are medical illustrations that
8 demonstrate the injuries to the table victims and those that suffered traumatic brain injury.

9
10 In the middle of the triage range are those individuals that sustained commonplace
11 injuries: broken bones, pneumothoraxes, hemothoraxes, neck, thoracic and lumbar
12 fractures, lacerations, compression fractures and facial injuries. The list is too numerous to
13 detail, but suffice it to say that many of these injuries due to the high force of impact cannot
14 be repaired and result in unresolved medical issues. Contemplated future surgeries are
15 commonplace and failure to return to full range of motion is the norm.

16
17 The category that received the least amount of money consisted of passengers that
18 sat in the second and third cars and faced the opposite direction of travel. This is not to say
19 that these individuals were not injured, rather they simply became the victim of triage.

20
21 At each of the hearings, the Court explained to the victims what the judicial triage
22 aspect would encompass. The example provided would be to imagine the two of us
23 returning to the scene of the accident and you were handed a bag containing only 10
24 bandages. You were then instructed to care for the victims as you saw fit and use your
25 discretion as to which victim you thought should receive a bandage. You then returned to
26 the Court and asked for more bandages and were told there were none to give. You were
27 then instructed to cut the bandages in halves, quarters, eights, or even sixteenths, but that

1 under no circumstances would you receive more bandages.

2
3 This scenario was provided to victims for the purpose of assisting them in
4 understanding what this Court faced. Additionally, it was to reinforce the fact that when the
5 victims received their awards, the Court did not wish them to be under the impression that
6 their injuries or predicament was not appreciated or understood by the Court. Nothing could
7 be further from the truth. However, the fact remains that this Court must follow the law and
8 in light of the federal court interpleader action and the orders issued therein, there was no
9 discretion to do otherwise.

10
11 Hence, impossible decisions had to be made. What was given to one victim had to
12 be taken from another. Essentially a Sophie's Choice had to be made on a daily basis.⁵
13 One Sophie's Choice is enough for a lifetime, but over 120 of them defies description. This
14 Court is no stranger to difficult cases or difficult decisions but that does not make the
15 situation any less challenging.

16
17 Finally, while no one can dispute the horrible impact the collision has had on the
18 passengers and their families, the loss to the North Valley, Chatsworth, Simi and Santa
19 Clarita communities should not go without mention. There were teachers, Federal State,
20 Municipal employees, business owners, executives, artists, and students that were all lost
21 that day. This loss represents a societal loss that crosses many generations and its effect
22 will be felt for generations.

23
24 Accordingly, itemized below are the awards to each of the victims and claimants. The
25 names of the victims and claimants are set forth in alphabetical order. It is hereby ordered

26 _____

27 ⁵ Used as an idiom in this context to mean a tragic choice between two unbearable options.

1 that the trustee of the Qualified Settlement Fund issue the payments in accord with the
2 numbers set forth below subject to ancillary orders regarding liens, costs and other
3 expenses.

4
5 NAME AMOUNT
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

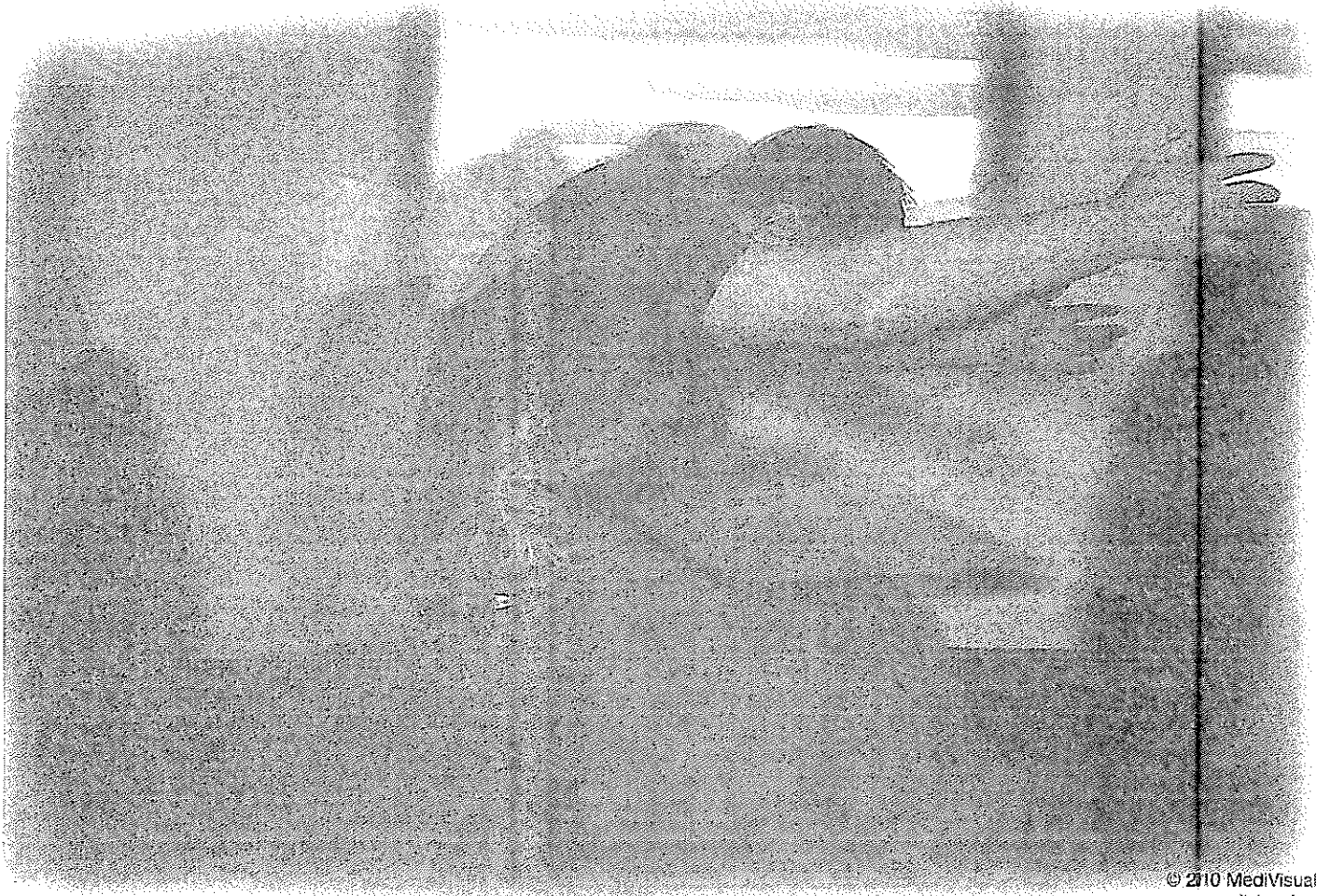
Conclusion

The presentations by the attorneys were well done and instructive. The attorneys were always willing to assist the Court in any way. The decisions were difficult, but yet the process moved efficiently and expeditiously. The Ernster Law Offices (the "Ernster Firm") provided a valuable service to this Court in serving as a neutral third party evaluator of the settlement briefs submitted to the Court. This process was necessary to assist the Court in determining the reliability of the damages to be awarded.

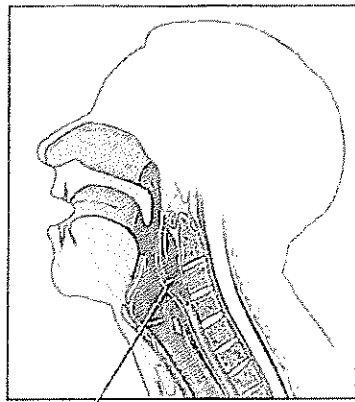
The costs attendant to the vetting work performed by the Ernster Firm is to be calculated by the Settlement Fund Claims Administrator. Further orders are to be submitted to the Court dealing with the sharing and allocation of those costs among the parties.

Medical Illustrations

Directional Forces Sustained



Summary of Traumatic Injuries



Significant epistaxis (bleeding) into the retropharyngeal space and above the vocal cords from injury to the maxillary arteries

Nasogastric tube

Intubation

Subclavian line

Blood pressure monitoring

Multiple liver lacerations

Splenic vein avulsed from portal vein

Chronically inflamed gallbladder requiring surgical removal

Cystic duct occlusion

Complete transection of neck of the pancreas (Type 1 Diabete Mellitus)

Atrophy of right kidney resulting in Chronic Stage 3 Kidney Disease

Massive hemoperitoneum

Free air and enteric contents in the abdomen from lacerated duodenum

Distended belly from leaking blood and bile

Foley catheter revealed gross hematuria

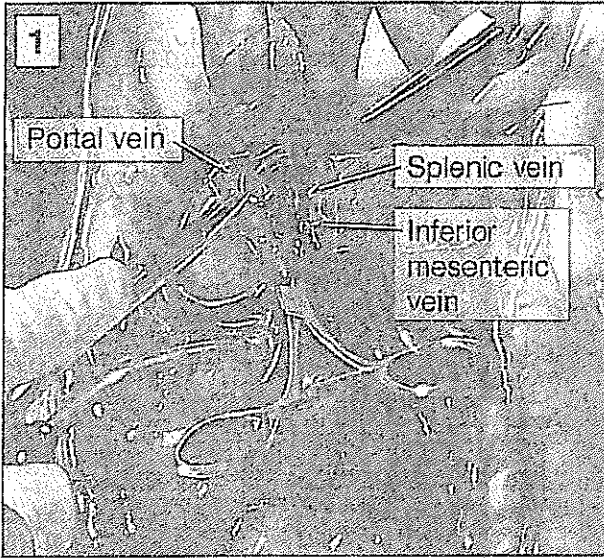


Large amounts of blood leaking into belly from splenic vein avulsion

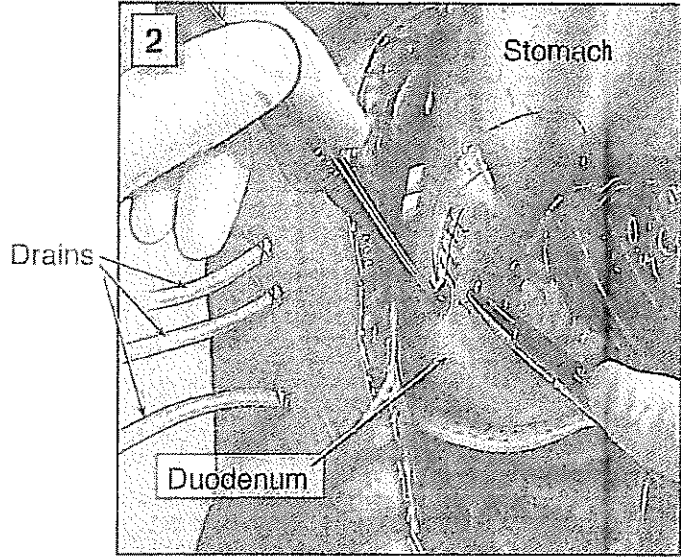
Large duodenal laceration leaking bile into belly

Initial Repairs

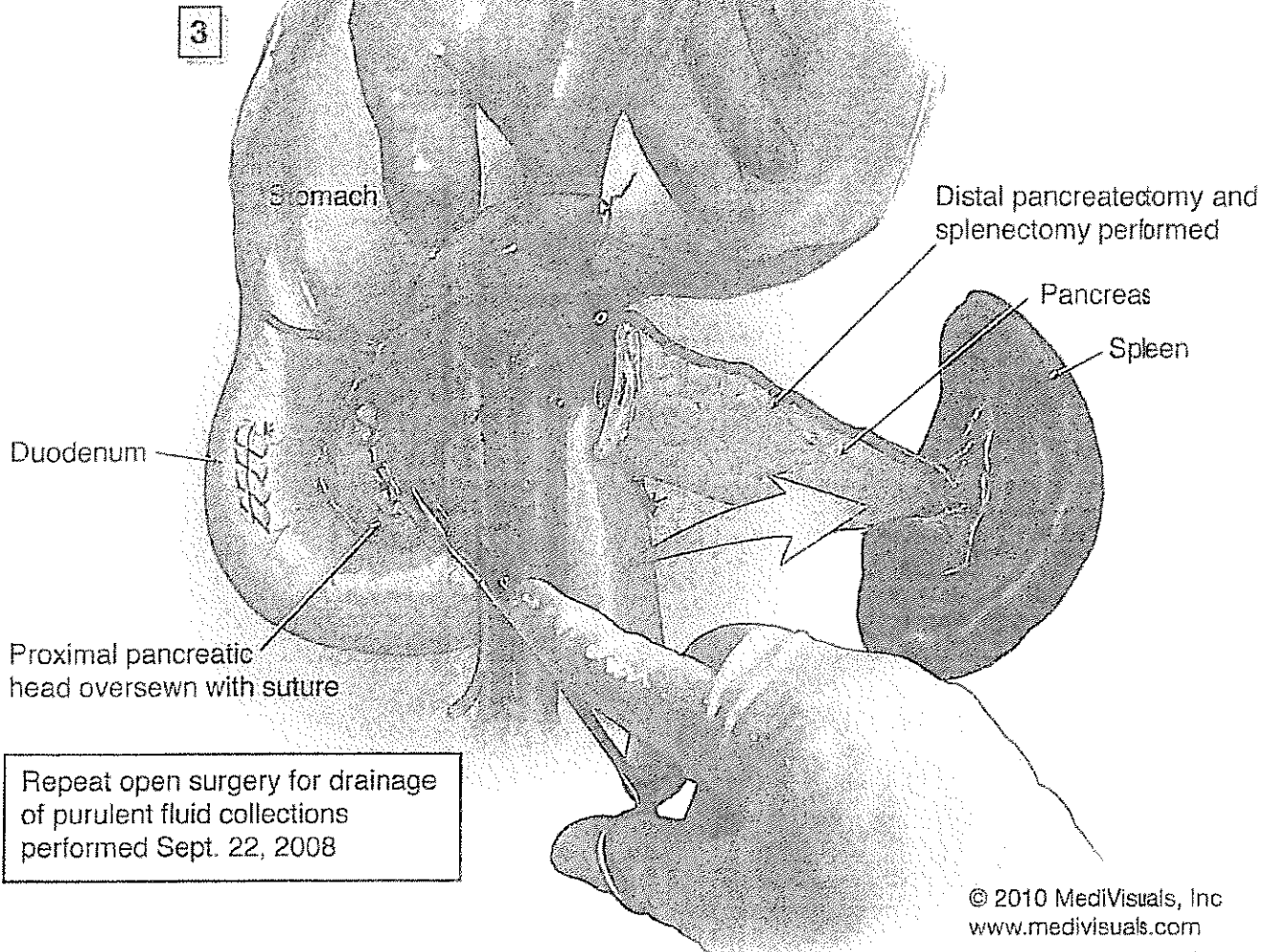
Performed on Sept. 12 and Sept. 14, 2008



Splenic vein avulsed from superior mesenteric vein; inferior mesenteric vein divided, superior mesenteric vein repaired with sutures



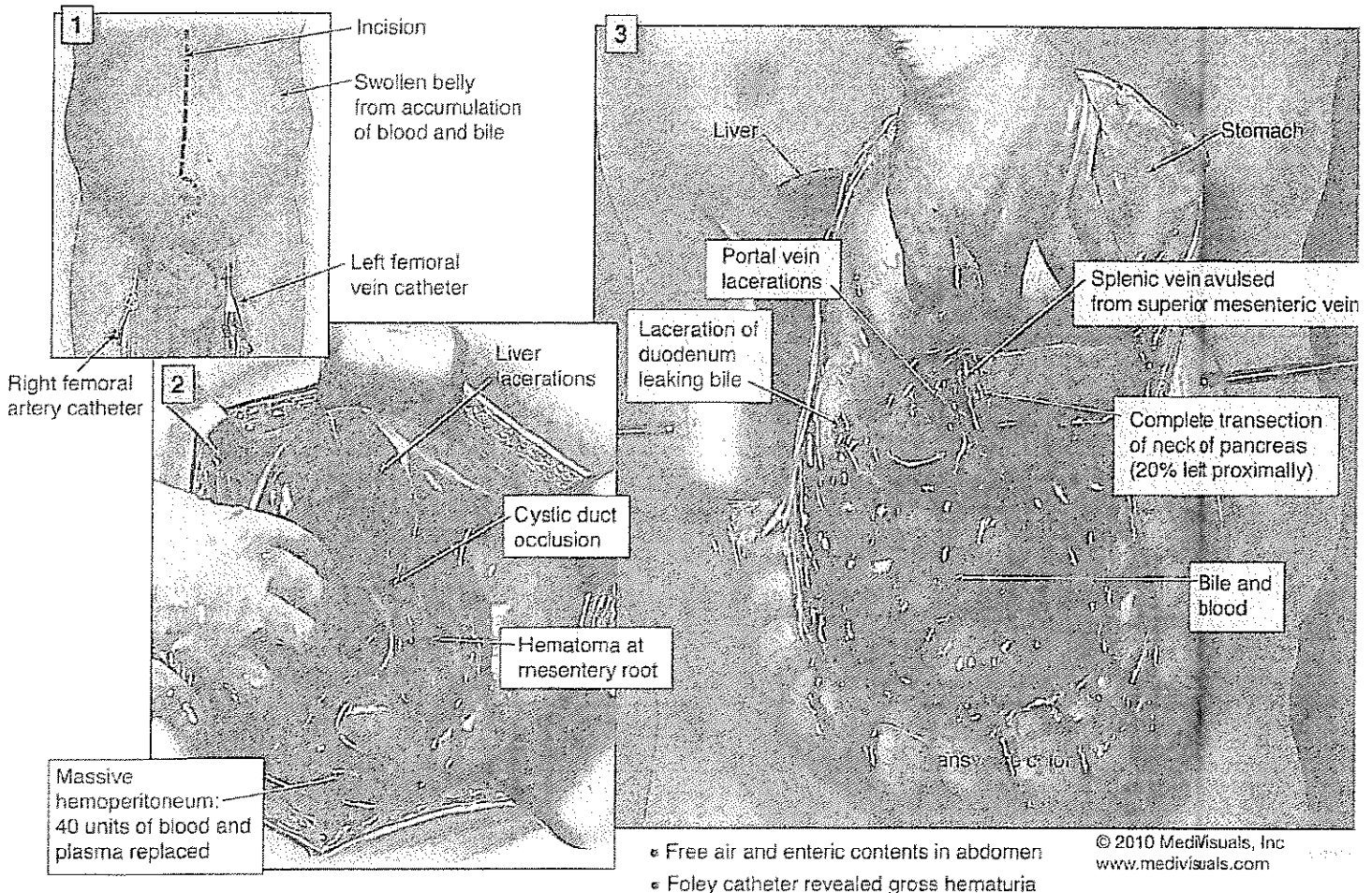
Duodenal laceration repaired with suture and drains placed



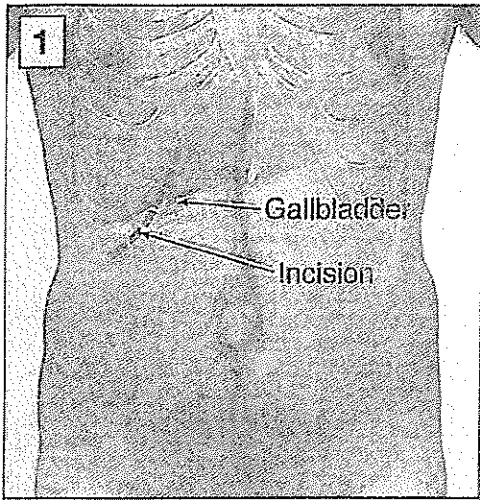
Repeat open surgery for drainage of purulent fluid collections performed Sept. 22, 2008

Massive Abdominal Blunt Trauma

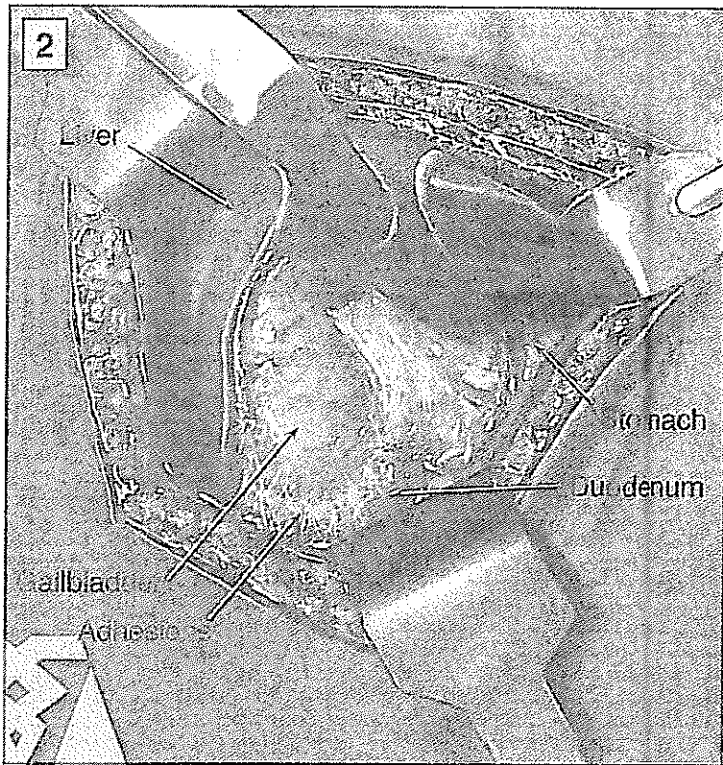
Exploratory Surgery Findings – Sept. 12, 2008



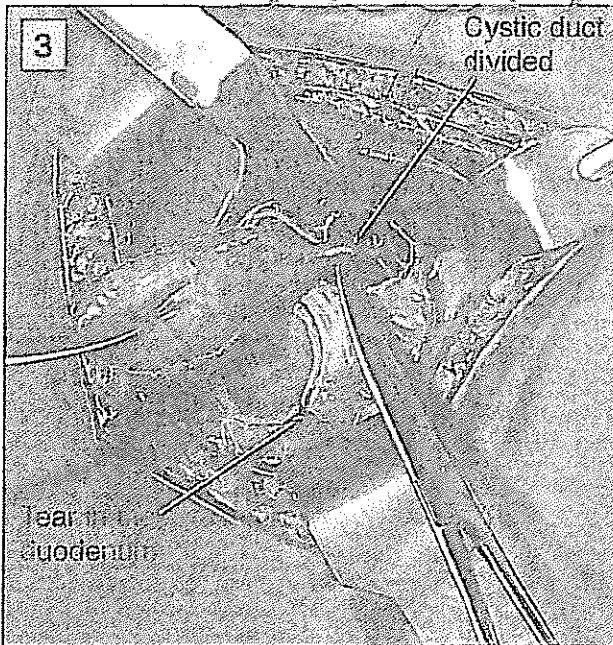
Cholecystectomy Performed Feb. 23, 2009



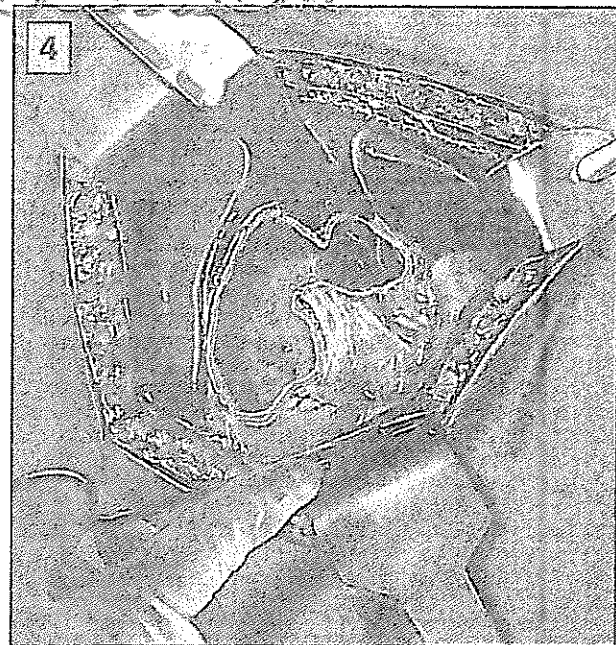
Right subcostal incision made



Rock-hard gallbladder adhered to liver capsule and abutting the duodenum



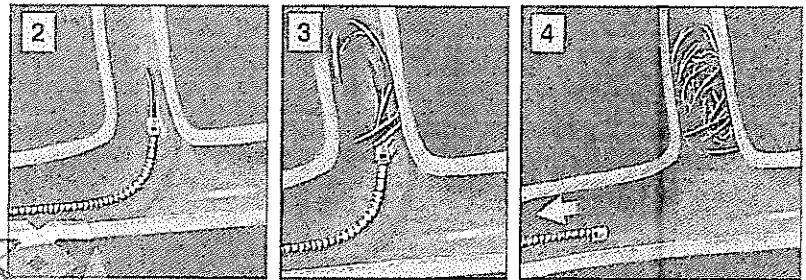
Gallbladder mobilized from liver bed, leaving the back wall and duodenal attachment in place



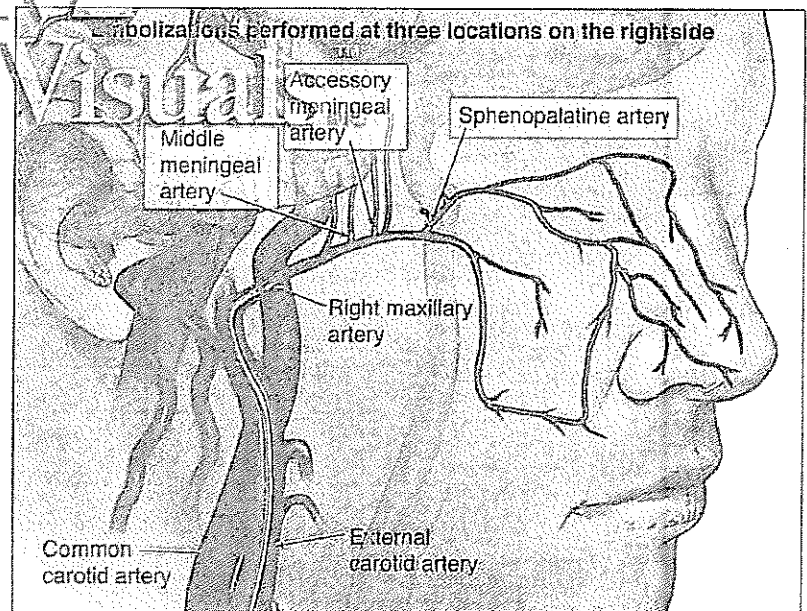
Gallbladder removed and duodenal tear repaired

Oct. 12, 2008 Coil Embolizations For Chronic Epistaxis (Nose Bleed)

Embolization



A series of coils inserted into the artery creating blockage to control bleeding



Embolization also performed on left maxillary artery