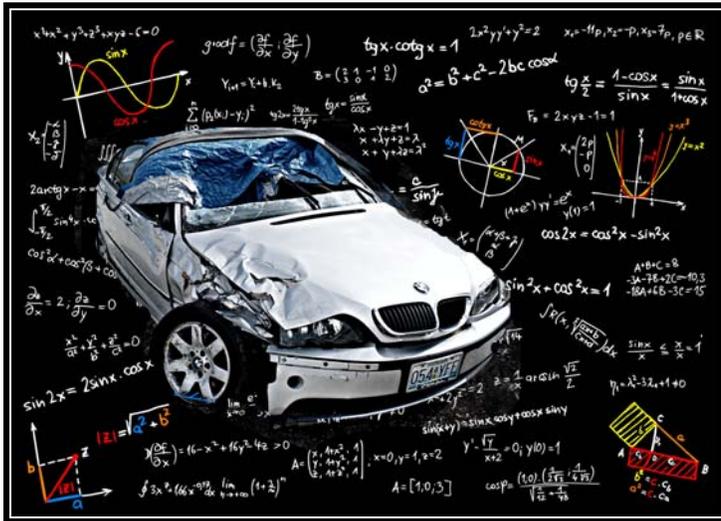


Investigating the "Routine" Auto Case

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Auto vs. Auto Mechanism of Injury

This is one in an "occasional" series dealing with important, but often overlooked, claims investigation issues which just could be vital to you and your defense counsel in their efforts to win a verdict for you when the claim goes to litigation.

In an earlier article, "Questioning Witnesses (Hear what they say, but heed what they don't say)", I addressed the need, generally, to focus our investigation on the claimed "mechanism of injury" and on preserving the evidence which will, with absolute certainty, only fade with passage of time.

In this article, I address some points specifically pertinent to the automobile claims investigation. But, please! **Even if you don't handle automobile cases**, don't let your attention wander, because the principles of thoughtful analysis discussed here apply equally to literally all cases involving human activity ... construction defect, products, slip and fall, toxic torts... you name it.

Those of us who are less scientifically inclined may not like to hear this, but I am going to let you in on a little secret. Analysis of automobile collision cases and understanding "who did what to whom?" is always a matter of making sense of three physical, factual issues: **time, speed and distance**. Without understanding these and relating them logically to one another, we can never know what truly occurred or whose "fault" the accident was. These three factual "truths", once they are ascertained, define for us the mechanism of injury in the auto case.

True, in any given claim, one of these factual issues may be more or less important and, in other cases, one may be less intuitively obvious than the others; nevertheless, each must be acknowledged, studied and resolved and not simply dismissed.

Time estimates must make logical sense and be consistent with the parties' and witnesses' perceptions of Speed and Distance. If they are not, the investigator must ask why. Whose version is more consistent with the facts and the physical evidence? Who is lying or innocently misstating the material facts?

We have all seen the auto claim in which the claimant alleges he or she was rear-ended at "40 m.p.h.", only then to learn that their smaller and lighter vehicle sustained little or no damage, when struck by the larger, heavier vehicle. Or the claimant who maintains adamantly the signal was yellow for a "minute or two." Or, says "I was traveling 35 m.p.h., but I was able to stop before the crosswalk in 10 - 15 ft."

Despite some claimant's or witness' best (though sometimes misguided) efforts, they simply cannot suspend the laws of physics and every adjuster should be familiar with some aspects of accident reconstruction.

In the first example, of course, common sense would tell us that a 40 m.p.h. impact would not result in a trifling dent. In the second, we all know that yellow signals are seconds long, not minutes (But, oh, how often we hear estimates like this?). And in the third, a vehicle traveling at 35 m.p.h. is traveling 52 feet per second, the driver's reaction time will allow him to travel about 36 feet, even before he can move his foot to the brake and the distance to a full stop would be more like 58 feet on a dry roadway.

In each example, the inconsistency of the witness' statement should literally leap out at the thoughtful investigator.

If there is an error, intentional or otherwise, in an estimate, how does it size up to the other evidence of **speed / time / distance?**

Many times the inconsistencies are less apparent and require careful analysis. Is it reasonable, for example, to believe a witness who says he was going 65 m.p.h., skidded for 45 ft. and caused only \$350 in damage to the other vehicle? Probably not, since skid stopping distance at that speed is about 200 feet. One might expect substantial residual speed and stored energy to have remained at impact, which would certainly have caused a higher level of damage. Neither we nor the claimant can suspend Newton's Laws.

Many years ago, I successfully resolved just such a case, in which plaintiff claimed the insured's high speed rear-end impact caused him to suffer severe brain damage and a life-threatening stroke. However, when I received the file from my carrier, my first response was, "what's wrong with this picture?"

The Plaintiff claimed \$4,000 damage to the rear of his large, older American sedan. He had photos to support the damage, though later we raised some doubts about the cause of the impact damage, which appeared inconsistent with a strike by the front of an automobile bumper and more consistent with a narrow frontal impact, such as might be caused by a low vent pipe or electrical transformer box.

Fortunately, the claims investigator had the foresight to photograph the insured vehicle to establish the **non-damage**. The vehicle was a small, light import car, which had a small 25¢ size dent on the left front bumper. The photo was not consistent with the claimant's estimate of the **speed** of impact. Indeed, our reconstruction expert was able to testify that: 1) the probable impact speed, per the insured's damage was less than 5 m.p.h., that 2) the damage to the claimant's vehicle was not caused in this incident and, finally, 3) the impact to the claimant could be equated to someone "dropping their buttocks onto a feather sofa cushion from a height of 5". Needless to say, the trier of fact was not impressed with plaintiff's causal theory of his injuries!

The case just described not only points out the need to evaluate **time, speed and distance** evidence in determining credibility and culpability, it also shows the importance of **preserving evidence**. In this case, it was "non-evidence" . . . photos showing the insured's car did not sustain any significant damage consistent with the claimant's allegations.

Over the past many years, I have often heard adjusters admit that they didn't take photos of the insured's or adverse driver's car "because there was no damage". Stop and think about that for a moment... In the defense of virtually every automobile collision case, it is **in the interests of the defense** to establish that there was little or no impact. Such evidence can only serve to disprove causation of the claimed injuries and to disprove the magnitude of the injuries themselves. Therefore, it is vital to photograph "non-damage" situations.

And as long as we're on the subject of photographing evidence, I was counseled long ago during my accident reconstruction certification training to photograph the vehicles involved properly. That means, not just the particular side or corner which sustained the impact. Each vehicle should be photographed from all 4 sides and from "quartering" views, diagonally across the vehicle. This is because a reconstructionist can use an analysis of the body deformation, the twisting or deformation of the underlying frame, etc. to recreate and reconstruct the accident dynamic and time line. All of the information to be gained could be pivotal and, after all, film or digital memory are cheap. If you're going to photograph it, do it right.

If you photograph the scene of an auto accident, try to get good, clear photos of skids, taken from a **low angle and elevation** above the roadway (More of the true length of the skid can be seen from a low angle. Plaintiff's expert knows this and so should we.

It is always wise to document the lens used for the photograph and camera aperture and speed setting if possible, to eliminate a plaintiff expert argument at trial that the photograph fails to depict the true conditions, due to optical focal length distortions and foreshortening.

A wide overall site view shot of the scene can serve as a later guideline for physical landmarks, from which measurements can later be made, from the photograph. A trained reconstructionist can use a transparent perspective grid overlay on photographs of the skids, for example, and obtain reliable measurements of the skids and, from that, clear proof of speeds.

Attention should be paid to special or transitory conditions at the scene and those should be photographed to preserve the evidence. If cloudy conditions, the glare of the evening sun, or the light-to-shadow uneven lighting of a bridge overpass are possible explanations for the accident or contributing factors, photos will help to demonstrate that fact.

If a construction zone, shrubs or other "temporary" obstacles are important to the mechanism of injury, photograph them. Something even as seemingly insignificant as shrub growth as an obstacle to a driver's view could be central to defending the case. Five years later, when the case is tried, the conditions of the area may be substantially changed and no longer available.

Evidence of **time, distance and speed** can come from the physical evidence and from witness statements. Sometimes the latter's information can have special significance in particular factual situations. Two that come to mind are auto vs. motorcycle and the auto vs. pedestrian cases. In both cases, it is important to question witnesses about the **trajectory** of the pedestrian or motorcyclist after impact. That is, the adjuster should try to establish with as much accuracy as possible: 1) the point of impact, 2) the point of highest arc or loft in the trajectory, 3) the elevation of the point of highest arc above the ground and 4) the point of rest. From this information, the speed of the vehicles and even the pedestrian can be reconstructed.

I successfully defended just such a case several years ago, in which we were faced with a double fatality in a single car accident. The decedents' sports car ran off the road without any initial clear indication as to why. Suit was filed by the families for alleged design defect in the roadway. Through discovery and questioning of witnesses, however, we were able to establish the point at which the vehicle left the road, the fact that it sailed airborne through the support standards of a nearby billboard at a **measured** elevation several feet above ground and landed a **measured** distance from that point, plowing into soft dirt. Based upon the expert's calculations of the car's loft and trajectory, we were able to solidly establish that the car entered the turn of the roadway at a speed in excess of 120 m.p.h. The jury found for the defense.

The point of this article is to serve as a reminder once again to focus investigation on the **mechanism of claimed injury**. In the case of automobile collisions, that will always involve analysis and careful understanding of **time, speed and distance** questions and how they relate to one another. It has also been a reminder of the critical importance of **preserving physical and percipient evidence**.

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