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## **So, You Want to Be a PI Cowboy (or Cowgirl)?**

By Arthur Croft, DC, MS, MPH, FACO

There is a common myth permeating the personal injury business. It's based perhaps on our natural inclination to rely on intuition and personal experience. These two factors in no small way serve also to perpetuate this myth. The myth I'm referring to is simply that one should (or would or could) not be injured in vehicle collisions, particularly the low speed, rear end type in which no permanent damage to the vehicles results. As much as I have attempted to debunk this myth over the years, it survives nearly unscathed. There is virtually no scientific evidence to support it and plenty to refute it, but those facts matter little when the stakes are so high.

I was sitting in my easy chair Sunday morning, reading the September edition of the *Texas Journal of Chiropractic*, when I came upon an article written by an attorney well-known within our profession for his many contributions. In the article, he chastens chiropractors for soliciting whiplash victims (i.e., a form of "ambulance chasing" in which the doctors somehow obtain the names of persons recently involved in crashes and then call them, offering, I imagine, some inducement to come in for a checkup). Good advice, though I'd certainly agree that such solicitation schemes, in addition to being unlawful, merely burnish the rather unsavory image of the high volume, strip mall PI mill. There are better methods of building a personal injury business.

Just gaze at the figures. There are approximately three million such injuries in the U.S. every year. According to the latest Insurance Research Council document, chiropractors currently treat only a little over 30% of these victims (up a few points from a few years back). Can you imagine gaining access to the other 70%? Do the arithmetic.

As I've pointed out in previous articles, the doleful truth regarding outcome in whiplash injury is that only about half of those injured ever fully recover. (I'm one of those unsalvaged statistics myself.) Most of these reported in the literature, mind you, have been medically managed, and no large scale chiropractic studies

have been completed. Of the smaller studies, though, chiropractic has shown promise. Arguably, we offer special knowledge and effective treatment methods and management strategies (nutrition, activities of daily living, ergonomic advice, etc.) for these patients, so why shouldn't we try to intercept the other 70%? Enough said.

Now back to my story. As I continued to read this article, I came to the part where this prominent attorney, who I happen to know personally (we put on a mock trial at the Davenport Centennial with Dan Murphy and others), described a crash in which a woman was allegedly injured by a "tap" in which there was no vehicle damage. He went on to suggest that a local doctor had solicited her somehow and purportedly found a variety of lesions requiring his care.

I imagine this attorney took a special interest in the case since it involved an injury to a passenger in his own car which, at the time, was driven by his assistant. Fair enough. But as I read on, I found the clear expression of this age-old myth: "Unconcerned by the slightness of the accident, the doctor said that there was no way to know the force of the impact since it could have been icy or wet. It wasn't icy or wet, but that didn't stop the doctor from considering this possibility. Apparently that was enough for this doctor to attribute all the injuries to the tap."

My point here is not to find fault with anyone. Perhaps the woman was injured and did need some care; perhaps not. Over the years I've heard some pretty imaginative grounds for care, like the case in which the mother told me there never was an actual injury to her child, but the doctor told her that three years of care would prevent the development of severe allergies, which (he said) are common in kids after such crashes. (Well, just imagine what five years of care might have prevented.)

What struck me about this article, though, was the familiar phraseology we hear so often from insurance companies and their lawyers: the innocent sounding "tap" used in conjunction with the report of no damage to the vehicle.

A couple of years back, I received a call from a local Southern California doctor asking for a referral to a PI attorney in his area. I immediately thought of an attorney I knew who is very familiar with the chiropractic management of whiplash injuries. In fact, he gives seminars to chiropractors on the subject from time to time. No, the doctor lamented, he'd already made that contact and the attorney wouldn't take the case. Why not, I asked? Not enough damage to the car, he said. I was flabbergasted. Interestingly enough, this was the other attorney who had participated in our personal injury mock trial in Davenport!

In the insurance craft, this notion has evolved into a catchy little axiom: "no crash, no cash." But is it merely ignorance, which might be easily remedied by spreading a little information? Not a chance. Don't forget, it is chiefly the insurance industry, in addition to some help from manufacturers, who have funded the studies which have reported injuries to crash test volunteers at crash speeds well below the threshold of damage to the cars. They know, but they bank (quite literally, often enough) on the jurors' sense of intuition to accept this myth that injuries are simply not possible when no permanent crush has occurred to their vehicle.

Most of them, after all, have been in fender benders in which no injuries resulted, and it wins cases for them more often than it loses. Unless, that is, the plaintiff's experts or lawyers know the literature and the facts.

Ironically, when damage does result, the defense turns full circle, arguing that all of the energy of the collision would have been dissipated by the crushing vehicle. They know how it works, this plastic vs. elastic argument, and use it with just a pinch of truth whenever it becomes expedient. Partial truths are always useful, it seems, in the service of lies.

If there is one thing I hear doctors from all over the country complain of more than anything else, it is attorneys who won't step up to the plate when property damage is minimal: even the chiropractic-friendly guys and gals. More and more law firms simply turn these cases away. Is it possible that after so many years of hearing it, they've actually bought into this myth so long foisted upon us by the evil empire? Is it simply ignorance? Or is it just that they like their work to be a slam dunk? Give me a "limb-off" case any day, they say, or a traumatic blindness. Those are pretty easy compared to a soft tissue case. And I've heard attorneys chafe when I all but refer to them as cowards. The ubiquitous response: "Juries around here are conservative."

Since I believe I now have heard that excuse in just about every state from California to Maine, it can only mean that Americans are conservative as a group; but if that's true, how can experts and lawyers brag about large settlements so often? How do we explain the recent multibillion dollar award against General Motors, or the multimillion dollar award for having hot coffee spilled in a woman's lap? I've certainly been involved in cases that settle for somewhat more than chicken feed myself - entirely soft tissue cases, mind you. No, it does no good to blame jurors. The real reason jurors don't compensate plaintiffs in most cases can be at least partially blamed on the plaintiff experts and on the plaintiff lawyers. They either don't know the issues in the first place (e.g., biomechanics, kinematics, outcomes research, etc.), or they didn't do a convincing job at trial. I've been there and done that enough that I can't be dissuaded from this opinion.

But there's a real danger in this trend. Since the legal profession is increasingly abandoning those patients, they are becoming more and more vulnerable to the bare-knuckle tactics of insurers. And what is the usual result? The patient just doesn't get the needed care. Don't forget that as an added bonus, the propagation of the myth necessarily tarnishes the image of those who provide care to the crash victims. After all, if you really can't get hurt in these no-damage crashes, and the doctors are treating these people anyway, they are essentially committing insurance fraud.

The myth also promotes the type of apathy among all people, and most dangerously legislators, that smoothes the way for no-fault legislation and constantly tightening restrictions on patients' access to treatment and on doctors' hopes for reimbursement. A good example of this can be seen in New Jersey, where a completely unqualified panel of about five people (including an MBA and a couple of RNs) from Price Waterhouse Coopers effectively tore chiropractic from the bleeding side of the state's populous in one quick shot. This was bought-and-paid-for, pure unadulterated science fiction, as bad as it ever gets - and it worked.

The myth also serves to slow manufacturers from designing or implementing safety systems which can ultimately reduce or even prevent some of these injuries. These innovations add weight and expense to cars and won't usually be added unless concerned consumers demand them or legislators mandate them. (Notable exceptions include Volvo and Saab, which have both recently introduced cars with special seats to reduce whiplash injuries.) Unfortunately, most people don't actually "believe" in whiplash until it eventually happens to them, but by then it's too late. They will be only another small voice in the great sea of non-believers. Still no threat to the powerful evil empire!

For so long, these plaintiff attorneys have relied upon the threats of going to the mat in court and potentially bringing in big awards. They wrote their demand letters and handled most cases by phone calls and letters, conveniently avoiding the high costs and lengthy time commitments of trial. But in the past several years, insurers have spent billions of dollars relentlessly fighting every case, often spending more in trial costs than they would have spent in settlements, specifically for the purpose of introducing plaintiff attorneys to this new game plan: if you want to play, you'll have to pay, and it won't be easy any more. The golden days are over, pal.

It's apparent that it has succeeded. They've effectively called the attorneys' bluffs. Those threatening letters and phone calls no longer have any teeth, and both the plaintiff attorneys and insurers know it. It's a sad

reality that all of this (just like the New Jersey debacle) had nothing to do with the lofty principles of science or truth; of guarding the public interest; or of fulfilling the somewhat dubiously metaphoric "good hands" image an insurer tries to convey. It was simply a matter of doing business well.

How do we reverse this disturbing trend? A case by case basis is perhaps the best way. Learn about your art. Set aside some study time every day. You're a professional, so invest in yourself and your future. You must keep learning as long as you practice and as long as science changes your world. Educate these attorneys whose training, after all, is not in biomechanics, physiology, or kinematics. You must work as a team to bring science and truth back into the courtrooms and really educate the jurors.

Your task is also to defuse the bamboozle of the defense experts who cite nonexistent research, misquote the better research or make fatuous extrapolations of other works; who confuse their own conjectures with things of the real world. Theirs is a physics of bank pure unadulterated science fiction, as bad as it ever gets - and it worked.

My detractors (usually big in the defense medical exam business) are fond of arguing that my goals are to promote big settlements; to aid and abet lawyers and doctors. These utterances almost universally come from doctors who have never been to my lectures. They can't discredit my teachings, so they attack what they believe are my motives.

In fact, I teach only the truth. I'm not concerned with the size of settlements or awards. That's between the patients and their lawyers. What I am concerned with is fair treatment of patients and their doctors. At the rate things are (not) generally improving in automotive safety design, we can expect the number of these injuries to increase for many years to come. Bringing some balance to the playing field will ensure that legislators, insurers and manufacturers follow a moral compass and take this huge public health problem to heart.

P.S.: Have you seen or read the latest Saab advertisements? "The best thing for a whiplash is chiropractic. The best thing to prevent it is the new Saab." They know, too.

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Click [here](#) for more information about Arthur Croft, DC, MS, MPH, FACO.



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