

HOW A MINOR ACCIDENT BECOMES A MAJOR CLAIM

When I reviewed a recent claims case, something seemed wrong. Why did a very minor traffic accident with no apparent injuries result in a claim value of potentially hundreds of thousands of dollars? I asked our claims team to review the case with me, and when I learned the circumstances of the claim, I decided this was a good real-life cautionary tale.

ASSESSING THE FACTS

In this case, a scrap recycler's tractor-trailer was returning to the yard with an empty flatbed. The truck made a right turn to merge onto a multi-lane road. While turning, the rear of the trailer crossed over the marked lane and made slight contact with a sedan in the next lane that was moving in the same direction as the truck. The contact was so subtle that the truck driver didn't feel the impact and continued on his way. Police later tracked down the driver and asked him to return to the accident scene.

The truck had no damage beyond scuff marks on the tire sidewalls, and the sedan had cosmetic damage. The sedan driver appeared to be a healthy adult and refused medical treatment at the scene. Neither the truck driver nor the police saw any indication of injury based on statements and reports. The claim for car repairs was about \$5,000, which is not unusual for such incidents. What caught my attention was the bodily injury reserve posted on the claim—hundreds of thousands of dollars, with notes in the file indicating the potential of a jury award in excess of the policy's \$1 million limit.

INVESTIGATING THE CLAIM

The claims adjusters had concerns about the claimant's medical history and the judicial venue where the accident happened. They commenced a claims investigation to mount a defense on behalf of the policyholder. They collected records, took statements, and pursued an accident reconstruction study. Such studies—which Ph.D.s in biomechanical engineering and physics usually conduct—evaluate the forces exerted on the vehicle and passengers in an accident. The study in this case indicated that the claimant experienced less than 1 g of force. (It takes more than 1 g of force to stand up or climb stairs.) The engineers

concluded that the accident could not have caused the grave spinal injuries claimed in the case. Why, then, would the loss value be so great?

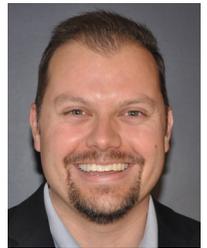
It turns out this claim involved an “eggshell-skull” claimant and a poor venue from a legal perspective. The eggshell-skull rule is a legal doctrine applied in tort, common, and criminal law that holds the offender liable for all consequences resulting from its negligent actions even if the victim's injuries are abnormally severe due to pre-existing medical conditions—including, in theory, the victim having a skull as thin as an eggshell.

In this case, the claimant had three previous injuries to the back and neck that showed no need for surgery prior to the accident. After the accident, the claimant's caregiver made a case for the need for surgery. Because of the eggshell-skull rule, the recycler became potentially liable for all of the claimant's medical conditions.

The claim's venue also had a significant impact on its value. The venue was what the American Tort Reform Foundation calls a “Judicial Hellhole,” which it defines as a place “where judges in civil cases systematically apply laws and court procedures in an unfair and unbalanced manner, generally to the disadvantage of defendants.” The venue also was known for juries that award excessive verdicts.

What can you learn from this case? Even seemingly minor incidents can turn into nightmare claims with significant financial, reputational, and opportunity costs. Investigate and evaluate minor or near-miss incidents just as if they were serious accidents. The key takeaway is the importance of having a robust safety and risk-management program, including driver safety training. To learn more about implementing a rigorous safety program and building a safety culture in your workplace, talk with ISRI's safety staff or your insurance broker, carrier, or risk manager. ■

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