

## Automobiles

# Is it really a minor impact? Tips for uncovering the true story of your client's property damage: Sidestepping the biomechanics debate

by Paul Veillon

Rear end collisions can cause a lot of damage that doesn't look dramatic from an initial visual inspection. A good body shop can help you avoid or attack a "low impact" defense without having to address the pseudoscience of biomechanical engineering. Here are a few tips:

### Advise your client to repair the car

One of the first things your client will do after a collision is get an estimate for the damage to their car. When your client obtains their initial insurance estimate, especially from the other driver's insurance company, the adjuster will frequently write a check on the spot. When the damage doesn't look bad from the outside, your client might cash that initial damage check to pay bills or buy groceries or pay for some other important thing besides repairing the car. If they do, then you have no idea what damage the vehicle actually suffered.

The check will represent the minimum amount necessary to repair the damage the adjuster can see on his or her initial visual inspection. The initial visual inspection won't include damaged parts that are hidden under the bumper cover and may not identify structural damage and evidence of a more severe impact.

When your client instead repairs the vehicle, the body shop will issue a "supplement" that often lists more damage once the technicians can disassemble or "tear down" the vehicle. The only way to learn the actual damage a vehicle sustained is to obtain a tear-down estimate before having it repaired to pre-loss condition.

### Recommend an independent body shop

A shop's invoice can describe rear-end

damage in different ways and with different levels of detail. Insurance companies have "direct repair" agreements with larger, higher-volume repair shops. These insurance "direct repair facilities," a.k.a. "preferred shops" or "recommended shops" have an economic incentive to minimize the appearance of rear-end damage on an invoice because that helps insurance companies, their primary source of referrals, minimize claim costs on both the property and injury portions of a claim. An independent repair shop with few or no insurance direct repair contracts is more likely to describe the damage in detail on their invoice, identify all the parts that need to be replaced, thoroughly inspect the rear structure of the vehicle, take your phone call if you have questions about what happened to the car, provide photos of the damage before and after they disassemble the car, write a brief statement about how your client's rear energy absorption system works and how the crash affected it, and otherwise cooperate in your efforts to find out how serious the collision damage really was.

### Understand the invoice and whether the collision was actually "minimal"

Most vehicles have a common set of rear end components - the bumper cover or fascia, the absorber (normally plastic or foam), the impact bar or reinforcement, rear body panel and floor pan (unibody structural panels). Your client's vehicle might have a tow hitch, which dramatically affects how it absorbs the energy from a collision. "Body on frame" designs (normally reserved for trucks) differ from more common "unibody" passenger cars.

Research your client's car online or ask the shop for information about its construction to understand what parts are susceptible to damage in a rear end collision to give the repair invoice and damage photos context.

### Obtain "tear down" or "supplement" photos

Insurance companies and repair shops will almost always take "intake" photos when they write their estimate before they disassemble the vehicle. Sometimes those photos will be misleading; the plastic bumper cover might show two punctures from the license plate bolts in front of the defendant's car, but is that all the damage? Once the shop disassembles the bumper, the technicians could find a cracked energy absorber or reinforcement bar, or they could find damage to the rear body panel or floor pan. Those parts may show up on the final invoice, but a line item describing two hours of repair to the rear body panel isn't as helpful as a photo of the dent the shop technicians had to pull or the cracked metal bumper reinforcement. You may need to be proactive to get the shop to take these photos, and even if the shop takes them without your asking, you may need to ask for them specifically since they may not be in the primary collection of "intake" damage photos.

### Collect the valuable evidence

Make sure to obtain the "final invoice" or "final supplement," not just "estimates." If your client goes through the effort of

getting the vehicle repaired, this final invoice is the payoff evidence.


### Be curious and ask questions

Body shop estimators, technicians, and managers don't generally want to talk to lawyers, and when they do, they don't generally want to speak in lay terms about damage. Call the shop anyway. Ask questions about what the items on the repair invoice mean. What parts were damaged? How does the rear bumper of this car work? Is your client's car designed to crumple in low energy collisions, temporarily deform and bounce back, or remain stiff (each tendency will transfer a different amount of collision energy to your client)? Swallow your pride and demand the "village idiot" explanation in plain English. If you develop a good rapport with the body shop manager or estimator who can explain the damage to your client's vehicle in a way the average customer (or juror) can understand, then you may find a solid witness you can call to rebut a biomechanical defense.

What at first blush may appear to be "low speed" or "low energy" rear-end collisions often are not. Attorneys and doctors spend a lot of time proving the biomechanics of "low speed" collisions, but spending a fraction of that time learning the true story of your client's property damage can sometimes help you sidestep the entire debate.

Paul Veillon, WSAJ EAGLE member, practices law at Oiva Bearb & Galish in Seattle

## Bertram Dispute Resolution, Inc.



**TRUE NEUTRAL**

TRUSTED. PREPARED. EFFICIENT.

**BDR**

Professional Negligence, Employment, Personal Injury, Business/Commercial, Civil Rights, Real Estate, Insurance Coverage, Automobile Liability, Maritime.

Gregg Bertram has resolved thousands of cases in his 25 years as one of the Pacific Northwest's most recognized mediators and arbitrators.

CALL US FOR YOUR MEDIATION OR ARBITRATION NEEDS.

Visit [www.bertramadr.com](http://www.bertramadr.com) or scan the QR code to learn why BDR is right for your ADR needs.



316 Occidental Avenue S, Suite 500, Seattle, Washington 98104 tel. 206.965.9133

## THOMAS M. FITZPATRICK

### PROFESSIONAL RESPONSIBILITY

30 years of practice; 17 years bar review professional responsibility lecturer; former member ABA Ethics and Discipline committees; member ABA Commission - drafting new judicial code; fellow, ABA Center for Professional Responsibility.

Available for consultation or referral on matters involving professional responsibility, lawyer and judicial discipline, forensic witness services, consultations regarding legal professional liability.

### TALMADGE/FITZPATRICK

18010 Southcenter Parkway  
Tukwila, WA 98188-4630  
Tel: 206-574-6661  
Fax: 206-575-1397  
E-mail: [tom@tal-fitzlaw.com](mailto:tom@tal-fitzlaw.com)  
[www.talmadgefg.com](http://www.talmadgefg.com)



## Safety Systems America

FORENSIC SAFETY INVESTIGATIONS/CONSULTING  
PERSONAL INJURY  
WRONGFUL DEATH

## Slips, Trips, Falls

Tom Baird  
Safety Consultant

(360) 887-3263

[slips-trips-falls@comcast.net](mailto:slips-trips-falls@comcast.net)

Safety Systems America  
P.O. Box 997  
Ridgefield, WA 98642

[www.slips-trips-falls.com](http://www.slips-trips-falls.com)

Serving Washington and Oregon Attorneys Since 1995