



Trial Survey Group

www.trialsurveys.com

email: chris.denove@gmail.com

Measuring the Impact of Impact

Statistical Analysis of
the Impact of Property
Damage on Jury Awards

Chris Denove
President, Trial Survey Group

In this report we present the results of four online mock trials where all the facts are identical except for the amount of property damage to the plaintiff's vehicle (see photos at left). By holding all facts constant except for the vehicle photos the results quantify how juries evaluate property damage when deciding cases involving typical rear end collisions. The report also contains an analysis of the impact of individual pieces of evidence on verdicts.

The Dilemma of Low Impact Auto Accidents

The scenario is all too familiar. Dave, a potential client, walks through your door with what appears to be a straightforward case. Dave was driving down the road when a ball rolls onto the street in front of him. Dave stops, but the car behind him doesn't. Clear liability - you've passed hurdle number one.

You breeze past hurdle number two when you find out that all parties are fully insured. A quick review of the medical records shows that Dave suffered a lumbar strain for which he received two courses of physical therapy. Unfortunately, Dave's pain didn't resolve so his doctor ordered an MRI that revealed a bulging disc at L3/L4.

Just as you're about to bring Dave a client agreement you see a picture peaking out from the corner of the file that shows a car that looks more like it was struck by a shopping car than another automobile.

On one hand you just spent an hour with Dave and you believe that he's telling you the truth about his injuries. But, you can't help looking at those photographs and thinking there is no way the insurance company is going to offer anything close to full compensation for such a low impact case. And what would happen if you actually had to take this case to trial? How much influence would those photos have on the jury and their verdict?

Testing the Hypothetical Case

To answer this question we considered reviewing the verdicts of published low impact cases. This methodology quickly proved unreliable because the uniqueness of each case makes it impossible to isolate the role of vehicle damage on each verdict.

We therefore settled on a scientific approach whereby we conducted four separate mock trials via the Internet to over 350 jury panelists. The evidence presented in all four trials was identical except for the amount of property damage. By holding every variable constant *except property damage* we were able to precisely determine how much the differing levels of visual property damage had on each verdict (see pictures on title page showing the damage shown to each jury).

The following contains an abbreviated version of the facts presented to the online jury panel. The police report indicates that Bob complained of general stiffness at the scene but refused medical treatment. The pain in his lower back was worse the next day so he went to his doctor who diagnosed a mild lumbar sprain that should resolve on its own in a week or two.

The pain did not resolve and Bob's doctor prescribed a month of physical therapy. The pain persisted so his doctor prescribed an additional course of therapy in addition to TENS unit to use at home. When the pain improved, but did not fully resolve, Bob's doctor ordered an MRI. The scan showed a bulging lumbar disc.

To no one's surprise the plaintiff's treating physician and the medical expert hired by the defense had very different opinions. Bob's doctor believed the accident caused the bulge, while the defense's expert not only refuted causation, but also opined that the bulge was not large enough to actually cause pain (suggesting the bulge was consistent with degenerative changes found in most men Bob's age).

The defense also pointed out that during his physical exam Bob said he experienced pain while performing two mobility tests unrelated to disc injuries. The defense doctor also testified that someone is more likely to injure their neck rather than their low back in a rear end collision.

Jurors were also presented evidence about a possible preexisting condition. The defense pointed out that Bob had mentioned back-related pain during three routine physicals over the past ten years. Bob countered that each of these resolved quickly and that until the accident he had never made an appointment to see any doctor *specifically because* of his back. This left jurors to decide if Bob's current problems are the result of a preexisting condition, or whether his lower spine was more susceptible to injury in a rear-end collision.

Bob's attorney argued that in addition to incurring \$5,000 in medical expenses, the jury should compensate Bob for the following non-economic damages:

- Bob has a desk job where he is unable to sit for more than 30 minutes at a time without pain
- Bob is no longer able to play competitive sports with his two teenage boys
- Bob is no longer able to play golf without pain (which was an important part of his life before the accident)
- Bob requires pain medication to sleep most nights

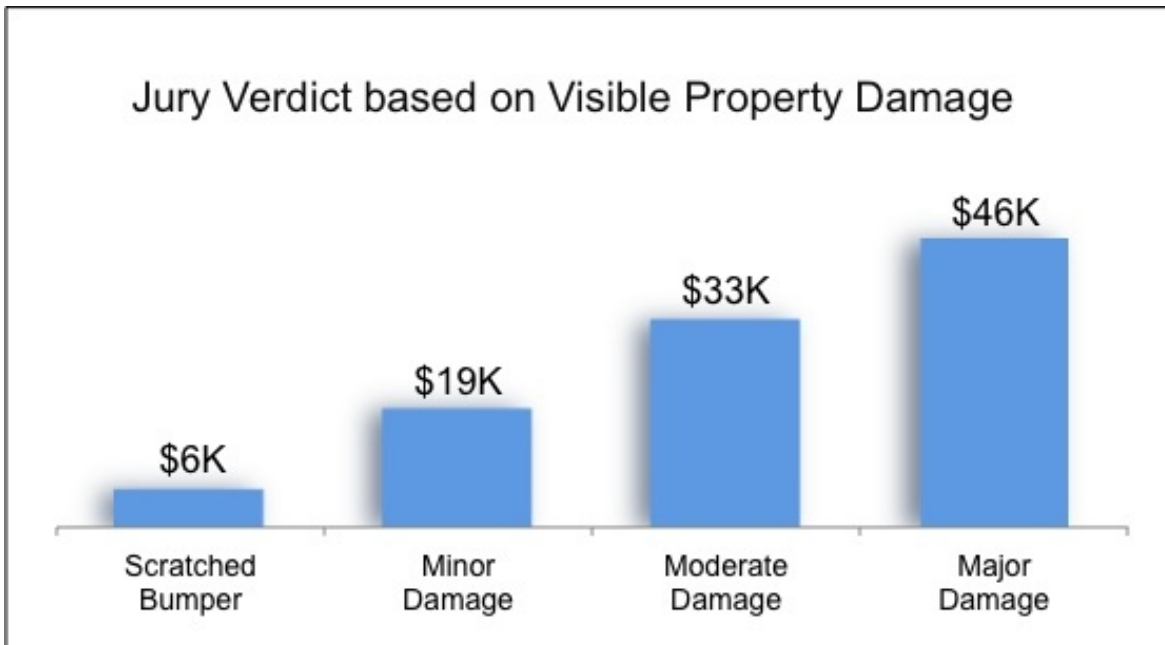
The defense contends that these claims are exaggerated, and whatever discomfort plaintiff currently experiences is due to his prior history of back problems and not the accident.

After hearing all the evidence and judges instructions, the mock jurors from each group were left to decide if Bob was an innocent victim who suffered a life altering injury, or a charlatan trying to turn a minor traffic accident into a pot of gold.

Note that we intentionally omitted testimony from biomechanical engineers discussing Delta-V forces and other technical data. Instead, we continually showed the photos of the plaintiff's vehicle without comment to allow the jury draw their own conclusion about how the force of the impact related to the plaintiff's testimony and injuries.

The Results

The results of the four online mock trials clearly demonstrate that the amount of visible damage to a vehicle influences the amount of money a jury will award a plaintiff when the link between the accident and the injury is unclear. Although verdicts rise along with the visible damage, the two do not move in lock step.



The “scraped bumper” jury found it difficult to believe that Bob's back problems were the result of the accident and therefore awarded him little more than his medical expenses. But, as the damage increases from a scratch to minor sheet metal deformation, the verdict more than triples to \$19,000; an amount that is nearly four times Bob's medical expenses.

The verdict continues to rise from there, but the *rate of increase* flattens out significantly. Note that moving from “moderate” to “heavy” damage only increases the award by 39% (from \$33K to \$46K).

The takeaway is clear, more damage equals more money, even if all other facts are held constant. But, as long as the damage extends to the sheet metal a jury will be open to the possibility that occupants suffered a meaningful injury.

Fixating on a Single Piece of Evidence

Some attorneys who reviewed these results expressed surprise that the jury would award full medicals for a scratched bumper, and four times the medicals for minor sheet metal damage. After all, in addition to being a low impact collision, there are other facts that could give a jury pause ranging from evidence of a preexisting condition to claiming to feel pain while performing an exercise unrelated to a disc problem.

To better understand these verdicts we must look closer at the facts presented to the jury. The defense naturally pointed out that a rear end collision is more likely to cause a cervical injury than a lumbar injury. Bob's doctor pointed out that immediately before the impact that Bob looked in the rear view mirror and saw that the car behind wasn't going to stop and stiffened up in anticipation. By bracing for impact Bob stiffened up which pulled his lower back away from the seat, thereby making his lumbar spine

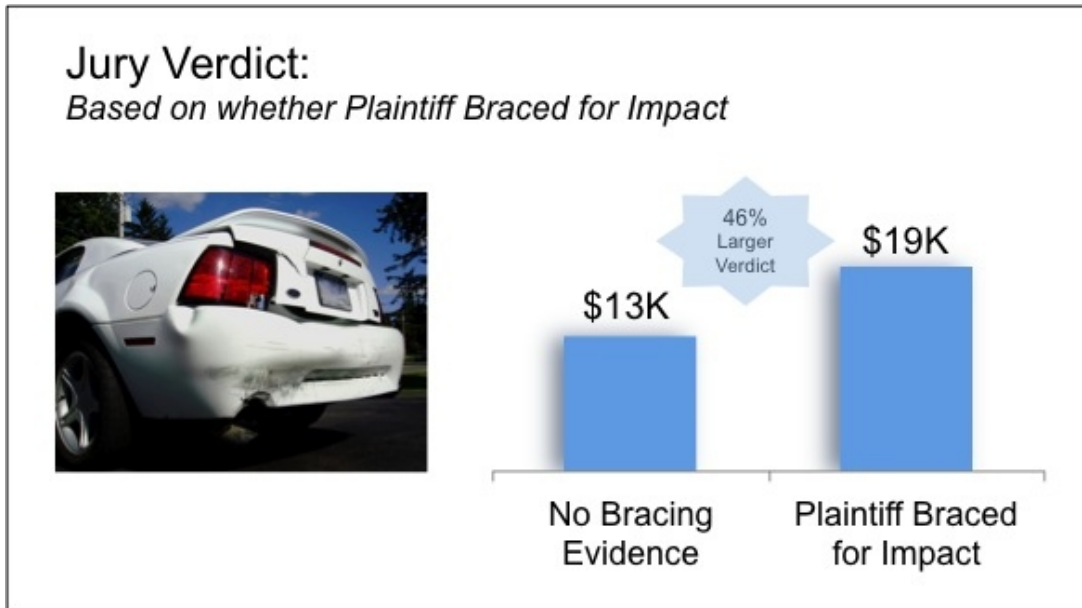
more susceptible to injury. The doctor explained that bracing increases the likelihood of injury; noting that drunks often walk away from serious accidents because they remained loose at impact.

Despite the fact that this seemingly innocuous statement amounted to no more than a couple sentences buried among pages of facts, the juries apparently fixated on its implication. Consider the following table that shows the percent of minor sheet metal damage jurors who felt that each argument was plaintiff's most persuasive evidence.

Plaintiff's Strongest Argument	% Agree
Bracing made plaintiff more susceptible to injury	30%
Plaintiff had not previously gone to doctor for back	22%
Plaintiff's back more susceptible to injury than most people	20%
Plaintiff's family doctor more credible than hired defense doctor	16%
Vehicle appears to have been hit sufficiently hard to cause injury	13%

Defense's Strongest Argument	% Agree
Plaintiff's medical records show prior complaints of back problems	45%
During defense exam plaintiff claimed flexing caused pain	17%
Rear end accidents not likely to injure someone's lower back	16%
Vehicle not hit sufficiently hard to cause injury	15%
Defense doctor is an orthopedist (more credible than P's family doctor)	10%

Its one thing for jurors to say that "bracing for impact" was plaintiff's strongest argument, but would the verdict have actually been different without this piece of evidence? Thankfully, the online mock trial methodology allowed us to test this theory by presenting the exact same facts to another group of panelists, except this time we left out the bracing evidence. The following chart shows that this one fact increased the jury's verdict for the minor sheet metal damage case by 46%.



We obviously aren't reporting this finding to suggest that plaintiff's should be coached to say they braced for impact. Instead, we conducted an additional online trial without the bracing evidence to illustrate how jurors can fixate on one small piece of evidence when deciding a case.

Conclusion

This study provides three useful conclusions that attorneys may use in practice.

1. Even without testimony suggesting the link (or lack thereof) between property damage and injury, juries will on their own take property damage into consideration when deciding a case.
2. Although verdicts continue to rise with property damage, as long as the damage in a rear end accident extends to the sheet metal most jurors are open to the possibility that a plaintiff suffered a meaningful soft tissue injury.
3. Attorneys need to understand how lay jurors are likely to interpret the facts of their case in a real world setting because actual jurors may fixate on a single piece of evidence that the attorneys do not see as critical.