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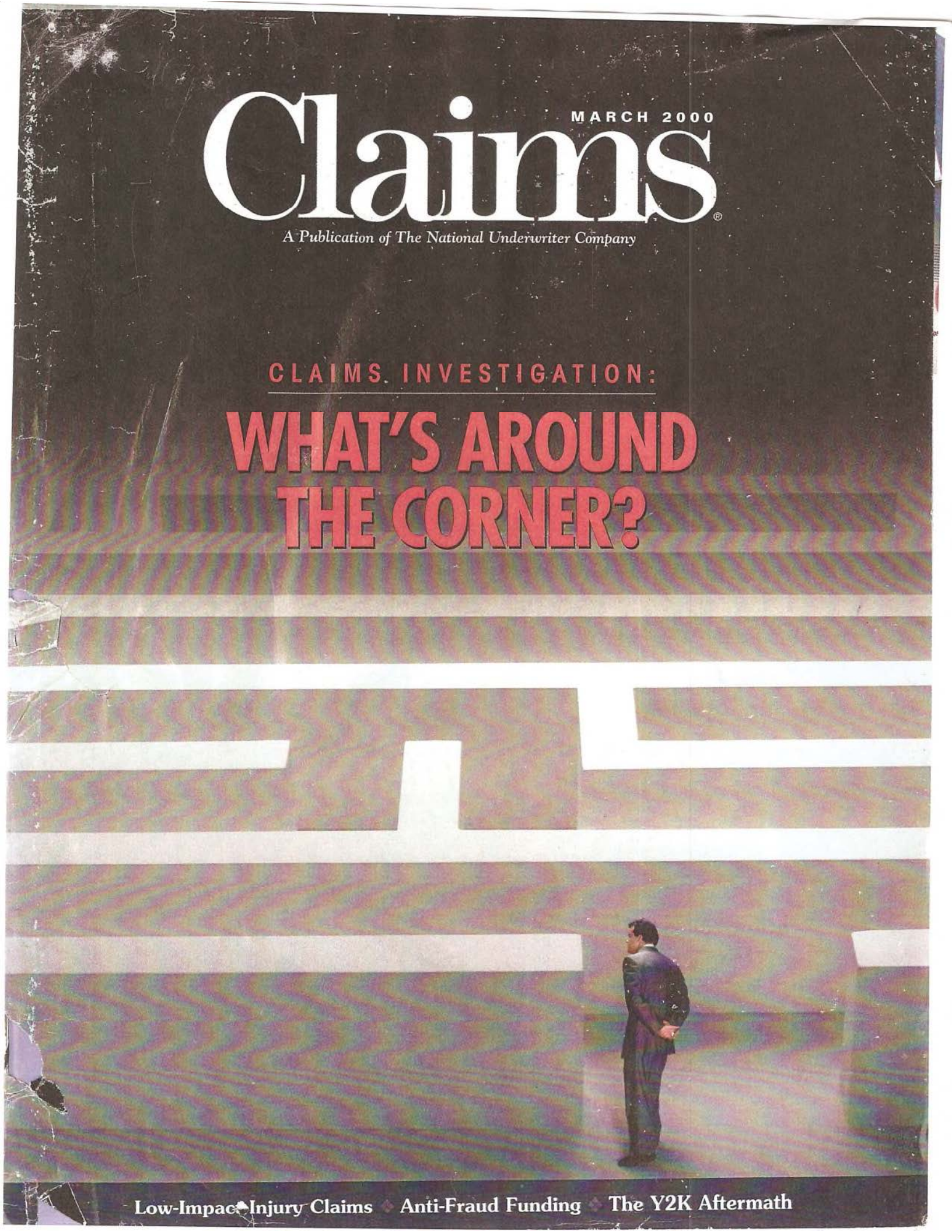
CLAIMS INVESTIGATION:

WHAT'S AROUND THE CORNER?



Low-Impact Injury Claims ◆ Anti-Fraud Funding ◆ The Y2K Aftermath

BIOMECHANICS
Takes Mystery Out of MIST Claims

BY JAY GALLAGHER

In the world of the front-line automobile claims professional, there's probably no greater truism than the old adage "speed kills."

But despite the simplistic profundity of that statement, it's more often the low-speed, minor-impact accident — typically devoid of all but the most insignificant property damage — that ironically proves to be the most troubling type of bodily injury claim for the front-line adjuster to handle. Factoring in the sheer number of these "minor" accidents only exacerbates the problems they present.

High-speed accidents are sudden, swift and have easily identifiable causes, not to mention obvious mechanisms of injury. These types of accidents lend themselves well to objective investigation, which is the axis around which any successful claim defense must revolve. Skid marks, crush damage, gouge marks and debris fields leave a trail for the diligent adjuster/investigator to follow in determining what happened and, often, whether or not it's reasonable to assume that the claimant's complaints of injury are legitimate.

By contrast, low-speed impacts leave significantly less evidence and are not as easily evaluated by objective methods. Consequently, they're ripe for exploitation, abuse and fraud by some less-than-scrupulous claimants interested in secondary gain. Add to that the relatively low settlement value of minor impact claims and close scrutiny sometimes becomes moot from a cost analysis standpoint.

"It's absolutely frustrating," said Boris Biloskirka, of BDL Management Inc., a Fountain Hills, Ariz.-based third-party administrator that caters primarily to over-the-road trucking companies. "We see a lot of the minor impact claims where, though there might have been some negligible contact, you know full well that the injuries being alleged by the claimant aren't consistent with the property damage sustained.

"Typically on a minor impact claim, we see subjective complaints, symptom magnification and injury descriptions which aren't consistent with the way the accident occurred," Biloskirka said. "Plus, it's all usually accompanied by inflated treatment, redundant treatment or treatment that's merely palliative in nature. Typically, when we've taken a hard line on these types of claims, we've referred them to medical bill auditing companies and we've had pretty good luck in settling them for a reasonable amount, despite what we perceive as inflated special damages."

Echoing an oft-repeated and age-old adjuster lament, Biloskirka added, "It

would be nice, though, to have some sort of objective and affordable method for evaluating and defending these types of impacts."

To that end, some insurers have embarked on an aggressive program to identify these types of files so that they can be targeted for extra scrutiny and subjected to expert review from medical providers and engineers. Many insurers, like GEICO and Allstate, have begun to handle the minor impact claims as a separate specialty, sometimes referring to them as minor impact/soft tissue (MIST) claims.

Fight 'em all the same way

According to those who handle a bulk of these types of claims, the key to effectively controverting them is to uniformly apply the same scrutiny to all minor impact claims. Additionally, the insurer must be realistic about what they're trying to accomplish using these methods. Judicious application of low-speed impact analysis techniques generally doesn't work. To be effective, an insurer must apply the approach to all low-speed impact claims they handle.

An added benefit of using this technique on all minor impact accidents is that, eventually, the insurer sends a message to plaintiffs' counsel that they're not going to sit back passively and settle questionable claims. A good portion of MIST claims will end up in court.

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"When you fight enough of these," says Shreveport, La., defense attorney Billy Guin, "the plaintiff's attorneys understand that it may not be economically practical for them to take too many of the minor impact cases. They're actually having to work, take depositions and to prove their case and their damages on these minor impact claims, whereas in the old days, insurers simply negotiated with them."

The idea is to not only win the cases you can, but also to obtain reduced judgments, defend subsequent appeals and reinforce the idea that not every minor fender bender is going to result in injury or a generous offer from the insurer.

Though zero verdicts are the optimum result of such a program, significantly reduced verdicts and reasonable settlements should be the insurer's main goal. "We're not seeing very many zeros using this approach, but we are seeing significantly reduced general damage awards," Guin said. "The judges here are reluctant to concede that the claimant may not have been injured, but they are taking into consideration the relatively minor nature of the injury."

Statements & photos

There are some high-tech tools that can be used in the handling of these types of MIST files, but there's no magic technique that takes the place of an old-fashioned, solid and precise investigation.

As with any claim, the investigation starts with the recorded statement and documentation of the damages — the cornerstone upon which a strong investigation is based. The earlier these types of claims are identified and documented, the easier they are to properly defend and defeat.

In addition to the "who, what, why, where, when and how" routinely covered in recorded statements, the diligent adjuster will want to get the claimant to document exactly how his accident occurred within the vehicle, covering the exact movements made by the claimant's body.

The adjuster will want to cover any incidental contact with the interior of the vehicle in great detail. If any personal items were in the vehicle, it's important to pin the claimant down regarding the behavior of these items during the accident. Also, it helps to examine the claimant's activities before and after the accident in great detail.

"A strong statement obtained by the adjuster is often the best tool we have," Guin said. "We can use that and compare what the plaintiff says to the adjuster with what he says in deposition and later on the stand at trial to show that there are inconsistencies and that perhaps the claimant is exaggerating his complaints."

Photos and measurements of the involved vehicles are also of the utmost importance. Appraisal photos are often limited because insurers are trying to hold down file costs, but it's not a wise move to skimp on photos if you're trying to aggressively defend against embellishment in minor impact cases.

"Sometimes a judge will look at the photos and decide in his own mind that the impact was insignificant and that the claimant couldn't have been injured," Guin said. "The better your photos, the better chance you have of proving your case."

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Internet brings down cost

Reconstructionists have, for years, analyzed accidents to look for fault, mechanism of injury and other issues of importance to the claims adjuster. Insurers engage engineering experts to perform biomechanical analyses of impact injuries. Medical treatments are often reviewed through peer audits, employing advanced techniques such as surveillance to crack down on the incidence of subjective exaggeration and fraud. The cost of these analyses, however, has long prohibited

their use in all but the most severe of claims files.

In this digital age, however, that's changing. The proliferation of web-based information enables experts to use previously published crash test research and information from sources such as auto manufacturers, the Federal Highway Department and the Society of Automotive Engineers to formulate opinions about the severity of low-speed impacts and the corresponding forces imparted on involved vehicles and their occupants.

The ability to obtain this information and research at low or sometimes no cost has enabled experts to reduce the fee for this type of inquiry for MIST claims. For as little as $500, a diligent adjuster, armed with appropriate measurements and good photos, can now send this information off and, within a matter of weeks, have an expert report in the claim file, detailing the severity of impacts and the probability of injury for a particular accident.

Factoring in the reduced settlement or reduced verdict in these questionable cases, along with the message that such an approach sends to plaintiffs' attorneys, this type of MIST investigation is often well worth the $500 file expense.

How does it work?

The biomechanical analysis seeks to quantify the energy imparted from one vehicle to another, and compare that to forces experienced by drivers and passengers as they engage in everyday activities.

As mentioned above, often a claimant will embellish or magnify subjective symptoms for secondary gain. The biomechanical analysis objectively evaluates the forces acting upon the claimant and gives the adjuster a tool to use in the negotiation and evaluation of the claim.

But for the biomechanical analysis to be truly effective, the front-line adjuster in the field must put some effort into preparing a file for the expert's review. Photos should be taken of the vehicle, square on, from all four sides, plus close ups of any associated damage. Corner shots, though prevalent in appraisal files, are of little benefit to an engineer.

Often it's helpful to have some sort of graduated measuring scale in the photograph so as to give the engineer a sense of the scope of the damage or, perhaps more appropriately, the lack thereof. For example, Keeson's PocketRod, a free-standing engineer's ruler with oversized markings, shows up particularly well in 35 mm photos (see Figure 1).

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Additionally, if the vehicle is equipped with impact absorbers or isolators, the diligent adjuster will want to climb underneath the vehicle to photograph and measure the travel on the isolators. As the vehicle is operated on the road, a film of dust, dirt and oil generally builds up on the undercarriage, making it very easy to document the movement of the absorbers/isolators.

A word of advice on photographing the impact absorbers is of particular relevance to field adjusters: Try to get some sort of measuring device into the photograph without blocking your view of the absorber itself. Since the absorbers are more easily photographed from the opposite side of the vehicle, the diligent adjuster will want to photograph the passenger side absorber by lying on the

ground under the driver's side of the vehicle and shooting back across it, and vice versa (see Figure 2).

In addition to the measurements indicated above, it's important to measure the various heights of the bumpers and any damaged alleged to have been caused in the impact. Often, these measurements alone can be used to show that alleged damage couldn't have resulted from the accident being investigated if the bumper heights and damage don't align.

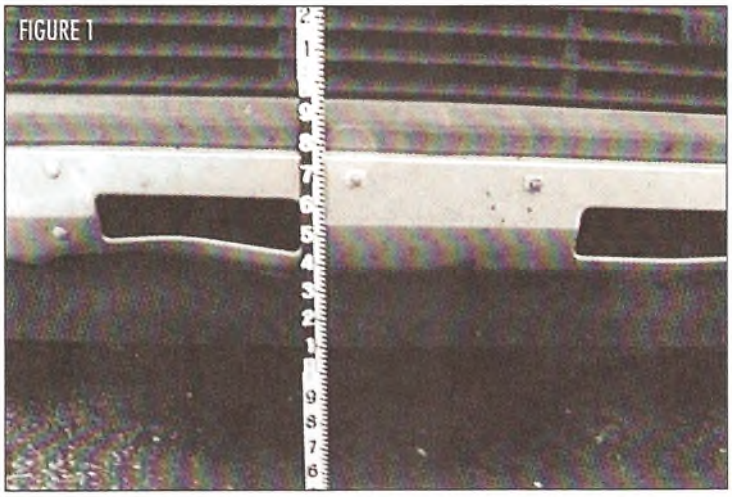
Also, the engineer can use the damage heights to determine if any of the structural members were involved or if the damage was limited to cosmetic body panels. This is particularly relevant when determining the severity of impacts. If the more rigid structural members are involved, it's possible for higher forces to be imparted on the target vehicle than if the damage is merely cosmetic in nature.

After the field adjuster has obtained photogrammetry, vehicle appraisals, detailed measurements and the police report, these items are then sent to the engineer, who uses these photos and measurements to determine the severity of the impact by comparing them with previously published crash test data.

Mike James, Ph.D., owner of Stress Dynamics, a College Station, Texas, engineering and reconstruction firm, said biomechanical reports can be invaluable tools for evaluating low-speed impacts. "We're seeing an increase in the number of insurers using them," said James, who has, himself, crash-tested more than 700 vehicles for the Department of Transportation.

"With the right measurements, there's enough information out there for us to run these things through CRASH [a computer-based reconstruction program] and come out with reasonably accurate solutions. Though it's possible to do these types of things using the adjuster's measurements, we'd prefer to actually look at the vehicle ourselves, if feasible."

Since few minor impact vehicles total out, often the vehicle is repaired before the carrier has had a chance to identify the claim as a potential MIST case. Claimants are becoming wise to these types of techniques and aren't reporting injury until after the vehicle has been repaired. As an alternative, some plaintiff's attorneys are advising their clients to go through their own carriers to have the property damage taken care of.



When taking photos of auto accident scenes, it is often helpful to inlude a measuring device like this to provide the proper perspective.

Bumper impact absorbers (the horizontal tube seen here from below, bolted to the bumber at left) are best viewed from the side of the car opposite from the absorber in question.

"It's always better if we can look at the vehicles which were involved," agreed Frank Johnson, CSP, PE, president and CEO of System Engineering and Laboratories Corp. in Tyler, Texas. "But, since that's not always practical in low-speed impact cases, sometimes all we have to go on are the photos and measurements. We use available crush damage data to determine a critical speed at which there is likely to be permanent damage to the vehicles and work from there."

Still some skeptics

Although the practice is gathering favor among insurers and defense attorneys, both James and Johnson indicate that biomechanical analysis is not always well received in the courts, but does seem to play well with juries. "It opens you up to some criticism if you don't actually see the vehicle, " Johnson said.

James agreed, but added that there are some ways around that. "In some cases, we've gotten the same type of impact absorbers as are on the vehicle we're analyzing and are able to test the absorbers to determine the force necessary to move them a specific distance," he said. "That enables us to be pretty accurate with our conclusions."

The litigation environment of your specific area is another important consideration. "I've used them in a number of venues," says one former front-line adjuster for GEICO, "and I've found that, in some areas, they don't do us much good because the judges have a tendency to not put much stock in the analysis. In other areas, we had great results and ended up with some zero verdicts because the jurors can read the reports, look at the pictures and realize that the claimant couldn't possibly be injured to the degree they claim."

"The idea is to relate the forces imparted in the collision to the force of gravity or 'G-forces' and then to [compare them to] everyday activities like walking, sitting down or stepping off of a curb," says James. "In some cases, we can relate the impact to things like the force felt by a person stepping on the accelerator of his vehicle or what he'd feel if he sneezed."

Although the jury's still out, so to speak, on the use of the biomechanical analysis and other hard-line approaches to dealing with MIST claims and subjective injuries, the promise of finally having an objective and effective tool to use in the fight against inflated or fraudulent claims is certainly nothing to sneeze at. ▲

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