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The accident-prone plaintiff

HOW TO HANDLE THE CHALLENGES ARISING FROM A PLAINTIFF INVOLVED IN MULTIPLE COLLISIONS

The U.S. Department of Transportation reported that in 2022, 2,382,771 persons were injured in motor-vehicle collisions in the United States. California alone accounted for over 200,000 people injured and 4,428 fatalities. Given these numbers, it is no surprise that many plaintiffs will be involved in multiple injury-causing motor-vehicle collisions. How you strategically handle these multiple collisions will impact the outcome of your client's case.

Certainly, prior and subsequent collisions are addressed during the course of litigation. However, if your client has two or more motor-vehicle collisions in close proximity, in which your client is not at fault and with the same underlying injuries, there is the opportunity to bring in both defendants in the same lawsuit. This is an efficient, cost-effective strategy in addressing both claims that can be optimized for your client's benefit.

Plaintiff's insurance and medical records

Prior to filing a lawsuit, due diligence is required to obtain information regarding any prior motor-vehicle collisions that

plaintiff was involved in. While your client may be able to provide a history, it is in your client's best interest, and yours, to independently investigate. Even the most astute client may not recall a fender bender from over a decade or more ago.

To actively investigate these prior claims, you can take a page out of most defense counsel's playbooks and run an ISO claims search on your own client. An ISO claims search looks for prior insurance claims made by your client, including injury, property damages, and workers' compensation claims. ISO claim searches can be made at <https://claimsearch.iso.com>.

After receiving this information, request additional documents and information from your client's insurance company, including any medical records, traffic collision reports, and property damage photographs and information. In some cases, a subpoena will be required to obtain additional documents. Not only does this level the playing field with defense tactics, but your client's prior injury claims may guide your strategy during litigation on what claims to pursue.

Another source of information will be your client's medical records. An ISO

search is not fool proof. If a collision is not reported to insurance, or your client was a passenger who was injured during a collision but never filed a claim, the ISO may be an incomplete source of information. Requesting all your client's medical records, without a date limitation, may show prior collisions and complaints of injuries by your client.

Prior imaging, such as X-rays, CT scans and MRIs, also may be pivotal to showing medical causation of your client's injuries in later stages of the case. For example, the significant increase of a disc bulge from comparing spinal MRIs taken before and after the collision will be objective evidence of the harm caused by the defendant during your subject collision and will counter claims of degeneration that the defense inevitably argues. Even if your client may have just gone to the emergency room after a collision to get checked out without taking any further action, you want to be able to disclose it in discovery and avoid your client being impeached during their depositions or in trial.

Many times, after reviewing an ISO claims report and prior medical records with your client, it will refresh their recollection as to prior motor-vehicle

collisions. An added bonus, this information will also be used to respond to Form Interrogatories Series 10 (Medical History) and Series 11 (Other Claims and Previous Claims) during discovery.

Concurrent collisions and consolidation

Occasionally, you will have a client who is involved in a subsequent collision a couple months, or a year, or even more, after the initial collision. Your client may still be treating for their injuries or completed treatment and still suffering from pain. Then there is the possibility to combine both collisions and therefore both defendants in one action.

If, as a result of the subsequent collision your client has injuries to the same body parts, you have the option of either bringing a lawsuit against both defendants in the same lawsuit or, if the lawsuit for the first collision has already been filed, bringing a second lawsuit and then consolidating both the lawsuits. For this to be successful, the injuries claimed by the plaintiff must overlap between the two collisions. There also must be doubt as to which collision caused or contributed to the injury. (*Landau v. Salam* (1971) 4 Cal.3d 901, 903.)

The Court has the authority to consolidate two separate motor-vehicle collisions under Code of Civil Procedure section 1048, subdivision (a), which states that, "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Commonly, the parties will agree to consolidate lawsuits via stipulation, with the action filed first as the lead case. If not, the majority of motions based on this premise are favored by the court.

As in any case, bringing a lawsuit against multiple defendants arising from two or more collisions will complicate the litigation process. With more defendants

comes more moving pieces to navigate; more discovery, depositions, motion work, and experts. More likely than not, it may also complicate the settlement process as defendants dispute their portion of the liability or causation of the injuries. However, depending on the circumstances, it is typically beneficial for a plaintiff with the same injury aggravated by multiple collisions to place the defendants under one lawsuit.

The efficiencies of consolidation

In a consolidated action of two collisions, the underlying fact discovery of the collisions themselves may be different, however the medical and damage evidence will be mostly the same for each action. With overlapping injuries and complaints, the medical discovery, including past medical records, treatment, surgeries, and future medical treatment will largely be the same. This also encompasses medical experts. It is more efficient and cost effective to hire a medical expert in one case instead of hiring the same expert twice to opine on the same injuries. The same applies to a life care planner, billing expert, vocational rehabilitation expert and even the damage witnesses you will call on behalf of your client to testify to how their injuries have affected their life.

If defendants oppose your motion for consolidation, you need to emphasize to the court the prejudice plaintiff will suffer if forced to litigate in two separate actions. In addition to judicial economy in having the cases consolidated, plaintiff will also be able to cost-effectively prosecute both their cases in terms of experts. Further, without consolidation, each defendant can potentially point the finger at the other collision and other defendant, which has the possibility of resulting in inconsistent outcomes. It should instead be left to a single jury to apportion the harm caused by the plaintiff in each collision.

In a consolidated action for two collisions, essentially the injuries will need to be apportioned between the two

defendants for the damage caused during the multiple collisions. As in a single-collision case, plaintiff will need to prove that each defendant was a substantial factor in producing the injuries. CACI Instruction 431 "Causation: Multiple causes" addresses this situation, that a defendant cannot avoid responsibility just because another person, condition, or event also caused plaintiff's harm. "A defendant's negligent conduct may combine with another factor to cause harm; if a defendant's negligence was a substantial factor in causing the plaintiff's harm, then the defendant is responsible for the harm; a defendant cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing the plaintiff's harm; but conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct." (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187).

A jury may decide that one collision caused further injury than another, but in the underlying lawsuit, both collisions and both defendants are ultimately still responsible for plaintiff's harm. Instead, in order to reduce liability and limit damages, defendants would focus on the apportionment of the harm between the defendants.

Likewise, if more than one plaintiff is injured a collision, the parties have the option of filing separate suits against the defendant. (*Anaya v. Sup.Ct. (Dow Chem. Co.)* (1984) 160 Cal.App.3d 228, 232). Practically speaking, however, any motion to consolidate these actions by the defendant will be successful.

Code of Civil Procedure section 379, Joinder as Defendants, makes clear that "All persons may be joined in one action as defendants if there is asserted against them: (a) any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." (Code Civil Proc., § 379, subd. (a)(1).)

Use of experts

Paramount to a consolidated action involving multiple collisions, or even an injury claim with subsequent collisions or injury-inducing events, will be the use of experts to strengthen your client's claim. Retaining experts will aid you in apportioning medical causation for your client's injuries. In addition to retaining medical experts to opine about plaintiff's injuries, both accident reconstruction and biomechanical experts may play a part in being able to parse out which collision may have caused harm, may have not caused harm, or the extent of harm.

With multiple collisions, there may be strategic reasons for wanting to demonstrate that one collision caused more harm to the plaintiff than others. For example, what if the plaintiff is at fault for one of the subsequent collisions? If plaintiff's own negligence contributed to his injuries, the damages should be proportionately reduced to reflect the percentage of plaintiff's fault. (*Li v. Yellow Cab Co. of Calif.* (1975) 13 Cal.3d 804, 828-829.)

By retaining experts early on, you may be able to better prepare your case to address when, not if, the defense makes the argument that a later event or another collision caused your client's injuries.

It may seem obvious which collision caused more injury to a plaintiff than the other. Like defense counsel in most of our cases, we may just look at the damage to the vehicles and come to a conclusion based solely on what we see. However, as plaintiff's attorneys know, it is not that simple. One collision may appear to have more damage and therefore have caused more harm, but until you gather all the evidence and compare it to the injuries, you will not know. An accident reconstructionist will need to analyze the vehicles involved in the collisions (preferably not repaired), photographs of the damage to the vehicles, repair estimates, examine the scene of the crash, the black box data, among other items, to determine how the crash occurred and to calculate the force, or delta v, of the collisions.

The biomechanical expert will then use the calculation of the force of the collision, review plaintiff's medical records, and determine the injury potential to the plaintiff. The type of vehicles involved, the type of impact, location of impact, and injuries claimed all play a part in the analysis. While some collision may seem to be the main source of your client's injuries, expert analysis may provide a different answer.

Finally, medical experts will be able to review records and films available to support causation against one defendant as opposed to another. By analyzing the chronology of medical records and plaintiff's complaints interspaced with collisions, medical experts can complete the picture of plaintiff's injuries. Likewise, a medical expert can look at prior medical records to counter arguments of pre-existing conditions.

Conclusion

More often than not, you will be inclined to try to settle the first collision for your client after a second collision occurs. This may reduce your client's recovery unnecessarily. In practice, it may benefit your client to pursue each case contemporaneously.

Megan E. Klein is an associate attorney at BD&J in Los Angeles. She litigates catastrophic personal-injury cases. She currently serves on the Board of Governors for the Consumer Attorneys Association of Los Angeles and as co-chair of the CAALA Education Committee. Megan is also the 2025 president for the Los Angeles Trial Lawyers' Charities.

