

Forensic Engineering Vs Timelines and Photos

By Curt De Vries, President

I was at the DRI products liability conference last week attending a breakout session about Traumatic Brain Injury. The point of the session was the brain is more likely to be severely injured when it is subjected to transverse forces in a sharp blow (i.e. head hitting the "b" pillar in a T-bone accident) than when it is subjected to compressive forces in a slower speed impact (i.e. face plowing into an airbag in a rear end collision). I was tracking with the speaker until she presented the mathematical equations used to develop the "ratings" assigned to the severity of a TBI. At that point she lost me. I took out my phone and started checking e-mail. I would have felt bad about doing this but then saw more than half the room was doing the same thing.

This presentation got me thinking. Due to the cultural shifts we have experienced in the last 5 years, the insurance industry has adopted a litigation strategy of developing cold hard facts. This is supported by the fact that forensic engineers outnumber any other vendors by at least 5 to 1 at the conferences I have been to this year. I understand why the industry went this direction, but it might be time to start re-evaluating this strategy. Discussions about the rise of nuclear verdicts, social inflation, and other antiseptic terms for a runaway financial catastrophe are becoming hot topics of conversation. If the "facts only" approach to file defense was working none of these topics would be a concern.

This brings me back to my breakout session. If the average juror has roughly the same level of intelligence as I do, mathematical equations aren't going to win the day. I hate math. I have always hated math. My guess is most jurors pulled from the public also hate math, and Plaintiff counsel likely already knows this. Instead of investing in the hard data from forensic engineering, he grooms his client to be sincere in the delivery of their testimony. In short, he is teaching his client how to tell "A GREAT STORY".

No one can argue with cold hard facts, and that is why the insurance industry adopted this strategy. However, in conjunction with empirical data, the insurance industry needs to regain the lost art of "story telling" and the power of timelines and photos. In so doing, they will be able to communicate their message to jurors that might not have a PHD in bio-mechanics and might be able to connect with some of the emotions plaintiff counsel is trying so hard to monopolize. Fraudsniifr can help.