



# One crash two crash, red crash blue crash

## Helping people with multiple incidents



Cooper

### BY MILES B. COOPER

The lawyer picked up a call from a client. “Oh, no. You were involved in a different collision? Are you okay?” The lawyer listened as the client provided information about what happened. An otherwise straightforward case just got a little more complicated.

#### Eat what is offered to you

Bill Veen (my old boss at The Veen Firm) used to deploy a Dutch phrase to us young lawyers that roughly translated to, “You will eat what is put before you, and like it.” The latter part came with emphasis. It was usually delivered in response to baby lawyer mewling about some case difficulty. When we hear about a new incident involving an existing or former client, we tend to be concerned. Beyond the client’s pain and difficulty, new incidents complicate ongoing cases and create injury proof issues. These new incidents typically fall into four categories: (1) during a case, same body part; (2) during a case, different body part; (3) after a case, same body part; (4) after a case, different body part. Each benefit from different approaches to successfully navigate the complexity of multiple incidents.

#### During the case, same body part

Multiple incidents can be sued into the same case. In other words, two separate incidents can be subject to the same lawsuit. Two rear-end collisions on different days, both affecting the back? Follow a less lethal variant of Arnaud Amalric’s approach to sorting Catholics and Cathars: sue them all and let the jury sort it out. This approach can include amending an existing complaint to add a further incident. The downside? Adding a new incident can push out a trial date and lengthen the case. The upside? The defendants cannot help but pee on each other a bit. “Doe’s back injuries came from the other collision.” Unless insurance limits are a significant issue, resist the urge to join the scrum. Prove the injury and let the defendants fight over which incident caused it.

Adjust this tactic if there’s a policy limits issue. Let’s presume there’s a low policy for one of the drivers, and the injuries likely exceed it. Consider weighing in given defense counsels’ skill and attention on lower policy cases vary. Helping the low policy defendant demonstrate the other incident caused more damage, if provable, improves collectability.

#### During the case, different body part

Different body parts reduce causation complexity. With two lower value incidents it may not be necessary to sue the cases together. That changes when significant wage loss claims arise. Assume a laborer with a permanent back injury from one incident and a permanent leg injury from another. Each defendant will blame future wage loss on the other. This is a case ripe

for having the defendants blame each other in a single lawsuit and letting the jury sort it out.

#### After the case, same body part

If a former client returns with an injury to the same area of the body, one typically has the benefit of already having the prior medical records. This is one of many reasons to archive digital case files long after a case concludes. Depending on the injury, this scenario can require very skillful lawyering. Two MRIs, one without a herniation and a new one with a herniation, make for an easy case. But it is rarely that clear. Without objective evidence, do the best one can with what is available. If there are differences like mid-back complaints instead of low-back complaints, focus on the differences and use graphics in the demand package or at trial to emphasize them. If the differences are limited, highlight reports that the injury resolved and periods without treatment before the new incident. And if one doesn’t have any of these, consider advising the client not to pursue the claim.

#### After the case, different body part

One would think a new incident involving a new body part would be a simple claim compared to what we’ve discussed so far. Sometimes it is. Challenges arise however when the prior claim and the current claim both include future wage loss. This is a proceed-with-caution area. A jury that believes one’s client is attempting to double-dip tends to punish the client across the board. If the client retrained from laborer to computer-assisted design drafter after the first case but then suffers a head injury and cannot work at all after the second, the differential between CAD drafter and nothing is compensable. Be creative, be zealous, but maintain credibility as one builds the case.

If the second incident is proceeding toward trial, consider moving in limine to keep references to a prior claim out while acknowledging the prior injury and its impact. Defense counsel like to try to paint people as serial litigants with the inference, or flat out statement, that they are seeking “jackpot justice.”

#### Outro

Back to our lawyer. The lawyer brought the second incident into the ongoing case. After discovery, the parties agreed to mediate with a skilled mediator. The mediator sliced through the causation and coverage issues, bringing both claims to conclusion the same day.

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