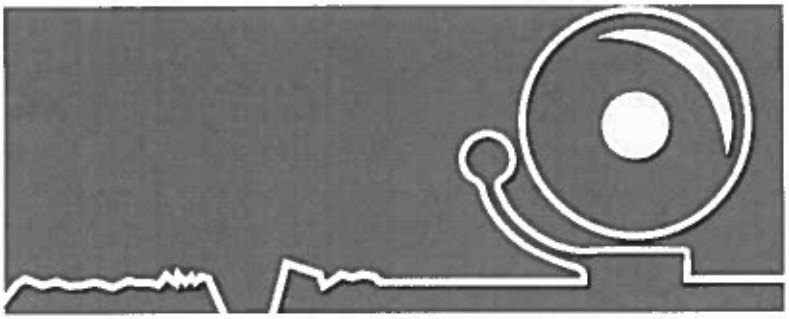

Having Your Bell Rung

Increased focus on brain injuries means all concussion cases are no longer simple.

By Patricia J. Trombetta

Does traumatic brain injury strike concern in your heart? If it doesn't, it should. Traumatic brain injuries are not limited to people who are found unconscious at an accident scene or even those with a Glasgow Coma Scale result below 15 points. Today, we are facing a challenge in bodily injury cases that have turned from what we once thought were "just concussions" into sizable claims for damages.

The news for the past 10 years has focused on concussions in the field of sports—mainly football, soccer, baseball, and hockey—and that news has expanded to include combat troops who have encountered improvised explosive devices, or IEDs. Those who formerly seemed only to have had their "bell rung" are now being subjected to concussion protocols. High schools are calling for baseline testing of their athletes and are no longer putting them back on the field, instead keeping players benched to see how the head injury plays out over days, weeks, and even months.

Diagnosing Brain Injuries

As previously mentioned, the most common tool for measuring brain injury severity is the Glasgow Coma Scale. It measures the subject's consciousness on three criteria: motor response, verbal response, and eye-opening response. As a result, patients are given one of three classifications: mild (13-15 points), moderate (9-12 points), and severe (3-8 points). No longer can the possibility of traumatic brain injury be ignored, even where there is a high scale rating or no loss of consciousness.

Savvy plaintiff's lawyers are monopolizing the news frenzy and no longer refer to these injuries as concussions. Today, the nomenclature in the medical field and in the courtroom has changed instead to "traumatic brain injuries." This change in terminology will increase the severity of the injury in the minds of juries.

A coup-contrecoup brain injury (where the brain meets the skull in the front and the back or side to side) is one that can be sustained in an assault, a fall, or even a rear-end auto collision in which a whiplash event is severe enough. There does not even need to be contact with a hard object. The mere force of impact within the skull may be sufficient enough to cause this type of injury.

The diagnosis of a mild traumatic brain injury (i.e., concussion) is made when, within 30 minutes of an event, there is a Glasgow Coma Scale finding between 13 and 15 (15 being normal); an alteration of consciousness (from confusion to actual loss of consciousness) of less than 20 minutes; and a reported period of post-traumatic amnesia of 24 hours or less. To be medically important, there also must be an impairment in one of three categories: somatic, cognitive, or behavioral.

However, there is no consensus on how many types of impairment there must be or to what extent. There is no set number or severity of impairments that are necessary. Almost anything can be

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determined as out of the ordinary and a sign of impairment due to head trauma coupled with the history of the accident reported by the claimant—depression, anxiety, exacerbation of pre-injury emotional vulnerabilities, concentration problems, insomnia, neck pain, and the list goes on. What is important is to find the baseline for the claimant. Without the baseline, you will not be able to determine if there actually is a difference between pre- and post-injury and, in fact, a significant head injury.

The importance of detecting traumatic brain injury early and minimizing the creation of a claim of damage is because:

- Chances increase the longer the claim is open that any issues in the claimant's life post-accident are related to the accident through the use of neuropsychological testing and expert testimony.
- Once a medical provider suggests the possibility of a traumatic brain injury as the reason for the life troubles of the claimant, the more ingrained that claim of damage becomes.
- The value of the claim increases the longer the claim is pending due to additional testing, loss of work, and claims of intangible losses, such as friends and social life.
- Traumatic brain injury can be supported by medical providers with the aid of family and friends, even if arising weeks, months, or even years after the accident.

Expert Expectations

The claimant's experts likely will include a neuropsychologist. It is important to note that the educational requirements of this type of expert include a four-year bachelor's degree in psychology, pre-med, biology, or neuroscience but does not include post-graduate work in a Ph.D. or Psy.D. Professional certification is not an absolute requirement to practice as a neuropsychologist. However, if the neuropsychologist is a member of the American Academy of Clinical Neuropsychologists, then she is required to achieve board certification.

Much like the diagnosis of a mild traumatic brain injury having no required constellation of symptoms, the neuropsychological testing of a claimant has no standard set of tests to diagnose the injury. In fact, each neuropsychologist can select the battery of tests that are to be given based upon the history provided by the claimant of the issues faced since the accident. Then, there are multiple subtests that must be selected within the initial battery of tests. In addition, much of the testing is accomplished by a technician, not the neuropsychologist, and there is a significant subjective factor in analyzing the timing of the responses, suggestions during testing, and the validity of the responses based upon the background of the patient.

You also may see a neurologist presented as an expert on behalf of the plaintiff because, although a neuropsychologist can tell you the strengths and the weaknesses that are found in the neuropsychological testing, she cannot tell you where the weaknesses came from and if it pre-existed the accident. In fact, there is no neuropsychological test result that is unique to a diagnosis of mild traumatic brain injury. The same test results can be found in a tumor or stroke patient. In the end, it is the neurologist who will determine, based on the history given by the claimant (and her family and close friends) that the demonstrated weaknesses and complaints of the claimant had their genesis in the accident.

Investigating Claims

The importance of a full investigation at the outset of the claim cannot be stressed enough. The claims professional needs to fully evaluate the claimed traumatic brain injury to determine if the issues related to the claimant as a result of the accident are really a result of other life forces or conditions, such as the normal aging process, neurodegenerative disorders, Alzheimer's, Parkinson's disease, multiple sclerosis, tumors, or even faked cognitive, behavioral, or somatic complaints.

What you are looking for in the investigation of a possible mild traumatic brain injury is the pre-accident baseline for the claimant. When the claimant's experts see them, they start from the history provided mostly (if not completely) from the claimant. As seen in many bodily injury cases, that history is neither necessarily correct, nor is it complete. Your job is to get the complete history to differentiate a real traumatic brain injury with life-changing consequences from an innocuous injury that does not affect the claimant's life or ability to work and earn a living.

To be complete, your investigation will include many items that are obvious, but some likely would not be routine when investigating and evaluating a different type of bodily injury claim. As always, start with a recorded statement of the claimant as soon as possible, pinning down the details of the event, the symptoms suffered, and others who witnessed either the event or the aftermath, focusing on loss of consciousness and any alteration of awareness. You also should speak with those witnesses—such as investigating police officers, passengers, the response team, or even the tortfeasor—again focusing on any loss of consciousness or alteration of awareness. Was the claimant out of the car immediately after impact? Did she have any trouble speaking? Did she appear odd in any way? Did she appear to know what she was doing and what happened?

The next step is to get all pre- and post-accident treatment records pertaining to the claimant. The best place to start is with the family doctor records, which likely will reflect other issues—medical and personal—that the plaintiff was having at the time of accident and afterward. Also, check other medical providers that the claimant is seeing for those issues. The records you are looking for include pharmacy, alcohol/substance abuse, psychiatric, cardiovascular, or neurological. Remember, all drugs have potential side effects that may have resulted in the injuries being claimed in the accident.

Medications that the claimant takes both before and after the accident are important, especially if the claimed traumatic brain injury arises days or weeks after the accident. Are the claimed symptoms a result of the drugs being taken or a traumatic brain injury?

Other records to obtain, depending on the severity and value of the potential claim, include:

- Police report for this and any other accident.
- Credit reports.
- Driving records.
- School records—including elementary school.
- Employment records.
- Prior claims/litigation actions.
- Military records.
- Licenses (CDL, hunting, fishing, etc.).
- Social Security income benefits applications.
- Workers' compensation records.
- Criminal records.

What you are looking for in these records is other claimed injuries or symptoms; any history of head trauma, depression, anxiety, or other problems that can mimic traumatic brain injury in diagnostic or neuropsychological testing; stressors and triggers (physical, mental, or financial); alcohol or drug dependence; and secondary gain. You also are looking for a baseline for the individual. Educational and employment records will be key to finding the baseline that is not soundly determined by the claimant's neuropsychologist.

Taking the time at the outset of a concussion injury to find the claimant's baseline and other stressors and triggers or medical conditions will be key to determining both the validity and value of the claim.

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