

# CHALLENGES OF LITIGATING MILD TRAUMATIC BRAIN INJURY

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# The Objective

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- Assist the patient/client in achieving fair compensation for their injury
  - Understand the challenges we face
  - Provide guidance in how you can assist the patient/client
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# The Challenges

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- No positive imaging
- Sometimes minimal property damage
- Patient looks and sounds normal
- Patient may be in denial
- There may be issues of co-morbidity (emotionality and/or longstanding personality issues...)

# Standard Defences

- Any impairment flows from pre-morbid, long-standing emotional problems
- Any impairment flows from some other event which occurred pre or post collision
- If there was an injury, it was trivial, and any ongoing impairment is the result of an emotional reaction
- The plaintiff is malingering
- The plaintiff is the subject of iatrogenic factors perpetuated by the idiots at TRI

# Understand How Jurors Think

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- Skeptical
- Imaging is infallible (the CSI effect)
- Plaintiff looks fine
- The Plaintiff's lawyer has no credibility and is trying to get rich

# Strategies

- Depends on whether you are a treating or medical/legal expert or both
- Be mindful of accident-related information (accident report, ambulance call report, damage photographs...)
- Pay attention to early entries( LOC, diminished GCS)
- Chart detailed information/observations (pain, memory, cognition, dizziness...)
- Seek out information from collateral sources

# Understand that Accident Related Impairments Need Not be the Sole Cause of the Problem

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- Did the crash play a significant contributory role?
  - Acknowledge non-accident related contributory issues
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# Be Wary of the Patient in Denial

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- Seek out evidence of real world function
- Don't always accept what the patient is telling you
- Be wary of the malingerer



# **Make Appropriate Recommendations for Short, Medium and long Term Care**

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- (Neuropsychological evaluation, in-home O.T. assessment, ENT evaluation...)

# Avoid Terms/Phrases Which Might be Misconstrued

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- Patient has made a good “recovery”,  
patient is “better”

# Review Collateral Documentation

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- Pre-ax records
- Will-say statements

# Reference Authoritative Studies/Literature

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# Contrast the Before and After Functionality

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# **Stress the Importance of the Evidence of Lay Witnesses**

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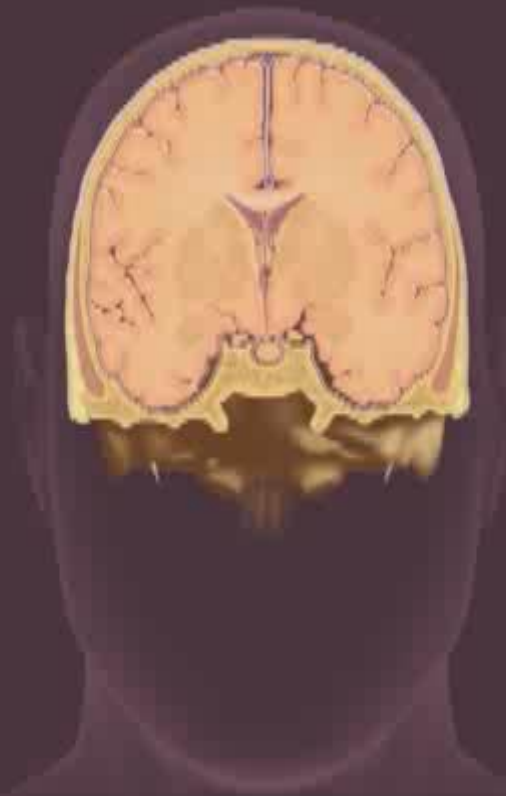
# Be a Good Witness

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- Be objective
- Do not advocate
- Speak to the jury in simple terms
- Embrace demonstrative evidence

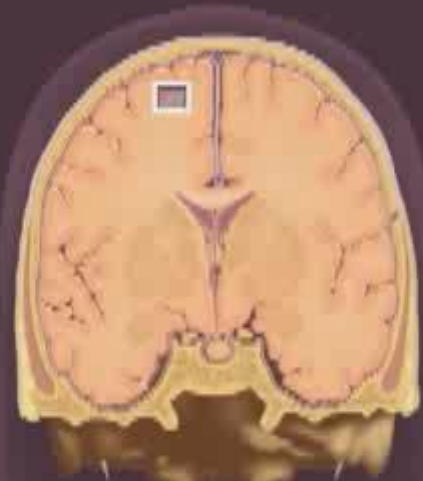
# COUP/CONTRE-COUP BRAIN INJURY DETAILS - John Doe

Conceptual  
view



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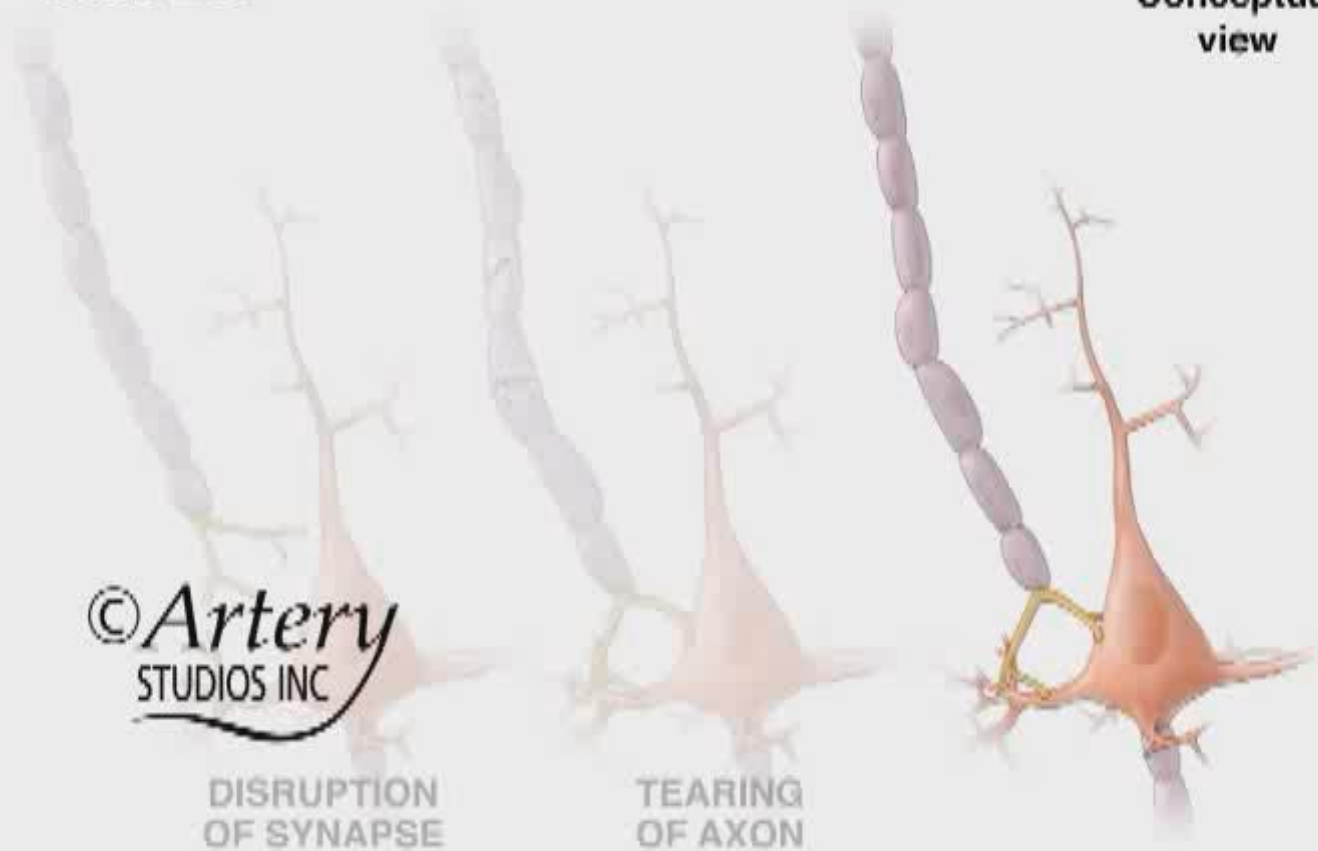




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# DIFFUSE AXONAL INJURY (DAI) - John Doe

Conceptual  
view



DISRUPTION  
OF SYNAPSE

TEARING  
OF AXON

