

INTO

THE

MIST



# **Effectively Approaching Minor Impact, Soft Tissue Claims**

*by Chantal Roberts*



## Abstract

*Minor impact, soft tissue, or MIST, claims involve collisions resulting in minimal vehicular damage but allegations of significant bodily injury among vehicle occupants. This seemingly counterintuitive phenomenon is all-too-common in the insurance industry, especially among newer adjusters.*

*Addressing these claims requires a careful approach, based on measurements, investigation, suspicion, and thoroughness (a second type of MIST, which we'll differentiate as **MIST**).*

*This article discusses strategies for recognizing and investigating MIST claims, including the use of electronic data recorders for quantifying impact. It also highlights the challenge of assessing damage in modern vehicles due to changes in car designs, while assuring that, with the tools they need to effectively assess and resolve MIST claims, adjusters can ensure fair outcomes for all parties involved in these claims.*

**"There is nothing new under the sun," my father said** to my husband and me after we relayed our 14-year-old son's text messages to his first girlfriend—texts that declared a love that no adult could understand. Ah, the purity and naivete of youth.

But while adolescent certainty around new love may indeed fall under the category of "business as usual," today's insurance landscape has left new adjusters feeling like they are, actually, in uncharted territory.

Combine the inexperience of a whole new generation of adjusters with industry changes, then add into the mix the retirement plans of many senior adjusters. The result? Well, new adjusters feeling that there is, in fact, quite a bit new under the sun.

One type of claim loss that rose to popularity during the late 20th century, catching unsuspecting carriers off-guard, involved minor impact, soft tissue (MIST) claims. These claims involve rear-impact collisions with vehicle physical damage that's generally limited to bumper impacts, but seemingly out-of-proportion claims of bodily injury from vehicle occupants.<sup>1</sup> Some carriers designate a certain threshold (\$1,500 or less, for example) for these low-impact claims.

## Recognizing MIST Claims

The first step in handling a MIST claim involves recognizing the minor impact. While every insurer is different, generally each has a ceiling on damage for the vehicle.

As part of this step, the adjuster may find that claimants have undergone months of chiropractic or physical therapy, perhaps under the direction of attorneys who are ubiquitous on daytime television and known for touting supposed million-dollar settlements against insurance companies. Frontline adjusters who encounter these facts should immediately notify their managers and transfer related files to a MIST team, if possible.

It is, of course, better to identify MIST claims before the claimants receive treatment. If, for example, because the damage is minimal, the insured expresses incredulity after the claimants file a bodily injury claim, the adjuster should plan to investigate the claim using these steps: measurements, investigation, suspicion, and thoroughness—a second type of MIST, which we'll differentiate as **MIST**.



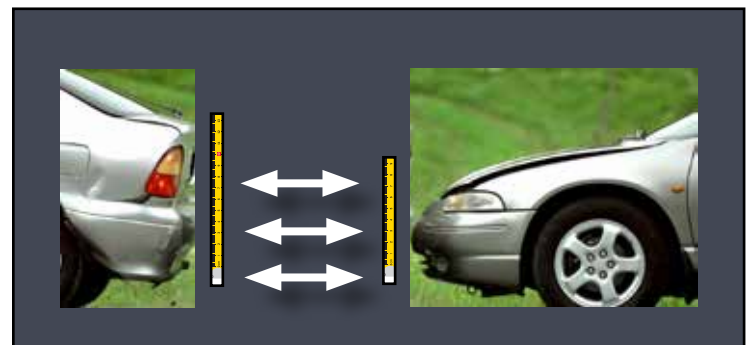
Adjusters can remember **MIST** as a strategic approach to assessing and managing MIST claims. Let's examine each component of the **MIST** process.

### Measuring MIST

The importance of measurements in MIST claims cannot be understated. This refers to the detailed assessment of physical damage caused to the vehicle involved in the accident. The adjuster should carefully measure and document the extent of this damage by taking high-resolution photographs from various angles; noting the location and size of the impact; and using advanced measuring tools, if necessary, to determine the severity of the impact.

Comparative measurements of the insured's and claimant's vehicles can often reveal telling discrepancies that point to the need for further investigation. In many cases, the positioning, height, and extent of damage on both vehicles should align closely if the reported circumstances of the accident are accurate. Damages that are not the same height indicate that the reported narrative of the accident may be fabricated or inaccurate.

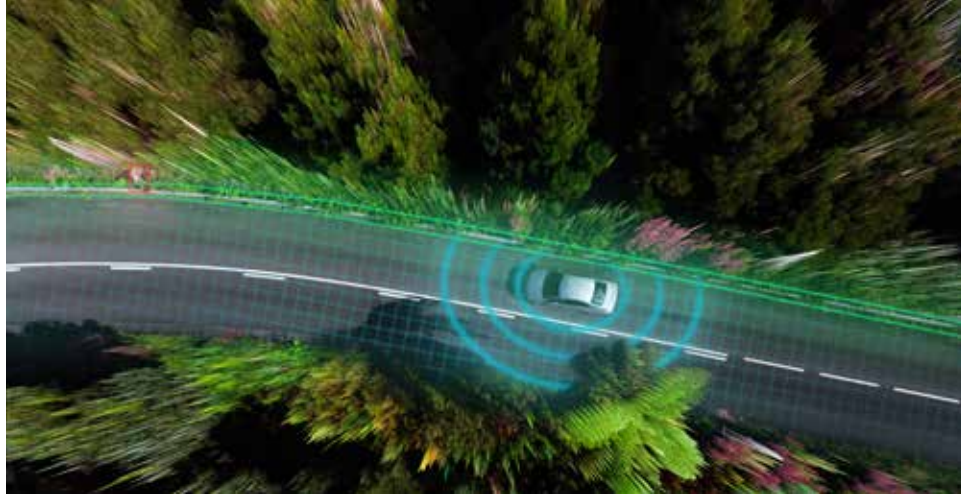
For example, if damage to the claimant's vehicle is 12 inches from the ground, while damage to the insured's vehicle is 15 inches from the ground, the vehicles may not have been moving in the same direction or at the same time as when the accident occurred. Indeed, these facts may suggest that another object or vehicle was involved.



Such misalignment can also raise questions about the alleged injuries. For instance, the type and severity of injuries claimed may not correlate with the nature of the impact suggested by the misaligned damage. This could lead to doubts about the validity of the injury claims.



## “Quantitative data is crucial for adjusters in resolving MIST claims”



Quantitative data is crucial for adjusters in resolving MIST claims. One way to obtain this data is through electronic data recorders (EDRs) or electronic control modules (ECMs), often referred to as crash data recorders or black boxes.

These devices can capture a wealth of information, including the vehicle's speed, braking, acceleration, and occupancy status at the time of the accident. It's essential for adjusters to retrieve this data from the insured's vehicle promptly and to request permission from the claimant to do the same.<sup>2</sup>

Data from the EDR can prove to be an invaluable asset, particularly if an accident reconstruction expert needs to be involved or if the claim ends up in litigation.

### **Investigating MIST**

Investigation is another crucial aspect of the *MIST* approach. This goes beyond physically inspecting a vehicle.

It requires fully understanding the accident's circumstances, including the speed and direction of the involved vehicles, weather conditions, and any other relevant factors. It also involves interviewing witnesses and gathering all relevant evidence, including traffic camera footage and police reports.

The adjuster can obtain (upon first contact, if possible) a comprehensive account of the incident from the claimant through a recorded statement. This statement allows claimants to provide their side of the story. Adjusters should ask specific, targeted questions to uncover or confirm key details, with the point being to verify that the puzzle pieces fit together, not to trap the claimant.

The adjuster might ask for specific details, including how the accident occurred, weather and road conditions, speed of all the vehicles involved, a description of the damage, and medical or doctor's information, so that the claimed injuries can be confirmed. Also important to ask is whether the claimant has missed any work. If so, the adjuster will need to ask the claimant or their representative for a physician's note verifying that the claimant's inability to work is directly related to the accident. Requesting this note is not only important for the insurer's verification purposes, but because it sets expectations for the claimant.

Finally, it's always a good idea for the adjuster to inquire how the accident has affected the claimant's day-to-day activities. By posing all these questions, adjusters can help establish the circumstances of the accident,

the claimant's physical condition before and after the event, the extent of the claimant's injuries, and the impact of these injuries on the claimant's life.

In addition, adjusters should review claimants' medical records in detail, comparing preexisting conditions and injuries with those being claimed. By committing to a thorough investigation, an adjuster can more accurately assess a claim.

## **Here's how the biomechanical approach went out of favor.**

Through the initial G-force method, MIST adjusters obtained photographs of bumpers' impact absorbers. These piston-like assemblies would compress upon impact, leaving a mark from where the grease, dirt, and road grime were removed. This was measurable even if no physical damage occurred to the bumper.

**“When physical damage to the vehicle appears minor, yet injuries claimed are severe, an adjuster should consider that a claim may be inflated or fraudulent”**

### **Employing Suspicion**

Suspicion, in this context, doesn't imply a general distrust of claimants. Instead, it represents a necessary level of skepticism that prompts further investigation.

When physical damage to the vehicle appears minor, yet injuries claimed are severe (such as herniated disks—which have been alleged), an adjuster should consider that a claim may be inflated or fraudulent. This suspicion should motivate the adjuster to scrutinize all aspects of the claim: from the accident's circumstances to the medical reports.

Indeed, the policyholders' attorneys allege that once a claim has been classified as “low impact,” insurers engage protocols to lowball settlement as a matter of course. Forefront in the adjuster's mind should be to seek concrete evidence; the investigation should never lead to unfair treatment of a claimant since the carrier's duty is to pay all claims for which the policyholder is legally liable.

Comparing the gravitational, or G-, force involved in the accident to the forces experienced during routine activities can help validate claims. In the past, adjusters frequently challenged MIST injury claims, accordingly—adopting a so-called biomechanical approach. However, some studies show that this comparison does not fully capture injuries<sup>3</sup> sustained by claimants. So today, claimants, their attorneys, and their doctors provide a variety of medical evidence to illustrate how injuries can result from low-speed accidents.

More recently, car manufacturers moved away from the traditional assemblies and instead adopted a different standard design, with honeycomb cells and Styrofoam energy absorbers. However, this shift poses a challenge for investigators, because quantifying the extent of damage to the honeycomb cells or Styrofoam absorbers is difficult. In fact, these components often may not exhibit any visible damage at all.<sup>4</sup>

For several years, the Insurance Institute for Highway Safety (IIHS) tested low-impact collisions through 4 tests at 5 mph (8 kmh). These tests were independently verified and offered insurers a great resource for scientifically demonstrating what damages a car could sustain and the corresponding forces on the human body inside.<sup>5</sup>

However, vehicle-manufacturing methods have changed since the early 2000s, and the IIHS stopped testing low-impact collisions around 2004. So today's adjusters must adapt to new technologies, information, and beliefs to thoroughly investigate MIST claims.

### **Ensuring Thoroughness**

While adjusters don't need to go down every rabbit hole, they do need to be sure to chase down pertinent information—in other words, to be thorough.

As mentioned previously, the biomechanical approach traditionally used by adjusters has

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recently come into question. One 2021 study, in fact, calls it “scientifically invalid,” reasoning that previous findings about daily living activities did not adhere to scientifically proven methods. This study found that an average 7 mph (11 kmh) rear-impact accident applies 13 times greater force on the body than leaping, the daily activity with the highest G-force (4 Gs).<sup>6</sup> However, an adjuster who’s ensuring thoroughness would have found that one of the study’s sources was a 2008 report showing that drivers who caused these types of collisions had not reported any whiplash injuries.<sup>7</sup>

Indirectly supporting adjusters’ efforts are jurors, who are becoming ever savvier. So simply preparing files for litigation with clear, measured photographs and then showing these photos in court, allowing juries to apply their own common sense, can be an effective tactic for insurers.

Ian Tilp, CPCU, AIC, who worked as a manager of a MIST unit for an auto carrier, can attest to this strategy. “Plaintiffs need to prove causation, and we found that regardless of the venue, it’s a very tough sell when juries are allowed to see vehicle photos depicting negligible damage,” he says. “In my tenure, we tried approximately 40 of these cases, and all but [2] resulted in defense verdicts.”<sup>8</sup>

Further, he said, the two outliers resulted in medical-only settlements: “The jury found no permanent injury, so there were no general damages [pain and suffering] awarded. The juries, regardless of venue... resoundingly rejected these claims. They would simply answer ‘no’ to the jury question of whether the plaintiff proved causation. Common sense and reasonable skepticism prevailed.”<sup>9</sup>

### Applying *MIST* in Practice

Applying the *MIST* approach can significantly aid in handling MIST claims. For example, an adjuster following a thorough MIST investigation may discover that the claimant had a preexisting back injury, which could affect the claim’s validity and the amount of compensation awarded.

Similarly, meticulous measurements of the vehicle damage might reveal inconsistencies with the reported severity of the accident. A detailed investigation and thorough review of medical reports may reveal a different picture, leading to a more accurate and fair settlement.

The *MIST* approach does not guarantee that all MIST claims will be straightforward or that fraudulent claims





will be eliminated. However, it provides a structured method for adjusters to assess and manage these challenging claims.

### **Grounded in Evidence and Fairness**

As new generations of adjusters take the reins, it's vital that they're equipped to handle the range of claims they may face. This includes low-impact claims. The **MIST** approach provides a valuable tool in adjusters' arsenal, promoting accurate and fair claim adjustment through meticulous measurements, in-depth investigation, balanced suspicion, and thorough review.

As in the tale of Romeo and Juliet, where youthful passion and a lack of experience lead to tragic consequences, young adjusters may find themselves overwhelmed by the intricacies and potential pitfalls of MIST claims. However, with the **MIST** approach as their guide, they can navigate these challenges with confidence and competence.

Indeed, much like young love, claims adjusting is rarely simple or predictable. It requires not only technical knowledge and skills but also the ability to question, probe, and remain thorough even when the path seems convoluted or uncertain. The **MIST** methodology encourages adjusters to approach each claim with a fresh perspective and a healthy dose of skepticism, to ensure that each decision made is grounded in evidence and fairness.

While there may indeed be nothing new under the sun, every claim presents a unique combination of circumstances that demand careful attention and considered judgment. By adopting the **MIST** approach, adjusters can meet this challenge head-on, ensuring that even in the face of the most complex and contentious MIST claims, they are well-equipped to deliver fair and accurate outcomes. ■

1. Paul S. Nolet, Larry Nordhoff, Vicki L. Kristman, Arthur C. Croft, Maurice P. Zeegers, and Michael D. Freeman, "Is Acceleration a Valid Proxy for Injury Risk in Minimal Damage Traffic Crashes? A Comparative Review of Volunteer, ADL and Real-World Studies," *International Journal of Environmental Research and Public Health*, March 12, 2021, p. 1.
2. National Highway Traffic Safety Administration (NHTSA), Department of Transportation, "Federal Motor Vehicle Safety Standards; Event Data Recorders," U.S. National Archives Federal Register, Dec. 13, 2012.
3. For example, Nolet, Nordhoff, Kristman, Croft, Zeegers, and Freeman; National Highway Traffic Safety Administration; U.S. Forensic, "Low Speed Impact Cases: Current Challenges & Solutions," August 7, 2022; and Insurance Institute for Highway Safety, *Crashworthiness Evaluation Offset Barrier Crash Test Protocol (Version XI)*, December 2004.
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5. Insurance Institute for Highway Safety.
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7. Adam J. Bartsch, G. Gilbertson, Vikas Prakash, Douglas R. Morr, and John F. Wiechel, *Minor Crashes and "Whiplash" in the United States* (Chicago: Association for the Advancement of Automotive Medicine, 2008), vol. 52, pp. 117–130.
8. Chantal M. Roberts and Ian Tilp, Correspondence about low-impact claims via personal phone interview (June 2, 2023) and *INteract* comment board (May 22, 2023).
9. Roberts and Tilp.

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