

Arthritis as a Confounding Factor

How often have you been told by insurance adjusters that your client's complaints existed before the accident as demonstrated by the pre-existing degenerative arthritis in medical records or imaging studies? This diversionary technique has been somewhat effective over the years but a new epidemiological study published in [Arthritis and Rheumatology](#) may provide us with data that can be used to minimize the impact of that argument.

Two epidemiologists from Boston University School of Medicine (S. Reza Jafarzadeh, DVM, MPVM, PhD, and David T. Felson, MD, MPH) looked at data from 33,672 patients in the 2015 National Health Interview Survey. They found that arthritis percentages are much higher than expected and at a younger age than previously thought. Among adults aged 18-64 years, 19.3% of men and 16.7% of women reported joint symptoms without having a doctor's diagnosis of arthritis. For participants 65 years of age and older, 15.7% of men and 13.5% of women reported the same. The researchers then applied their expanded definition of arthritis from their updated method for arthritis surveillance and they found that the prevalence in adults aged 18-64 years was 29.9% in men and 31.2% in women. In the older than 65 populations, the prevalence was 55.8% in men and 68.7% in women. An extrapolation of their data suggested that arthritis affected 91.2 million adults (36.8% of US adults) in 2015, including 61.1 million of those aged 18-64 years (24.7% of US adults). This estimate is 68% higher than the previous estimate of 52.9 million Americans with diagnosed arthritis.

So, what this tells us is that over 1/3rd of the US population has some form of arthritis symptoms that may or may not be properly diagnosed. How does this information help your clients? You might be thinking that 1/3rd of your clients now have prior problems that, to some degree, require apportionment. I see it completely different. I see that 1/3rd of your clients have a condition that makes them more vulnerable to injuries that otherwise may not have occurred had they been healthy. In fact, you can now argue that arthritis is practically a normal condition for a great part of the US and that your client is no different than practically any other American.

I understand the "eggshell client" and "taking your client as you find them" is Personal Injury 101 (and Medicine 101 too), but having studied trauma biomechanics and other related injury mechanism data, I can appreciate the significant confounding impact that a pre-morbid condition like arthritis of any type can have on injury potential. Let's face it, not every person in the US has a perfectly healthy body with optimal muscular tone and fitness. The majority of people have health issues that limit their potential to withstand an otherwise non-injurious force. With this study, we can now make an argument that even in

the medically undiagnosed population, there is a 36.8% chance they have some form of arthritis and therefore a greater potential for injury. From my perspective, that's a good thing when it comes to explaining the magnitude of pain and suffering your clients' may have as residuals.

We know that in motor vehicle collisions injuries, there are both occupant factors and non-occupant factors that contribute to injury potential. One of the most significant occupant factors is the patients' health. In the case of arthritis, and depending on the type, we know that this population has restricted ranges of motion, ligamentous laxity or instability, loss of cartilage, erosion and destruction of bone, increased pro-inflammatory chemical mediators, and much more. All of these factors lead to the probability of greater injury potential such that an otherwise low impact, non-injury producing collision could cause significant injury.

Now when your client is involved in a low property damage collision or an injury mechanism which is considered to be minor, you can make the argument that your client likely falls into the 36.8% of the population with a condition that makes them more vulnerable to injury and less likely to completely heal. In an ideal world your client may not have been injured but the arthritis related eggshell client (perhaps not medically diagnosed), has a lower threshold to injury than the perfect physical specimen.

I think approaching this offensively rather than defensively is a strategy that may have some merit. Identifying up front that your client has a condition that 36.8% of the US population has, which is why they are so significantly injured, puts you in a better position to argue future medicals and impairment (if it exists). This approach reminds me of the scene in the movie "Erin Brockovich" when Albert Finney is meeting with the PG&E junior lawyer and is told that PG&E is a big company worth billions of dollars in an effort to intimidate him. Albert Finney's response is classic when he turns that around by saying, "Billions of Dollars? I had no idea. That's great!" (I'm paraphrasing).

Obviously, I'm only a doctor and never had to negotiate a settlement with a claims adjuster or make a legal argument to a jury. So I acknowledge that I am commenting beyond my level of expertise. However, as a physician, I believe my providers and I could make a compelling argument in support of greater injury potential and greater chance of residuals simply because our patient has a premorbid condition which confounds the otherwise routine injury potential and recovery expectation.