January 1, 2021

LawyerFirst LawyerLast Esquire

SampleFirmName

123 Address St.

CityVille, StateLand 12345

Tel: (012) 345-6789

RE: *Pl1FirstName Pl1LastName; Pl2FirstName Pl1LastName; Third One Third Name et al. v SampleCaseDefendantName et al., Case No: CaseNoSample, SampleCourtName*

Date of Crash: January 1, 2020

Date of Birth: *Pl1FirstName Pl1LastName:* January 1, 1999 [20 years old at time of crash]

*Pl2FirstName Pl1LastName:* January 2, 1990 [29 years old at time of crash]

*Third One Third Name:* January 4, 1994 [25 years old at time of crash]

Dear Mr. LawyerLast,

I am in receipt of your correspondence regarding the above-named action. I have reviewed the documentation accompanying your correspondence including medical records, information regarding the subject crash, litigation documents, and other materials.

The purpose of this report is to provide an analysis of the causal relationship between the subject frontal impact collision and Ms. and Mr. Pl1LastName and Mx. Third Name’s subsequently diagnosed disk injuries and need for treatment.

*My qualifications to provide opinions concerning the matters herein, particularly on issues of the causal relationship between trauma and injury, are as follows:*

I am Professor and Chair of Forensic and Legal Medicine with the Faculty of Forensic and Legal Medicine of the Royal College of Physicians (UK), and a consultant in the fields of forensic medicine and forensic epidemiology. I am credentialed as a Fellow of the Royal College of Pathologists (UK), Fellow of the Faculty of Forensic and Legal Medicine (FFLM) of the Royal College of Physicians (UK) and member of the British Association in Forensic Medicine. I hold the following relevant academic degrees and certifications: a Doctor of Medicine degree (Med.Dr.) from Umeå University, a Doctor of Philosophy (Ph.D.) in public health/epidemiology from Oregon State University, a Master of Public Health (MPH) in epidemiology and biostatistics, also from Oregon State University, a master’s degree in forensic medical sciences (MScFMS) with the Academy of Forensic Medical Sciences in the United Kingdom, i.a. In addition to my degreed education, I have completed a 2-year post-doctoral fellowship in forensic pathology at Umeå University in Sweden and hold a Diploma of Legal Medicine (DLM) with the FFLM. I am also a fellow of both the American Academy of Forensic Sciences and the American College of Epidemiology. I am a Fulbright Fellow and held a 3-year roster appointment (2017-20) with the United States Department of State as a Fulbright Specialist in the field of forensic medicine. I serve as tenured Associate Professor of Forensic Medicine at Maastricht University and a joint Clinical Professor of Psychiatry and Public Health and Preventative Medicine at Oregon Health and Science University School of Medicine, where I have taught courses for the past 24 years in forensic medicine, forensic epidemiology, and injury epidemiology. From 2005-2017 I held an appointment as an Adjunct Professor of Forensic Medicine and Epidemiology at the Institute of Forensic Medicine, Faculty of Health Sciences, Aarhus University, Aarhus, Denmark, and am a recent (2020-21) visiting professor at University of Indonesia in the Faculty of Medicine.

I have been a crash reconstructionist since 1996 and have had ACTAR accreditation (the Accreditation Commission on Traffic Accident Reconstruction) since 2005. Over the past >25 years I have participated in the reconstruction of more than 3,000 crashes, including more than 300 fatalities. From 1999 through 2007 I served as a vehicular homicide investigator for law enforcement (consultant to the state medical examiner and special deputy sheriff), and I am a former affiliate medical examiner with the Allegheny County Medical Examiner’s office.

I am a member of the American Society of Biomechanics and have more than 60 scientific publications pertaining to injury biomechanics, including a book for the Society of Automotive Engineering and taught injury biomechanics in a faculty peer-reviewed course at OHSU for 15 years. I have served as a consultant on injury biomechanics to state and federal government.

I am an associate editor of the Journal of Forensic and Legal Medicine and serve or have served as an associate editor or editorial board member of 14 additional scientific peer-reviewed journals. I have published approximately 230 scientific papers, abstracts, book chapters and books on topics that include traffic crash injuries, crash reconstruction, injury causation and injury biomechanics, including the text for Elsevier, Forensic Epidemiology: Principles and Practice (2016). My publications have been cited by other authors more than 4,700 times.

I have provided testimony in more than 400 civil and criminal trials in state and Federal courts throughout the United States, Canada, and Australia. Please see my CV for further details.

At the time of the crash,

***Injury Causation Analysis***

A crash-related injury causation analysis for a specific individual is performed by assessing the risk of injury from the collision and comparing it to the probability that the injuries or conditions would have been present at the same point in time if the collision had not occurred. The process is referred to as a "3-step" injury causation method in which improbable alternative causes are ruled out and the single most likely cause is identified. The analysis is accomplished via the application of crash reconstruction, biomechanical, medical, and epidemiologic (risk assessment) principles.[[1]](#footnote-1),[[2]](#footnote-2) This 3-step methodology has been extensively described in the peer-reviewed literature, been deemed generally accepted by Courts in the United States, and has been adopted as part of case law in the U.S.[[3]](#footnote-3),[[4]](#footnote-4) See the Appendix at the end of this report for more information.

The three fundamental elements or steps of an injury causation analysis are as follows: Whether the injury mechanism had the potential to cause the injury in question (aka general causation);

The degree of temporal proximity between the injury mechanism and the onset of the symptoms reasonably indicating the presence of the injury; and

Whether there is a more likely alternative explanation for the occurrence of the symptoms at the same point in time (aka differential etiology).

As applied to the facts in the subject case, these 3 steps are as follows:

*Reconstruction of the crash*

*Injury biomechanics*

The subject high speed frontal collision would have produced high loads in Ms. and Mr. Pl1LastName and Mx. Third Name’s entire bodies, as they continued to travel forward inside the vehicle and into the deploying airbags, seatbelts, steering wheel, and dashboard at 10 mph. The loads on Ms. and Mr. Pl1LastName and Mx. Third Name’s spines and spinal disks would have included high levels of compression, rotation, and shear, and would have had the potential to cause any level of injury severity to Ms. and Mr. Pl1LastName and Mx. Third Name, including all of the injuries that they were ultimately diagnosed with. The US National Highway Traffic Safety Administration reports that at an approximately 10 mph crash, nearly AMOUNT% of occupants will sustain some degree of injury that is immediately apparent and requires medical evaluation, around AMOUNT% will sustain a fracture or more significant injury, and around AMOUNT% will sustain a life-threatening injury (i.e., spinal cord injury, skull fracture, etc.).[[5]](#footnote-5)

Thus, all of the injuries diagnosed in Ms. and Mr. Pl1LastName and Mx. Third Name after the subject collision, and the associated treatments that they sought for their symptoms of significant and persisting spinal injury, are entirely explained by the exceedingly dangerous high speed frontal crash that they were exposed to.

The preceding opinions were given as reasonable medical, and scientific probabilities. I reserve the right to amend any of my opinions should new information come to light.

Very truly yours,



Michael D. Freeman, MedDr, PhD, MScFMS, MPH, FRCPath, FFFLM, FACE, DLM

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Faculty of Forensic and Legal Medicine, Royal College of Physicians (London, UK)  
  
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Fellow, Royal College of Pathologists (UK)  
Fellow, Faculty of Forensic and Legal Medicine, Royal College of Physicians (London, UK)  
Fellow, American College of Epidemiology  
Member, American Society of Biomechanics

Appendix

The 3-step causation methodology that I have used in this case is set forth in a number of my peer-reviewed publications, including a paper entitled *A Systematic Approach to Clinical Determinations of Causation in Symptomatic Spinal Disk Injury Following Motor Vehicle Crash Trauma*, published in the Journal of Physical Medicine & Rehabilitation in 2009. I first described this 3-step methodology in a paper published in 2008 and have since published more than a dozen papers describing some of the manifold applications of the causation methodology. As I describe below, the 3-step causal methodology has recently become part of United States Appellate Court case law on injury causation.

The methodology set forth in my 2009 paper consists of 3 steps or elements that need to be satisfied in an injury causation analysis in order to conclude that an injury resulted from a particular event to a reasonable degree of medical/ scientific probability, which are as follows:

1. Plausibility: This first step addresses whether it is biologically possible for the injury event to have caused the condition (a.k.a general causation). A finding of plausibility is unrelated to the frequency of the injury, because even if the injury occurs in only 1 in 100 or fewer cases of exposure to the event (e.g. a spinal disk injury following a car crash), it is still plausibly caused by the event. Plausibility is a relatively low hurdle to clear in a causal analysis and is largely satisfied by the lack of evidence of implausibility of the relationship. Although it is common in crash injury litigation for the defendant to assert minimal vehicle damage as a basis for disputing injury causation, the approach is unhelpful for evaluating plausibility, as such an analysis does not have a sufficiently low error rate to establish impossibility, and at best can only be used to suggest a low frequency of injury in the general population. An example of an impossible causal relationship is the discovery of leukemia the day after a crash, as it is well established that it is not biologically plausible for trauma to cause leukemia. Plausibility is often, but not necessarily, established with epidemiologic data or information.

2. Temporality: This second step examines the clinical and other evidence of the timing between the onset of the symptoms of injury and the injury event and must be satisfied to assess specific causation. First, it must be established that the sequence of the injury and the event is appropriate; the symptoms cannot be identically present prior to the event. Further, the onset of the symptoms of injury cannot be implausibly latent, relative to the injury event. For example, while the symptoms of a spinal disk injury in the neck may not immediately include upper extremity radiculopathy (most such injuries are initially diagnosed as a simple sprain or strain), a complete absence of symptoms in the neck for 3 months after a traffic crash, followed by the sudden insidious onset of symptoms of a cervical disk injury with radiculopathy, could not be plausibly related to the crash in most cases.

3. Lack of a more probable alternative explanation: This final step examines the probability of the injury condition occurring at the same point in time in the plaintiff, given what is known about the plaintiff from the review of medical records and other evidence, but in the absence of the injury event (a.k.a. differential etiology). First, evidence of competing injury events must be evaluated, and compared for injury risk. Then, the likelihood of the condition occurring spontaneously must be assessed. For example, the plaintiff may have evidence of degenerative changes in the spinal disks pre-existing a traffic crash, but no symptoms. The question of interest (after the first 2 steps are satisfied) is what the probability was that the condition would have "converted" from asymptomatic to symptomatic in the absence of ("but-for") the crash. Since there is no information that can be gleaned from an examination of the plaintiff regarding her or her condition in the hypothetical absence of the crash, epidemiologic data often serves as the basis for the evaluation of the probability of alternative explanations. More probable alternative explanations are often intervening traumatic events that alter the clinical history in a substantive way. As an example, for a plaintiff with neck strain symptoms that lasted for 1 week after a crash, who is then involved in second collision a month later that results in neck and arm pain and is ultimately diagnosed with a cervical disk herniation, the second collision is easily identified as a more probable cause of the disk derangement than the antecedent crash. This is in part due to the abrupt change in the distribution of the symptoms more consistent with a disk derangement, but also the epidemiologically based conclusion that it is rare for a cervical strain that improves rapidly to evolve into a cervical disk herniation, and thus but-for the second crash, the condition would not have manifested.

The methodology described above was used to evaluate the cause of the Plaintiff’s injury in Etherton v Owners Insurance Company, entered on March 3, 2014 in United States District Court for the District of Colorado. In Etherton, the Plaintiff’s medical expert relied on the above referenced article to support her methodology (see footnote 3 on page 8 of the decision). The expert specified the same 3-step approach to assessing causation outlined above, described by the Court on page 8 of the order as follows:

"…his first step was to determine general causation… whether or not the type of injury that the plaintiff sustained could have been caused by the type of collision that the plaintiff was in… her second step was to consider whether there was a temporal relationship between plaintiff’s injury and the collision… her third step was to… rule out alternative causes of plaintiff’s injury. "

The defense challenged, among other things, the reliability and fit of the methods described by the expert. After an extensive examination and discussion of the 3-step process used by the expert, the Court found that the methodology appropriately fit the specific facts of the case, and that a population-based (epidemiologic) approach was an appropriate part of the causal methodology. The Court denied the Defendant’s motion to strike the expert’s testimony.

The Defendant appealed the ruling from the District Court, and in July of 2016, the Tenth Circuit U.S. Court of Appeals unanimously affirmed the 3-step causal methodology described in my 2009 publication cited above as generally accepted and well established for assessing injury causation (see Etherton v. Owners Insurance Company, No. 14-1164, 10th Cir, entered on July 19, 2016). Using the 3-step methodology, the Court determined the expert’s methodology fit the specific facts in the case, and that the District Court properly applied Rule 702/Daubert standard to the expert’s testimony in finding his methodology reliable. The judicial panel included current Supreme Court Justice Neil Gorsuch.

Below is a partial list of publications in scientific journals in which my descriptions of the 3-step methodology described in the Etherton decision and its various applications have been subjected to peer review. The foundation for the specific causation methodology described in all of these papers is the "Hill criteria, " a guideline for the assessment of general causation that has been universally relied on in medicine and science for more than 50 years.

Dianita Ika Melia P, Zeegers MP, Herkutanto H, Freeman MD. Medicolegal causation investigation of bacterial endocarditis associated with an oral surgery practice using the INFERENCE approach. Int J Environ Res Public Health 2021:18,7530. https://doi.org/10.3390/ijerph18147530.

Dianita Ika Melia P, Zeeger MP, Herkutanto H, Freeman MD. Development of the INFERENCE (INtegration of Forensic Epidemiology and the Rigorous EvaluatioN of Causation Elements) approach to causal inference in forensic medicine. Int J Environ Res Public Health 2020;17:8353; doi:10.3390/ijerph17228353

Dianita Ika Melia P, Freeman MD, Herkutanto H, Zeeger MP. A review of causal inference in forensic medicine. For Sci Med Path 2020:doi.org/10.1007/s12024-020-00220-9.

Freeman MD. A practicable and systematic approach to medicolegal causation. Orthopedics 2018;41(2):70-2.

Freeman MD, Zeegers M. Principles and applications of forensic epidemiology in the medicolegal setting. Law, Probability, & Risk 2015; doi:10.1093/lpr/mgv010.

Freeman MD. Medicolegal causation analysis of a lumbar spine fracture following a low speed rear impact traffic crash. J Case Rep Prac 2015; 3(2): 23-29.

Freeman MD, Cahn PJ, Franklin FA. Applied forensic epidemiology. Part 1: medical negligence. OA Epidemiology 2014;2(1):2.

Koehler S, Freeman MD. Forensic epidemiology; a methodology for investigating and quantifying specific causation. Forens Sci Med Path 2014 Jun;10(2):217-22.

Freeman MD, Kohles SS. An examination of the threshold criteria for the evaluation of specific causation of mesothelioma following a history of significant exposure to chrysotile asbestos-containing brake dust, Int J Occ Env Hlth 2012;18(4):329-36.

Freeman MD, Everson T, Kohles SS. Forensic epidemiologic and biomechanical analysis of a pelvic cavity blowout injury associated with ejection from a personal watercraft (jet-ski). J Forens Sci 2012 doi: 10.1111/j.1556-4029.2012.02250.x

Freeman MD, Kohles SS. Plasma levels of polychlorinated biphenyls, non-Hodgkin lymphoma, and causation. J Environ Public Health 2012;2012:258981. doi: 10.1155/2012/258981. Review.

Freeman MD, Kohles SS. Application of the Hill Criteria to the Causal Association of Post-Traumatic Headache and Assault. Egypt J Forensic Sci 2011;1:35-40.

Freeman MD, Kohles SS. Application of the Bradford-Hill Criteria for Assessing Specific Causation in Post-Traumatic Headache. Brain Inj Prof 2011;8(1):26-8.

Freeman MD, Kohles SS. An Evaluation of Applied Biomechanics as an adjunct to systematic specific causation in forensic medicine. Wien Med Wochenschr 2011;161:1-11.

Freeman MD, Centeno CJ, Kohles SS. A systematic approach to clinical determinations of causation in symptomatic spinal disc injury following motor vehicle crash trauma. PM R 2009;1(10):951-6.

Freeman MD, Rossignol AC, Hand M. Forensic Epidemiology: A systematic approach to probabilistic determinations in disputed matters. J Forensic Legal Med 2008;15(5):281-90.

1. Melia P et al. Development of the INFERENCE (INtegration of Forensic Epidemiology and the Rigorous EvaluatioN of Causation Elements) approach to causal inference in forensic medicine. Int J Environ Res Public Health 2020;17:8353; doi:10.3390/ijerph17228353. [↑](#footnote-ref-1)
2. Freeman MD. A practicable and systematic approach to medicolegal causation. Orthopedics 2018;41(2):70-2. [↑](#footnote-ref-2)
3. Freeman MD, Centeno CJ, Kohles SS. A systematic approach to clinical determinations of causation in symptomatic spinal disc injury following motor vehicle crash trauma. PM R 2009;1(10):951-6. [↑](#footnote-ref-3)
4. Etherton v. Owner Insurance Company. U.S. District Court of Appeals, 10th Circuit. Case No. 14-1164. [↑](#footnote-ref-4)
5. Wang, J.-S. (2022, May). MAIS(05/08) injury probability curves as functions of delta V (Report No. DOT HS 813 219). National Highway Traffic Safety Administration. [↑](#footnote-ref-5)