

WASHINGTON CASE UPDATE

Examining the Admissibility of Biomechanical Engineer Testimony

case in point...

From the desk of Kyle Riley: Washington courts have long struggled with the admissibility of biomechanical engineer testimony on the issue of causation of injuries. Last year we published a case update on the Court of Appeals opinion in *Johnston-Forbes v. Matsunaga*, which affirmed the trial court's admission of a biomechanical engineer's testimony. The Washington Supreme Court granted review and we have detailed the Court's opinion below.

Claims Pointer: Whether a court will allow a biomechanical engineer to testify depends upon the individual biomechanical engineer and the facts of the specific case. Trial courts have wide discretion in determining the admissibility of experts and their decision will only be reversed upon an abuse of discretion. Defense counsel can strengthen their case for admissibility by illustrating that the expert is qualified, relies on theories generally accepted by the scientific community, and that the testimony would be helpful to the jury.

Johnston-Forbes v. Matsunaga, 333 P.3d 388 (2014)

Cathy Johnston-Forbes (Johnston-Forbes) brought suit against Dawn Matsunaga (Matsunaga) for alleged injuries Johnston-Forbes sustained after her car was rear-ended by Matsunaga. Matsunaga retained a biomechanical engineer to testify at trial. Johnston-Forbes moved to exclude the biomechanical engineer's testimony on three grounds: lack of qualification; lack of foundation; and that any testimony would mislead and confuse the jury, while unfairly prejudicing Johnston-Forbes.

In support of her lack of qualification argument, Johnston-Forbes pointed out that the biomechanical engineer was not licensed as a professional engineer. For lack of foundation, Johnston-Forbes noted that the biomechanical engineer had only viewed pictures of Matsunaga's vehicle and never examined, in person or otherwise, the vehicle that Johnston-Forbes occupied at the time of the accident. Further, Johnston-Forbes had been leaning forward and was turned towards one of her children sitting in the back seat at the time of impact. Johnston-Forbes argued that the biomechanical engineer could not take into account how her body position during the collision increased her likelihood for injury. Given the lack of foundation, Johnston-Forbes asserted that any opinions the biomechanical engineer had regarding the forces to her neck would be speculative, misleading and confusing to the jury, as well as unfairly prejudicial to Johnston-Forbes.

In response, Matsunaga stated that the biomechanical engineer had repeatedly studied similar accidents, had published hundreds of papers on low speed impact biomechanics and forces, and had performed numerous

biomechanical tests. Additionally, he was a doctor of biomechanical engineering and had been a professor of biomechanical engineering for 23 years. The biomechanical engineer had reviewed photographs of Matsunaga's vehicle, the repair bill for Johnston-Forbes' vehicle, the parties' depositions, engineering data and bumper crash test information for the vehicles, and personally performed bumper impact tests for both vehicles. His testimony was limited to biomechanics, focusing on the exchange of forces and the propensity for injury, and comparing the forces of the impact to forces involved in daily living activities.

The court denied Johnston-Forbes' motion to exclude the biomechanical engineer and, on appeal, the trial court's decision was affirmed. Johnston-Forbes then appealed to the Washington Supreme Court.

In Washington, expert testimony is generally admissible as long as the expert is qualified, relies on theories generally accepted by the scientific community, and the testimony would be helpful to the jury. Furthermore, wide discretion is given to trial courts in determining whether to allow expert testimony and the court's decision will not be reversed except for abuse. Several evidentiary rules in Washington help govern a trial court's decision regarding expert witnesses. ER 702 notes that an expert can be qualified, not only by licensure, but by knowledge, skill, experience, training, or education, while ER 704 allows expert testimony on ultimate issues for the trier of fact.

Washington trial judges have arrived at opposite conclusions regarding the admissibility of biomechanical expert testimony. Each decision regarding admissibility is to be conducted in the context of the individual case's specific facts.



Contact: Kyle Riley | www.smithfreed.com | email: kriley@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 2nd Ave. Ste. 1700 | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.



SMITH FREED & EBERHARD P.C.

Your Litigation Partner

WASHINGTON CASE UPDATE

Examining the Admissibility of Biomechanical Engineer Testimony

case in point...

Here, the trial court found that Matsunaga's biomechanical engineer was qualified to testify as an expert because of his many years in the field. Lack of a license does not, by itself, require exclusion of an expert. Because Johnston-Forbes did not challenge the biomechanical engineer's testimony as not being generally accepted by the scientific community at the trial level, the issue was not preserved for review. Moving to the final factor for admissibility, the biomechanical engineer's testimony was helpful to the jury in understanding what forces may have been involved during impact. Whether an expert has personally observed the subject vehicle goes to weight, not to admissibility. Having followed the requisite framework, the trial court did not abuse its discretion. The trial court's ruling and the Court of Appeals' ruling was, therefore, affirmed.

Writing the concurring opinion, Justice Yu cautioned that the court's decision was not to be viewed as an endorsement of biomechanical engineers for soft tissue injuries from car accidents. Further, Justice Yu indicated that prior rulings on an expert's admissibility do not bind a court's ruling on that expert's testimony in subsequent cases due to the individualized analysis required.



Contact: Kyle Riley | www.smithfreed.com | email: kriley@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 2nd Ave. Ste. 1700 | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.



SMITH FREED & EBERHARD P.C.

Your Litigation Partner