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YOU CAN'T PREDICT THE PAST – A LOW SPEED IMPACT COMMENTARY

We recently received a copy of an article entitled “The problem with probability.” This article was written by Michael D. Freeman Ph.D, D.C., M.P.H., Forensic Trauma Epidemiologist and Clinical Associate Professor, Department of Public Health and Preventive Medicine Oregon Health and Science University School of Medicine, and published in the March, 2006 edition of *Trial*. Here are some key statements from the article in regard to low impact automobile collisions:

Risk is a predictive tool, and you cannot predict the past. Risk or probability cannot be used retrospectively to cast doubt on or deny an injury that has been observed and recorded. The defense may try to use the low likelihood of injury after a crash to deny that the crash caused the injury.

A good measure of such statements' validity is to consider how they would sound if a death rather than an injury had resulted from a crash. Just as the low risk of death in a particular circumstance cannot be used as a basis for the jury to ignore the testimony of a pathologist, the low risk of injury cannot be used to ask the jury to ignore the testimony of a treating physician. Risk is exclusively a predictive tool: It can be used in theoretical or “what if” scenarios (for example, What if the crash had not involved a second impact?), but it cannot be used to deny an injury outcome as reflected in a medical record.

What is “usual,” “normal,” “typical,” or “average” has no application to a specific case. References to average injury responses to a crash are irrelevant to individual outcomes. The defense may use expressions like “most people” or “usually” when discussing a plaintiff's injuries in an effort to cast doubt on them because they are somehow out of the ordinary. Even if it is true that the average person would not suffer permanent injuries in a particular crash—a statement that would have to be validated with real data—this does not mean that 30 percent of the population would not be permanently injured, or that the plaintiff is “average.” A good analogy is body weight: If the average person weighs 170 pounds, this does not mean that the next person who walks through the door cannot weigh 200 pounds.

Injury risk is population-specific. Gender, age, physical condition, vehicle type, and other variables all contribute to injury risk in a crash. A 53-year-old woman with a history of neck surgery belongs to a relatively rare demographic group, and so the claim that injury from a minimal-damage crash is highly unlikely in the general population has little meaning for her case. Even if

accurate, such claims are relevant only when there is no specific individual with an injury. Once the injury has occurred, the various risk factors for injury present in the individual define a target population for which injury-frequency statistics do not exist.

We take the position that if you want to know what injuries a person sustained as a result of a specific accident then you should ask a physician, not an engineer. Any physician can easily determine if a patient has sustained a new acute injury. Medical evidence always trumps engineering and biomechanical predictions.

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