



FILED
LEWIS COUNTY THE HONORABLE JAMES W.

2022 MAY 31 AM Date of Hearing: June 1, 2022 @ 9:00 a.m.

SUPERIOR COURT
CLERK'S OFFICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, LEWIS COUNTY

SCOTT HAMILTON, as guardian ad litem for
Z.H.,)

NO. 20-2-00543-21

Plaintiffs,)

vs.)

PLAINTIFF'S REPLY IN
SUPPORT OF MOTION RE:
EXPERT TESTIMONY

LINDA AMONDSOON-MULLER, Personal
Representative of the ESTATE of LAURA
HAMILTON,)

Defendants.)

The plaintiff submits the following reply in support of his motion to exclude specific expert testimony.

A. Causation testimony by nonmedical experts.

The defense concedes that its midwives may not, under Washington law, give a medical opinion as to causation. Plaintiff's midwife, on the other hand, is nurse with a bachelor's degree in nursing. She has medical training and should be able to testify as to causation. Machler Reply Decl., Exh 1.

As for Dr. Grimm, she is not a medical witness and may not, under Washington law, give a medical opinion regarding causation. The law is clear on that. Defense counsel's lengthy discussion of the *Myhre* case omits one important fact – this Court ordered that Dr. Tencer could not testify as to causation. Machler Reply Decl., Exh. 2. Dr. Tencer did not testify regarding causation, and therefore, no causation testimony was before the Supreme Court on appeal.

PLAINTIFF'S REPLY IN SUPPORT OF
MOTION RE: EXPERT TESTIMONY - 1

OSBORN MACHLER
2025 1st Ave., Ste. 1140
Seattle, WA 98121
206-441-4110 (Tel)
206-441-4220 (Fax)

1 The Court should grant plaintiff's motion and preclude the defense midwives and Dr.
2 Grimm from testifying that Z.H.'s injuries were caused by the natural forces of labor.

3 **B. Opinions by neurologist.**

4 The Court should exclude defense neurology expert Dr. Scher from opining on obstetrics
5 and the natural forces of labor. He is not an obstetrician and does not deliver babies. He has
6 insufficient expertise to testify about the mechanism of Z.H.'s injury before he was born.

7 Dr. Scher can testify how nerve injuries are caused in general, and he can opine that
8 Z.H.'s injuries were caused by the natural forces of labor. But he should be precluded from
9 repeating the defense posterior shoulder theory, which has never been observed or proven by
10 anyone.

11 The Court should also preclude Dr. Scher's opinion that Z.H. suffered "excessive
12 hypotonia" and that the hypotonia caused his brachial plexus nerves to spontaneously avulse.
13 This opinion is entirely speculative, and the literature he cites in support of this confirms that the
14 connection between hypotonia and brachial plexus injuries is just a theory or may be a case of
15 "reverse causation," where the brachial plexus injury causes the hypotonia. Machler Reply Decl.,
16 Exh. 3, p. 39, lines 17-24.

17 The Court should also preclude Dr. Scher's opinion that anatomical variations in Z.H.
18 and his mother caused his brachial plexus nerves to be ripped away from his spinal cord. There is
19 no medical or factual basis for this opinion, as Dr. Scher admitted in his deposition.
20

21 These opinions by Dr. Scher are entirely speculative and without foundation and should
22 be excluded.

23 **C. ACOG bulletin approved by pediatric doctors.**

24 The testimony by Dr. DeMott that pediatric doctors approve of the theory that a four-
25 level avulsion injury was caused by the natural forces of labor will merely mislead the jury. No

1 one knows why a group of pediatric doctors approved the bulletin, and for Dr. DeMott to testify
2 that pediatric doctors agree with the defense theory and put their stamp of approval on it, is
3 speculative and prejudicial. The Court should grant plaintiff's motion.

4 **D. Defense economist.**

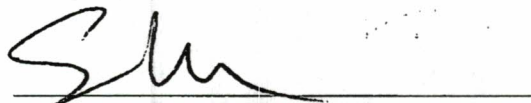
5 The Court should grant plaintiff's motion to preclude the defense economist from using
6 the "healthy life" expectancy table. Z.H. was forever deprived of any opportunity to have a
7 healthy life, and the economist should not be allowed make the false statement that his disability
8 will magically disappear at an arbitrary age. Defense counsel is correct when he states that the
9 healthy life tables might reduce damages. Such a reduction would prejudice Z.H., and the Court
10 should exclude the healthy life tables. It is, after all, plaintiff's counsel's fundamental obligation
11 under the RPC's to do a competent and thorough job for their client. RPC 1.1.

12
13 The healthy life tables conflict with the life expectancy table required by the Washington
14 Pattern jury instructions, an issue that the defense does not even address in its opposition.

15 The Court should grant all of plaintiff's motions in limine.

16 Dated this 31th day of May, 2022.

17 OSBORN MACHLER

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19 Susan Machler, WSBA #23256
20 Simeon J. Osborn, WSBA #14484
21 Austin Neff, WSBA #57059
22 2025 1st Ave., Ste. 1200
23 Seattle, WA 98121
24 Phone: (206) 441-4110
25 Fax: (206) 441-4220
26 Email: sosborn@osbornmachler.com
smachler@osbornmachler.com

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

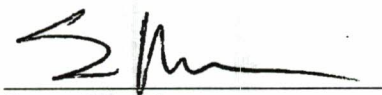
The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that I caused the foregoing to serve upon the following in the manner indicated below:

Attorneys for Defendant:

Donna Moniz
925 4th Ave, Ste. 2300
Seattle, WA 98104

- Via Electronic Filing
- Via Legal Messenger
- Via U.S. Mail
- Via E-Mail: monizd@jgkmw.com;
vasquezb@jgkmw.com; randp@jgkmw.com;
sproulj@jgkmw.com
- Via Fax:

Dated this 31st day of May, 2021 at Seattle, Washington.



Susan Machler