Problem Introduction and Overview of Evaluation
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FACT PATTERN

Accident Narrative

- The Plaintiff Driver was traveling west-bound on Highway 67 in Reagan County, Texas. Plaintiff, a heavy machinery mechanic for an oil company, was driving a light commercial vehicle and was traveling to repair a piece of machinery at a job site. She was unfamiliar with the area and had been told she would need to take a left on Ferguson Lane, which she would know by a small advertisement sign on a barb-wire fence just past her turn. Plaintiff was looking for the sign to know where to turn.

- The Defendant Driver (who was accompanied by a passenger) was some distance behind the Plaintiff (not directly behind), also traveling west-bound on Highway 67. When the Plaintiff initiated the left hand turn, Defendant’s vehicle collided with Plaintiff’s vehicle’s driver side; sending both Defendant’s tractor trailer and Plaintiff’s light commercial truck into the grass and roadside fencing along the highway just past Ferguson Lane. The Plaintiff was taken to a hospital by ambulance.

- The Plaintiff and Defendant have drastically different accounts of the vehicles’ movements just prior to the collision. The Defendant contends that the Plaintiff’s vehicle had been pulled over onto the right shoulder when the Plaintiff suddenly (and without signaling) turned left across the right hand lane -- to take a left onto Ferguson Lane. The Defendant describes that he was travelled in in the right hand lane until he swerved slightly to the left to pass Plaintiff when the Plaintiff’s vehicle moved onto the right shoulder. When Plaintiff began the unexpected turn, Defendant swerved further left in an effort to avoid the turning vehicle.

- The Plaintiff contends that the turn was initiated from the right hand lane (not the shoulder), with a proper and timely left-turn signal activated. Plaintiff alleges that the Defendant Driver moved into the left hand lane (the lane of oncoming traffic) to pass Plaintiff while Plaintiff was slowing to make the left turn.

- The police report’s description is not detailed enough to validate or disprove either story and the investigating officer does not recall much about the accident or its investigation — only what is in the report.

Distracted Driver Issue

- The Defendant Driver admitted to talking on his cell phone at the time of the collision. However, the Defendant testified that he was using a hands free device at the time of the collision. Post accident photos show the cell phone is docked in a mounting bracket, and Defendant’s passenger corroborates that a hands free device was being used. It is generally uncontested that Defendant was in fact using a hands free device.

Video Evidence of Prior Problem Behavior (Relevance Question)

- Two days before the collision, Defendant had posted a video on Facebook in which he is using his phone to take a video of another truck wreck while driving the
company truck. This action is a violation of company policy. The Defendant was not engaged in similar activity (videoing or using phone with hands) at the time of the accident.

Post Accident Drug Screen (Plaintiff)

- The Defendant was promptly drug tested. The test came back negative. The Plaintiff was driving a small commercial vehicle and was administered a drug test after the collision. The test yielded positive findings for amphetamines and marijuana metabolite. Plaintiff testified she had used marijuana two days prior to the incident. Plaintiff’s expert opines that the levels of marijuana metabolite found in Plaintiff’s system would not cause any impairment and would be consistent with Plaintiff’s testimony. Plaintiff was generally unaware of taking any amphetamines but testified that she had been taking weight loss supplements from GNC. Plaintiff’s expert associates the amphetamine level to the dietary supplements and opines that the level would not cause impairment.

Other issues

- Plaintiff underwent surgery (L5 S1 Fusion). Plaintiff’s medical expenses were sold to a medical factoring company and not submitted to Plaintiff’s insurance.

- Defendant was ticketed at the time of the collision for an inoperative brake light on one side and missing rear reflectors.

- Defendant Company determined that the accident was preventable and instructed the driver to slow down when confronted with confusing roadside circumstances.
April 12, 2018

VIA E-MAIL @ caspy@namanhowell.com
Clark Aspy
Naman, Howell, Smith & Lee, PLLC
Prominent Pointe One
8310 N. Capital of Texas Hwy, Suite 490
Austin, Texas 78731

Re: Tammy B. Hurtin v. JIT Oil Field Services Co. and Jose Lopez
Mediation Date: May 3, 2018, at 8:15 a.m., The Greenbrier, White Sulphur Springs, WV

To the Honorable Mediator Aspy:

CONFIDENTIAL MEDIATION STATEMENT

1. Names, addresses and phone numbers of Plaintiff (identify authorized representatives, if known and attorneys of record.

Attorney for Plaintiff, Tammy B. Hurtin:
Ryan T. Hand
LORANCE & THOMPSON, P.C.
2900 North Loop West, Ste. 500
Houston, Texas 77092
T: 713-868-5560
E-MAIL: RTH@lorancethompson.com

2. Names, addresses, phone numbers of Defendant (identify authorized representatives, if known and attorneys of record.

Attorney for JIT Oil Field Services Co. and Jose Lopez:
Christy Comstock
WALES COMSTOCK
3608 North Steele Boulevard, Suite 101
Fayetteville, AR 72703
T: 479-439-8088
E-MAIL: christy@walescomstock.com

Authorized Representative: Cynthia Paisley, V.P. Risk for JIT Oil Field Services Co.
3. Names, addresses, phone numbers of other parties (Please specify "Intervenor", etc.)

Medlegal Litigation Funding, Inc.
Lien on the settlement in the amount of $145,000
Purchased the accounts receivable on the medical expenses.
1-800-fundyou

4. Describe the nature of the Plaintiff's claims and the Defendants defenses and counterclaims.

Plaintiff, Tammy, a heavy machinery mechanic for an oil company, was traveling west-bound on Highway 67 in Reagan County, Texas. Plaintiff was driving a light commercial vehicle and traveling to repair a piece of machinery at a job site in the field. She was unfamiliar with the area and had been told she would need to take a left on Ferguson Lane, which she would know by a small advertisement sign on a barb-wire fence just past her turn. Plaintiff was looking for the sign to know where to turn.

The Defendant Driver, Jose Lopez (accompanied by a passenger) was some distance behind the Plaintiff (not directly behind), also traveling west-bound on Highway 67. An unknown/uninvolved passenger vehicle was traveling ahead of Lopez. When the Plaintiff initiated the left hand turn, Defendant’s vehicle collided with Plaintiff’s vehicle’s driver side; sending both Defendant’s tractor trailer and Plaintiff’s light commercial truck into the grass and roadside fencing along the highway just past Ferguson Lane. The Plaintiff was taken to a hospital by ambulance.

The Plaintiff and Defendant have drastically different accounts of the vehicles’ movements just prior to the collision. The Defendant contends that the Plaintiff’s vehicle pulled over onto the right shoulder when the Plaintiff suddenly (and without signaling) turned left across the right hand lane --to take a left onto Ferguson Lane. The Defendant describes that he was travelled in the right hand lane until he swerved slightly to the left to pass Plaintiff when the Plaintiff’s vehicle moved onto the right shoulder. When Plaintiff began the turn, Defendant swerved further left in an effort to avoid the turning vehicle.
The Plaintiff contends that the turn was initiated from the right hand lane (not the shoulder), with a proper and timely left-turn signal activated. Plaintiff alleges that the Defendant Driver moved into the left hand lane (the lane of oncoming traffic) to pass Plaintiff while Plaintiff was slowing to make the left turn.

The police report confirms Plaintiff’s version of the accident. The Defendant Driver admitted to talking on the cell phone at the time of the collision. However, the Defendant conveniently testified that he was using a hands-free device at the time of the collision. Post accident photos show the cell phone is docked in a mounting bracket, and Defendant’s passenger, likely to help his friend, testified that a hands-free device was being used.

The police officer gave the following narrative:

As shown below, Plaintiff’s description matches the police report. However, Defendants’ version was concocted after defense attorneys met with the Defendant driver following the accident. JIT determined the accident to be preventable. Not even JIT believes Lopez’ version.
Overhead Map of the Roadway/Area:

Accident scene photographs:

Plaintiff underwent surgery (L5 S1 Fusion) after conservative measures failed. Plaintiff’s medical expenses were sold to a medical factoring company and not submitted to Plaintiff’s insurance. She has been unable to return to work, and will never work as a mechanic again.

5. **What relief is sought by the parties? (State each request for damages, exemplary damages, and attorney's fees).**

Plaintiff’s Damages:
- Fabulous Surgical Center (injections): $46,500
- No Pain Anesthesia: $13,552
New Hope Rehab: $15,000
Clear Imaging (MRIs): $10,000
Clear Cut Surgical Hospital: $75,000
Dr. Cutter: $44,637
Total: $184,689

Future Medical Expenses (future ESIs, medications and additional surgery): $478,900
Lost Wages: $493,000

- Lifetime of pain and suffering (past and future)
- Mental Anguish (past and future)
- Impairment (past and future)

6. What are the primary issues of law or fact in this case, from your prospective?

Two days before the collision, Defendant posted a video on Facebook which shows him using his phone to take a video of another truck wreck while driving his company truck. This action is a violation of JIT company policy. Although the Defendant was allegedly not engaged in similar activity (videoing or using phone with hands) at the time of the accident, this video is relevant to how he uses his phone for other reasons in his truck that distract his driving.

The Defendant was promptly drug tested. The test came back negative. The Plaintiff was driving a small commercial vehicle and was administered a drug test after the collision. The test yielded positive findings for amphetamines and marijuana metabolite. Plaintiff testified she had used marijuana two days prior to the incident. Plaintiff’s expert opines that the levels of marijuana metabolite found in Plaintiff’s system would not cause any impairment and would be consistent with Plaintiff’s testimony. Plaintiff was generally unaware of taking any amphetamines but testified that she had been taking weight loss supplements from GNC. Plaintiff’s expert associates the amphetamine level to the dietary supplements and opines that the level would not cause impairment. This evidence is irrelevant to the accident, highly prejudicial and should be excluded from trial, for the following reasons:

1. No reliable evidence of “active compounds of marijuana” in her system
2. Plausible that she unknowingly ingested supplements that contained legal amounts of amphetamine compounds
3. Very low levels of amphetamine
4. No impairment from marijuana or amphetamine
5. Officer noted “apparent physical status” as “normal” just following the accident
6. Any probative value is outweighed by the prejudicial impact of the evidence under Rule 403

Defendant was ticketed at the time of the collision for an inoperative break light on one side and missing rear reflectors. Defendant JIT determined that the accident was preventable and instructed the driver to slow down when confronted with confusing roadside circumstances.

In addition, the trucking company’s CSA scores are below industry norms, and indicate a lack of concern for public welfare and empty assurances of “safety first.”
The following issues and FMSCR violations demonstrate a renegade company that clearly values profits over safety.

- On the cell phone when the accident happened
- Passenger in the truck
- Failed to perform proper pre-trip inspection (missed inoperative brake lights on the side of the trailer and missing rear reflectors)
- Preventable accident determined by the trucking company
- Prior distracted driving
- Driver with medical issues known to impact driving (Sleep Apnea)

7. **What is the status of discovery?** (Please circle one): (1) little or none, (2) some discovery done, but substantially incomplete, (3) substantially complete, (4) complete.

Substantially complete. Depositions and written discovery are complete.

8. A) **Do you have sufficient information to form a realistic settlement position?** If not, what else is needed?

   Yes

B) **What are the last offers of the parties?**

<table>
<thead>
<tr>
<th>Demand</th>
<th>Offer</th>
</tr>
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<tbody>
<tr>
<td>$5,000,000</td>
<td>no response</td>
</tr>
</tbody>
</table>

   Plaintiff requests a joint opening session. Further, the undersigned Attorney agrees to be bound by the “Rules for Mediation” and requests that Clark Aspy serve as mediator in this cause.

   Very truly yours,

   Ryan Hand
   LORANCE & THOMPSON, P.C.
April 12, 2018

VIA E-MAIL @ caspy@namanhowell.com
Mr. Clark Aspy
Naman, Howell, Smith & Lee, PLLC
Prominent Pointe One
8310 N. Capital of Texas Hwy, Suite 490
Austin, Texas 78731

Re: Tammy B. Hurtin v. JIT Oil Field Services Co. and Jose Lopez
Mediation Date: May 3, 2018, at 8:15 a.m., The Greenbrier, White Sulphur Springs, WV

To the Honorable Mediator Aspy:

CONFIDENTIAL MEDIATION STATEMENT

1. Names, addresses and phone numbers of Plaintiff (identify authorized representatives, if known and attorneys of record.

   **Attorney for Plaintiff, Tammy B. Hurtin:**
   Ryan T. Hand
   LORANCE & THOMPSON, P.C.
   2900 North Loop West, Ste. 500
   Houston, Texas 77092
   T: 713-868-5560
   E-MAIL: RTH@lorancethompson.com

2. Names, addresses, phone numbers of Defendant (identify authorized representatives, if known and attorneys of record.

   **Attorney for JIT Oil Field Services Co. and Jose Lopez:**
   Christy Comstock
   WALES COMSTOCK
   3608 North Steele Boulevard, Suite 101
   Fayetteville, AR 72703
   T: 479-439-8088
   E-MAIL: christy@walescomstock.com

   Authorized Representative: Cynthia Paisley, V.P. Risk for JIT Oil Field Services Co.

3. Names, addresses, phone numbers of other parties (Please specify "Intervenor", etc.)

   Medlegal Litigation Funding, Inc.
   Lien on the settlement in the amount of $145,000
   Purchased the accounts receivable on the medical expenses.
   1-800-fundyou
4. Describe the nature of the Plaintiff’s claims and the Defendants defenses and counterclaims.

Plaintiff was en route to a make a delivery when she became lost or disoriented and pulled to the right-hand shoulder. As Defendant approached the vehicle moving onto the shoulder, Defendant moved slightly to the left to travel beyond Plaintiff’s vehicle. Simultaneously and presumably realizing that she needed to make a left turn near where she had left the roadway, Plaintiff suddenly moved back into traffic, making a left turn without signaling and without any warning to Defendant. Plaintiff’s erratic driving was negligent and careless and proximately caused the collision. Contrary to Plaintiff’s assertions, the investigating officer did not conclude that Defendant was at fault for this accident, and we do not anticipate that the officer or the report, if admitted at trial, will convince the jury that Defendants were at fault. It is further the belief of Defendant that, as is supported by Plaintiff’s post-accident toxicology results, Plaintiff was under the influence of illegal substances, namely amphetamines and marijuana, which likely caused Plaintiff to make the poor driving decisions she made and exhibited pre-impact.

5. What relief is sought by the parties? (State each request for damages, exemplary damages, and attorney's fees).

Defendant seeks to recover property damage caused by this accident. While Plaintiff may have submitted voluminous bill and records of medical treatment, all of those alleged damages were proximately caused by Plaintiff’s own negligence.

6. What are the primary issues of law or fact in this case, from your prospective?

Rather than confront the evidence that Plaintiff is at fault for causing this accident by making an unexpected left turn from the shoulder of the roadway, Plaintiff is engaged in a game of distraction, and offers a number of red herrings to confuse and mislead this matter. For example, Plaintiff suggests that the presence of Mr. Lopez’s passenger is relevant and that an alleged violation of company of policy and/or distracted driving in the days prior to the accident may have probative value. Plaintiff’s strategy of substituting facts about the actual accident with remote, causally unrelated allegations must not be tolerated.

For example, Plaintiff alleges that Mr. Lopez’ cell phone use in the days prior to the accident is somehow indicative of the use Plaintiff alleges by Mr. Lopez on the date of the accident. Even if Mr. Lopez used his cell and/or posted a video of cell phone usage in the days prior to the accident, there is no nexus between the prior cell phone use and/or any related violation of company policy and Mr. Lopez’s attention to his driving on the date of the accident. To the contrary, Mr. Lopez was keeping the proper lookout when he observed Plaintiff pull off onto the shoulder and moved his tractor trailer to the left to ensure safe passage around Plaintiff. Plaintiff has no evidence that Mr. Lopez was distracted by his permissible hands-free used of the cell phone at the time of the accident, and no violation of company policy in the days prior to the accident is admissible to establish Mr. Lopez’s negligence on the date of his accident with Plaintiff.

Additionally, and contrary to Plaintiff’s contentions, Defendant’s citation -- an inoperative brake light on one side and missing rear reflectors – should not be admissible because it is not indicative of negligence. Furthermore, JIT’s preventability determination – that the accident was preventable – is unfairly prejudicial without being indicative of causation.
To the contrary, the preventability analysis is a self-critical analysis performed by JIT as a training opportunity with the driver to manage speed when, as Plaintiff exhibited here, the driver sees confusing roadside behavior by other drivers.

Defendant’s CSA scores are entirely irrelevant and admission of the same would be reversible error by the Court since none of them relate, in any manner to, Mr. Lopez or to the circumstances of this accident. Defendant’s hours of service violations, unrelated to Mr. Lopez or the date of the accident, do not offer the jury any relevant insight in their task of determining whether Mr. Lopez caused or contributed to cause the accident with Plaintiff. Admitting irrelevant prior violations which are neither proximately related to the accident by time or similarity is violative of the Rules of Evidence and is unfairly prejudicial to Defendants. Defendants anticipate that their motion in limine will be granted with respect to Plaintiff’s proffer of these scores.

7. What is the status of discovery? (Please circle one): (1) little or none, (2) some discovery done, but substantially incomplete, (3) substantially complete, (4) complete.

Substantially complete. Depositions and written discovery are complete.

8. A) Do you have sufficient information to form a realistic settlement position? If not, what else is needed?

Yes

B) What are the last offers of the parties?

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<td>no response</td>
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Plaintiff requests a joint opening session. Further, the undersigned Attorney agrees to be bound by the “Rules for Mediation” and requests that Clark Aspy serve as mediator in this cause.

Very truly yours,

Christy Comstock
WALES COMSTOCK
Texas Peace Officer's Crash Report (Form CR-3 1/1/2010)

Mail to: Texas Department of Transportation, Crash Records, P.O. Box 140349, Austin, TX 78714. Questions? Call (512) 486-5789

Refer to Attached Code Sheet for Numbered Fields

= * These fields are required on all additional sheets submitted for this crash (ex. additional vehicles, occupants, injured, etc.).

Crash Date (MM/DD/YYYY): 06/29/2014
Crash Time (24HRM): 09:27
Case ID

+ County Name
Reagan
+ City Name

Outside Limit

in your opinion, did this crash result in at least * Yes
$1,000 damage to any one person's property? * No

Latitude (decimal degrees): 31.1, 16.7, 0.4
Longitude (decimal degrees): -101.1, 34.8, 7.7

ROAD ON WHICH CRASH OCCURRED
US Hwy. 67

CR CR

Hwy. 147

Block Num. 1

3 Street Prefix

Street Name

Ferguson

4 Street Suffix

Dry, Paved US Highway

INTERSECTING ROAD, OR IF CRASH NOT AT INTERSECTION, NEAREST INTERSECTING ROAD OR REFERENCE MARKER

Distance from Int. or Ref. Marker

3 Dir from Int. or Ref. Marker

Reference Marker

DRY, PAVED COUNTY ROAD

Driver Of Primary Person

Name: Last, First, Middle

Enter Driver or Primary Person for this Unit on first line

Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.

Towed To

Towed By

Towed By

Towed By

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Towed By

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### Law Enforcement and TxDOT Use ONLY

#### Case ID

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#### TXDOT Crash ID

|             |            |            |            |                            |                          |

#### Disposition of Injured/Killed

|             |            |            |            |                            |                          |

#### Damaged Property Other Than Vehicles

|             |            |            |            |                            |                          |

#### Owner's Name

|             |            |            |            |                            |                          |

#### Owner's Address

|             |            |            |            |                            |                          |

### DAMAGE

- Wire Fencing and Metal Posts

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- Carrier's Carrier's Addres.

- 30 Rdwy. Access

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- Carrier ID Num.

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### CMV

- 33 Cargo Body Style

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- Sequence Of Events

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### Factors & Conditions

- Contributing Factors (Investigator's Opinion)

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- Vehicle Defects (Investigator's Opinion)

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### Environmental and Roadway Conditions

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### Investigator's Narrative Opinion of What Happened

(Attach Additional Sheets if Necessary)

- Field Diagram - Not to Scale

#### Diagram

- Non Contact Vehicle
- Field of Impact
- County RD 147
- Ferguson Lane
- Point of Rest
- Fence
- US 67

### Time Notified

- 09:29:29

### Time Arrived

- 09:32

### Report Date

- 06/29/2019

### ID Num.

- 811

### Investigator

- Golliday, J.

### OI Num.

- TX1920000

### Agency

- Reagan County Sheriff's Office

---

Copy from Custodial File
**Texas Peace Officer's Crash Report (Form CR-3 1/1/2010)**

Mail to: Texas Department of Transportation, Crash Records, P.O. Box 145349, Austin, TX 78714. Questions? Call (512) 486-5780

Refer to Attached Code Sheet for Numbered Fields

+ These fields are required on all additional sheets submitted for this crash (e.g., additional vehicles, occupants, injured, etc.).

---

**1. Crash Information**

- **Crash Date (MM/DD/YYYY):** 06/29/2014
- **Crash Time (24HRMM):** 09:27
- **Case ID:** 0
- **Local Use:** Yes

**2. Accident Location**

- **County:** Reagan
- **City Name:** Ferguson
- **Road On Which Crash Occurred:** Dry, Paved US Highway
- **Intersecting Road, Or If Crash Not At Intersection, Nearest Intersecting Road Or Reference Marker:** Dry, Paved County road

**3. Vehicle Information**

- **Veh. Year:** 2011
- **Veh. Color:** WHI
- **Veh. Make:** Dodge
- **Veh. Model:** Ram 3500 (pickup)
- **Veh. Descr:**

---

**Owner/Lease**

- **Owner:**
- **Lease:**

---

**Proof of Fin. Resp.**

- **Fin. Resp. Type:** 2
- **Fin. Resp. Name:**
- **Fin. Resp. Num.:**

---

**Towed**

- **Towed By:**

---

**Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.**

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Copy from Custodial File
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<td>00001</td>
</tr>
</tbody>
</table>

**INVESTIGATOR**

Investigator Name (Printed): Golliday, J.J.

**ORI Num.** TX, 1, 9, 2, 0, 0, 0, 0, 0

*Agency: Reagan County Sheriff's Office*

---

**Narrative and Diagram**

Investigator's Narrative Opinion of What Happened (Attach Additional Sheets If Necessary)

Field Diagram – Not to Scale

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**Reports**

- **Time Notified (24HRMM):** 09/29
- **How Notified:** Sheriff's Dispatch
- **Time Arrived (24HRMM):** 09/32
- **Report Date (MM/DD/YYYY):** 06/29/2014
- **ID Num.:** 811

---

**Copy from Custodial File**
CRASH NARRATIVE

CASE NUMBER:  
OFFICER NAME: Golliday, J.J.  
NEAREST CITY:  
COUNTY: Reagan  

Unit #1 (Towing Unit #2) was going West (South) on US 67 approaching the intersection with Ferguson Lane (County Rd 147).

Unit #3 was slowing to make a left turn onto Ferguson Lane. Another vehicle was behind Unit #3 and Unit #1 did not realize that Unit #3 was turning.

Units #1 and #2 moved left to pass the slowing vehicles and realized Unit #3 was turning.

Units #1 and #2 went to the extreme left and simultaneously Unit #3 accelerated when he saw Unit #1 bearing down on him.

This is believed to have kept Unit #1 from striking Unit #3 in the driver's door. The FD of Unit #1 struck the BLQ of Unit #3.

Unit #3 then spun counter clockwise. Both vehicles went across the intersection with Unit #3 going backward into the steel pipe corner fence posts.

Unit #1 continued on with the FLQ of Unit #1 catching the FD of Unit #3. This caused Unit #3 to be dragged 90 degrees to the West.

Unit #3 then flipped over onto the driver's side and came to rest facing West. Unit #2 spun around causing a jackknife before coming to rest.

The POI was approximately 15 feet East of the West pavement edge of Ferguson Lane and approximately 10 feet South of the South pavement edge of US 67.

No other. JG
## Positive/Abnormal Report

**Date Ordered:** 45304H (DOT DRUG PANEL M/78)

### Specimen Validity Testing

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Positive/Negative</th>
<th>Acceptable Range</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ADULTERATION</strong></td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td><strong>GUAhlen Panel</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>AMPHETAMINE</strong></td>
<td>Positive</td>
<td>initial: 500 ng/mL 250 ng/mL</td>
</tr>
<tr>
<td><strong>METHAMPHETAMINE</strong></td>
<td>Negative</td>
<td>test level: 250 ng/mL</td>
</tr>
<tr>
<td><strong>COCO-ANALOGUES</strong></td>
<td>Negative</td>
<td>500 ng/mL 250 ng/mL</td>
</tr>
<tr>
<td><strong>MORPHINE METABOLITES</strong></td>
<td>Positive</td>
<td>150 ng/mL 100 ng/mL</td>
</tr>
<tr>
<td><strong>CODEINE METABOLITES</strong></td>
<td>Negative</td>
<td>50 ng/mL 15 ng/mL</td>
</tr>
<tr>
<td><strong>DIOXIN</strong></td>
<td>Negative</td>
<td>10 ng/mL 10 ng/mL</td>
</tr>
<tr>
<td><strong>NOCYLORPHINE</strong></td>
<td>Negative</td>
<td>25 ng/mL 25 ng/mL</td>
</tr>
</tbody>
</table>

### Quantitative Results

<table>
<thead>
<tr>
<th>Substance</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANNABINOL</td>
<td>3140 ng/mL</td>
</tr>
<tr>
<td>CANNABINOL METABOLITE</td>
<td>3360 ng/mL</td>
</tr>
</tbody>
</table>

**Certifying Scientist:** Derrick Passek

**Sample Received and Processed by the Lenexa DWSR Certified Laboratory.**

---

**Quest Diagnostics-Lenexa**

10101 Renner Blvd
Lenexa KS 66214
Forensic Toxicology Report

Supplement to [Redacted] Report Dated 30 December 2016

This report is written to respond to concerns raised in the letter/report of Dr. [Redacted], PH. D. and expressed in her correspondence dated 26 January 2017 with regard to this case. The concerns involve:

1. The chemical specificity of the “Quest Diagnostics Laboratory” testing procedures employed in this case.
2. The chemistry and analytical chemistry with regard to alpha (amphetamine, AMP) and beta methyl phenethylamine (hereafter referred to as alpha {AMP} and beta {BMP}).
3. The use of the terms milligram (mG) and microgram (uG) and the interpretation of drug dosages and the marijuana metabolite and amphetamine test concentrations for [REDACTED] in this case.

4. The possible presence of stimulants and/or amphetamine in herbal preparations sold for “weight control” in commercial preparations by “Health Stores” such as GNC.

5. The possible analytical confusion of AMP and BMP during “Quest laboratories” testing.

6. The question of whether or not [REDACTED] used AMP (amphetamine) prior to the MVC, which is the subject of this case.

7. The question of whether or not fluid intake could have diluted the urine which “Quest” tested and was voided by [REDACTED].

First; the chemical specificity for AMP in this case is confirmed by “Quest” and other laboratories. The testing report and “Quest” response reveal that the immuno-screen (EMIT) and the GC/MS confirmation used, does delineate and prove that the analyte found in this case was AMP. The testing differentiates AMP from other chemicals and stimulants (see attachment #1).
Second; the positional isomer defense has been around for decades. It was first raised at crime laboratories in the 80's or earlier and has been clarified analytically since. The issue was raised in “street drug “and “trucker societies.” The 2 chemicals are positional isomers and that is where the similarity stops (see attachment # 1).

Third; the concern regarding “herbal preparations” which are used as dietary supplements is also an issue of long-going study, concern and scrutiny in the Forensic community. The US Drug Enforcement Administration (Special Testing laboratory) monitors issues and questions about such things; as does the United States SAMHSA. Dr. [redacted] has raised the concern about the presence of AMP, but has provided no evidence that any preparation sold by GNC or used by [redacted] contained AMP. It is correct that other chemicals related to substituted phenethylamines can be found in some of these “herbal preparations,” but they are all readily delineated and differentiated from AMP by the analytical chemistry employed in these (“Quest”) identifications.
---4--- Report Supplement

Fourth; the chemical specificity of the "Quest Laboratories" analysis speaks for itself in attachment #1. Further, investigations, scientific experience and discussions with other forensic toxicologists confirms that the chemistry which differentiates AMP & BMP is sound.

Fifth; it is a redundancy, but a necessary one, to reaffirm that the forensic testing procedures and methodologies used at "Quest Laboratories" and other forensic/crime laboratories is sufficient, appropriate, proper and correct for achieving the goal of identifying AMP to the exclusion of BMP and other forensically important chemicals/drugs/preparations or compounds.

Sixth; fluid intake can dilute urine concentration of the analytes in question in this case. The "normal range" creatinine in the urine of [REDACTED] does not obviate the possible dilution of that body fluid by liquid intake prior to urine voiding.

Seventh; the question of whether or not [REDACTED] used AMP is answered. She did use AMP and marijuana. She used them prior to the MVC. Also, AMP along with her marijuana usage are likely, possible and substantial contributing factors leading to the MVC.
Report Supplement

As an aside, on page 3 of the letter it should be noted that creatinine is excreted as an indicator of protein metabolism and kidney function. Creatine is a naturally occurring muscle phosphate also used as a dietary supplement by body builders and weight lifters.

Finally, referring to # 3 above, the use of milligram (mG) in the report is either confusing or incorrect. Many of the citations used in the report should read micrograms (usually abbreviated as uG in the medical field, when a type font without the Greek alphabet is used). The use of the term uG is not a part of the report. The report mixes mG/L & uG/L when citing drug dosages and drug/analyte metabolite concentrations.

All caveats in the previous report (page 5 paragraph #2) apply herein.

To prepare this report I have reviewed further information including:

1. Personal communication with staff members of the DCI Laboratory; to wit Director and Criminalists and .
4. Selected literature and information regarding alpha-methyl phenethylamine (amphetamine) and beta-methyl phenethylamine from the internet.

Attachments to this report include:

1. Those already provided for the previous report, please also use the ones from that report for the purposes of this report.
2. The “Quest Laboratories “answers to __________ Questions” from Attorney __________ regarding this case, dated 21 February 2017.
Report Supplement

To prepare this report Supplement I have reviewed:

1. The letter/report to [redacted], from Dr. [redacted], PH.D., dated 26 January 2017; and attachments.
2. The attachment # 2 above.
3. Personal communication from staff of the Iowa DCI Criminalistics Laboratory.
4. All materials from the previous report.

[redacted] BS, MS, F-ABFT
Laboratory Director, Retired

Date 02 March 2017
Below are the answers you requested from the lab.

Sent: Tuesday, February 21, 2017 9:36 AM
Subject: RE: Subpoena for DOT test records; SID No. 5233836

Below find the responses I received to the questions posed by your expert.

1. Does the immuno-screen rule out beta-MPEA as the analytic identified?
   a. When tested at twice the cutoff (1000 ng/mL), beta-methylphenethylamine does not produce a presumptive positive screen on the immunoassay screening test.

2. Does method differentiate alpha (amphetamine) from beta?
   a. Based on the above, yes. Alpha-methylphenethylamine (amphetamine) is the target analytic assay in the screening test and beta-MPEA does not produce a positive at the cutoff.

3. What is the technology of the Immuno-screen – EMIT or other?
   a. The screening assay uses enzyme multiplied immunoassay technique.

4. Does the Mass Spectral technology differentiate alpha from beta?
   a. Yes.

5. What was the exact mass spectral technique for the analysis of this urine in 2013?
   a. Gas chromatography/mass spectrometry.

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From: [Redacted]
Sent: Thursday, February 09, 2017 1:38 PM
To: [Redacted]
Subject: RE: Subpoena for DOT test records; SID No. 5233836

I hope all is well. I wanted to reach out to you because our expert toxicologist has been attempting to get some additional information from Quest with no luck. I was wondering if you would be willing/able to be a go-between. Our expert doesn’t need to talk to someone per se – he would just like to know answers to the following simple (from a toxicologist’s standpoint, anyway) questions.

1. Does the immuno-screen rule out beta-MPEA as the analyte identified?
2. Does method differentiate alpha (amphetamine) from beta?
3. What is the technology of the immune-screen – EMIT or other?
4. Does the Mass Spectral technology differentiate alpha from beta?
5. What was the exact mass spectral technique for the analysis of this urine in 2013?

If you could let me know one way or the other whether or not you would be able to get these questions to someone who knows the answer I would really appreciate it. Let me know if you have any questions.

Thanks,

From: [Redacted]
Sent: Friday, November 04, 2016 4:30 PM
To: [Redacted]
Subject: RE: Subpoena for DOT test records; SID No. 5233836

[Redacted]

I have the documentation package. I will email it shortly and mail a copy to you and [Redacted]

From: [Redacted]
Sent: Tuesday, November 01, 2016 4:54 PM
To: [Redacted]
Subject: RE: Subpoena for DOT test records; SID No. 5233836

[Redacted]

Just checking on the status of this – can you confirm if it was mailed?
From: [Redacted]

Sent: Wednesday, October 05, 2016 3:47 PM

To: [Redacted]

Subject: Subpoena for DOT test records; SID No. 5233836

Hi:

It was nice speaking to you. As we discussed, the laboratory will begin preparing a documentation package for the DOT urine specimen identified by SID No. 5233836. The cost of the documentation package is $250.00. The check should be made out to Quest Diagnostics and can be mailed to my office at the address below.

I will contact [Redacted] and inform him of your request for the documentation package and our interpretation of the Court’s 6/21/16 Order. If he disagrees with my understanding of the Court’s Order or objects to the production of the documentation package to all parties, I will let you know. In that case, Quest Diagnostics will wait for the parties to work out any objections before providing any records to either party.

Let me know if you have any questions.

[Redacted]

The information contained in this transmission is a privileged attorney-client communication and/or contains confidential information intended solely for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.
Consulting Group was hired in order to assist with the evaluation of urine toxicology test results from [redacted] was asked to determine if the test results support that [redacted] was impaired at the time of a motor vehicle accident which took place on December 8, 2013 at approximately 5:15 P.M. [redacted] was also asked to review the report of [redacted] and determine if his conclusions/opinions are supported by the scientific evidence.

My name is [redacted] I have over 25 years of scientific experience and I am a full member of the Society of Toxicology. My opinions in this case are based upon the known toxicology of marijuana and amphetamines and related compounds, the case documents that have been provided to me, the peer-reviewed scientific literature, my professional qualifications, work experience and knowledge of biochemistry, molecular biology, toxicology, pharmacokinetics, exposure assessment, risk assessment, forensic toxicology, chromatography and related fields. My academic training, doctoral degree, work experience, professional affiliations and publications qualify me as an expert in toxicology with reference to interpreting relevant case materials as outlined in the Reference Manual for Scientific Evidence published by the Federal Judicial Center. Appendix for your information is a copy of my Curriculum Vitae (Attachment A, CV).

[redacted] State Police Traffic Reconstruction Report 201300335241

In order to form my opinions I have reviewed the following case documents which have been provided to me:

1. Quest Diagnostics’ forensic laboratory testing records for the urine specimen identified by
2. Mr. , B.S., M.S., F-ABT’s Forensic Toxicology Report dated December 29, 2016
4. Deposition transcript of dated December 5, 2016
5. Deposition transcript of dated March 17, 2015

Conclusions

1. The urine toxicology test results for show that she tested positive for a marijuana metabolite at a level greater than 300 nanograms per milliliter (ng/mL) and amphetamine at a level of 2140 nanograms per milliliter (ng/mL), or 2.1 mg/L on December 9, 2013 at 2:50 A.M., approximately 10 hours after the motor vehicle accident which is the subject of this suit.3 What the report does not elaborate on, is that the marijuana metabolite that tested positive for in her urine, is an inactive marijuana metabolite, carboxy-tetrahydrocannabinol (THC-COOH), a chemical not capable of causing impairment.

2. did admit to using marijuana some time prior to the accident (approximately 2 prior according to her deposition) However, the laboratory urine toxicology test results do not give any reliable indication of precisely when last consumed marijuana, as positive results above the cutoff level of 50 ng/mL can be obtained for 3 to 4 days after last usage even in occasional users.4 These results also do not give any indication of whether or not had any amount of the active parent compound, delta-9-tetrahydrocannabinol (delta-9-THC) present in her blood at the time of the accident, as the metabolite remains in urine long after the active parent compound of marijuana is no longer in the blood. The presence of the parent compound in the blood is required to infer intoxication and thus impairment. Since the inactive compound cannot cause impairment and the amount (if any) of the parent compound in her blood at the time of the accident is not known, it is

3 Mr. , B.S., M.S., F-ABT’s Forensic Toxicology Report dated December 29, 2016
4 Carey, P. The Drug Court Practitioner Fact Sheet. The marijuana detection window: determining the length of time cannabinoids will remain detectable in urine following smoking. A critical review of relevant research and cannabinoid detection guidance for drug courts. National Drug Court Institute Vol. 4, No. 2 April 2006
not possible to reliably establish that [redacted] was impaired by marijuana at the time of the accident.

3. Mr. [redacted] has offered speculation that [redacted] drank excessive fluid in order to dilute the levels of drugs in her urine. However, there is no indication, as [redacted] Mr. [redacted] has insinuated, that [redacted] consumed excessive amounts of liquid in an attempt to dilute her urine sample. The sample validity testing, which measures a urinary protein, creatine, to detect possible attempts at dilution, was “within acceptable range” with no adulterants present. Had she “diluted” her urine or added chemical adulterants, it would have been indicated in this portion of the testing.

4. [redacted] testified that she was taking an appetite suppressant she obtained from the GNC store, “Black 6 for Her” at the time of the accident but denies taking any amphetamines. Appetite suppressants sold by the company GNC and other supplement suppliers over the past several years have been found to contain synthetic and natural amphetamine positional isomers and amphetamine derivatives which were not disclosed as such in the varying products’ labeling. Some of these derivatives such as β-methylphenylethylamine (BMPEA), a positional isomer of amphetamine (see figure 1 below abstracted from an article by Dr. Peter Cohen, M.D.), also resolves chromatographically identically to the amphetamine-d5 standard which is used to confirm the presence of amphetamine in a urine sample (See figure 2 below extracted from Dr. Peter Cohen’s 2015 article).

5. A search for other adulterants in weight loss supplements noted by the FDA to cause false positives on drug tests shows that the chemical fenproporex (Perphoxene) is also present in adulterated weight loss formulas. This chemical is metabolized directly to amphetamine and causes measurable amphetamine levels in the urine when taken (2.9 to 4.2 mg/L from a 10 mg dose) and would cause a positive amphetamine result in the range of that found in [redacted] urine.

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5 Quest Diagnostics’ forensic laboratory testing records for the urine specimen identified by SID No. 5233836. Pdf p. 26, 123
6 Deposition transcript of taken on December 5, 2016
7 Cohen et al. 2015. An amphetamine isomer whose efficacy and safety in humans has never been studied, β-methylphenylethylamine (BMPEA), is found in multiple dietary supplements. Drug Test. Analysis 2016, 8, 328–333
9 Cohen et al. 2015. An amphetamine isomer whose efficacy and safety in humans has never been studied, β-methylphenylethylamine (BMPEA), is found in multiple dietary supplements. Drug Test. Analysis 2016, 8, 328–333
11 http://www.fda.gov/Drugs/ResourcesForYou/Consumers/QuestionsAnswers/ucm136187.htm
6. It is not possible to derive any reliable levels of amphetamine which would have been present in blood at the time of the accident from the urine toxicology results for the drug. This is because amphetamine has variable half-life in the body (7-34 hours) due to individual differences in urinary pH.\textsuperscript{12} The urinary pH levels, while measured by Quest were not presented in a format which allows for interpretation.

7. With respect to the amount of amphetamine in urine, she had 2.1 mg/L amphetamine in her urine which is an indication that she had not recently used the drug and was not a tolerant addict or an abuser. Additionally, having urinary amphetamine levels beneath what is seen from a typical therapeutic dose would not be expected to have been experiencing significant effects of the amphetamine in her system.

8. Mr. has offered the opinion in his report that “it is highly likely, but not absolutely proven by a urine drug test, that was impaired and/or effected by this combination of drugs at the time of this MVC”. However, based on the previously stated information such as the inability of the inactive urinary metabolite of marijuana to be used as a marker of impairment, the likelihood that a weight loss supplement used by contained amphetamine or an amphetamine derivative, the low amount of amphetamine in her urine and the lack of knowledge regarding how much amphetamine was in her blood, Mr. interpretation of the evidence is not supported by the scientific evidence available.

Discussion

\textsuperscript{12} Amphetamine in Disposition of Toxic Drugs and Chemicals in Man th Ed. Randall C. Baselt Rd. Biomedical Publications. 2001.
\textsuperscript{13} State Police Traffic Reconstruction Report 201300335241 p. 7
ure for a Department of Transportation (DOT) drug screen. The urine came up positive for the presence of marijuana metabolites above the testing threshold of 300 ng/mL and for amphetamines, 2140 ng/mL. The urine was not deemed by the testing agency to have been adulterated or diluted.\textsuperscript{17}

When asked whether or not she had been using marijuana at the time, responded in her sworn deposition that she had used marijuana recently but not for a time period of two.\textsuperscript{18} When asked if she had taken any amphetamines, responded that she had not but was taking an appetite suppressant sold by GNC, “Black 6 for Her.” She testified that she took two capsules per day at the time of the incident so that she would not “get chubby.”\textsuperscript{19}

Research into products with this name turns up no result. However GNC does sell a product currently called “Lipo 6 Black-Hers” and did sell a product called “Lipo Black 6” which has been found to contain the amphetamine isomer, BMPEA.\textsuperscript{20} This product is banned by the FDA. BMPEA has an identical structure to amphetamine and is known as a positional isomer to the drug (See Figure 1 abstracted from the 2015 Cohen article).

In 2015, Dr. Peter Cohen, M.D., published an article detailing the fact that it had been reported to the FDA that many of these types of supplements contained synthetically derived amphetamines, but due to the FDA’s failure to act and pull the supplements from the shelves of stores like GNC, they were increasing in number rather than decreasing. He also noted that the public was largely unaware of the adulteration of the supplements, which he noted could be very dangerous.\textsuperscript{21}

\textsuperscript{14} State Police Traffic Reconstruction Report 201300335241 p. 69
\textsuperscript{15} State Police Traffic Reconstruction Report 201300335241 p. 83
\textsuperscript{16} State Police Traffic Reconstruction Report 201300335241 p. 83
\textsuperscript{17} Quest Diagnostics’ forensic laboratory testing records for the urine specimen identified by SID No. 5233836. Pd p. 26, 123
\textsuperscript{18} Deposition of [REDACTED] dated December 5, 2016 p. 26-28
\textsuperscript{19} Deposition of [REDACTED] dated December 5, 2016 p. 36-39
\textsuperscript{20} http://www.girardgibbs.com/gnc/ 
\textsuperscript{21} Cohen et al. 2015. An amphetamine isomer whose efficacy and safety in humans has never been studied, β-methylphenylethylamine (BMPEA), is found in multiple dietary supplements. Drug Test. Analysis 2016, 8, 328–333
BMPEA also resolves chromatographically with the d-5 amphetamine standard so that this molecule could be mistaken for amphetamine both in an immunoassay and in a confirmation LC/MS/MS screen (see Figure 2 below).

A search for other adulterants in weight loss supplements noted by the FDA to cause false positives on drug tests shows that the chemical fenproporex (Perphoxene) is also sometimes present in adulterated weight loss formulas. This chemical is metabolized directly to amphetamine and causes measurable amphetamine levels in the urine when taken (2.9 to 4.2 mg/L from a 10 mg dose) and would cause a positive amphetamine result in the range of that found in urine. has stated that she did not take the amphetamine drug Adderall® which is typically prescribed for Attention Deficit Hyperactivity Disorder (ADHD).

It is noted by Baselt that amphetamine abusers often have 10-100 mg/L amphetamine in their urine and that men receiving a 10 mg dose of amphetamine (such as the dose available in Adderall®) had average urinary levels of 3.3 mg/L, 12 hours after taking the dose. With respect to the amount of amphetamine in system, she

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22 http://www.fda.gov/Drugs/ResourcesForYou/Consumers/QuestionsAnswers/ucm136187.htm
24 https://www.drugs.com/pro/adderall.html
had 2.1 mg/L amphetamine in her urine which is an indication that she had not recently used the drug and was not a tolerant addict or an abuser. Additionally, whose urine amphetamine levels were under those seen from a typical therapeutic dose, would not be expected to have been experiencing significant effects of the amphetamine in her system.

Summary

In summary, I find that there is no reliable evidence that had active compounds of marijuana in her blood at the time of the accident based upon the urine toxicology results. I also find that it is plausible that she unknowingly ingested supplements which were adulterated with amphetamine compounds and caused an amphetamine result. The levels of amphetamine found in her urine correlate with low levels of amphetamine use and are not consistent with levels found in the urine of abusers. This level would also likely not cause notable impairment as these levels are found 12 hours after use from a 10 mg dose of amphetamine such as a dose used to treat Attention Deficit Hyperactivity Disorder (ADHD) used in Adderall® preparations. It is also noteworthy that “apparent physical status” as noted by Police was “normal” just following the accident which does not support that she was impaired at the time of the accident.

This report was prepared for the exclusive use of and was not intended for any other purpose. Our report was based on the information available to us at this time. Should additional information become available, we reserve the right to determine the impact, if any, the new information may have on our opinions and conclusions and to revise our opinions and conclusions if necessary and warranted.

Thank you for allowing us to provide this service. If you have any questions or need additional assistance, please call.

Sincerely,

[Redacted]

CONSULTING GROUP [Redacted]

[Redacted]

Toxicologist, Principal Consultant

Attachments:  A - CV  
B - Testimony Report  
C - Terms and Conditions
Dear [Blank],

[Blank] issued an expert report related to [Blank] on January 26, 2017 ("first report") that is provided as an attachment to this supplemental report for reference ([Attachment A, [Blank], Ph.D. January 26, 2017 Report of Findings - [Blank]]). Since that time, I reviewed a supplemental report authored by Mr. [Blank] on March 2, 2017 ([Attachment B, Mr. [Blank], M.S. F-ABT March 2, 2017 Forensic Toxicology Report]) and evaluated it with respect to Mr. [Blank] conclusions and the available scientific evidence relevant to this case.

My name is [Blank], Ph.D. I have over 25 years of scientific experience and I am a full member of the Society of Toxicology. My opinions in this case are based upon the known toxicology of marijuana and amphetamines and related compounds, the case documents that have been provided to me, the peer-reviewed scientific literature, my professional qualifications, work experience and knowledge of biochemistry, molecular biology, toxicology, pharmacokinetics, exposure assessment, risk assessment, forensic toxicology, chromatography and related fields. My academic training, doctoral degree, work experience, professional affiliations and publications qualify me as an expert in toxicology with reference to interpreting relevant case materials as outlined in the Reference Manual for Scientific Evidence published by the Federal Judicial Center.¹

With respect to Mr. [redacted] opinions and conclusions, I offer the following opinions to a reasonable degree of scientific and toxicological certainty:

1. There is no definitive scientific evidence that [redacted] was under the influence or impaired by active marijuana compounds or amphetamines at the time of the motor vehicle accident that is the subject of this lawsuit. It is quite clear from reviewing both of Mr. [redacted] reports that he understands this as well, as he has qualified his conclusions with the words “possible” and “likely” rather than the more definitive qualifiers of “she was impaired” or, “more probable than not” or, “to a reasonable degree of scientific certainty”. In using these words, he is acknowledging that it is “possible” as well as, just as “likely” that she did not have these compounds in her blood at the time of the accident, which is why he cannot say definitively, that she did. This is because the type of testing done on [redacted] urine (the strongest scientific evidence in this case) does not allow for an interpretation of whether or not she had the active component of THC or a certain amount of amphetamine in her blood at the time of the accident. This type of testing only shows that she had ingested marijuana sometime within the past few days, as well as an amphetamine or another chemical that was metabolized to amphetamine, such as the weight loss drug Fenproporex, within the recent past. Because the metabolites of these drugs can stay in the urine for days after the effects of the drugs have worn off, and the presence of the active compound of marijuana and amphetamine in the blood is required to definitively infer intoxication and impairment. (See previous report in Attachment A for a full discussion (Attachment A, [redacted], Ph.D. January 26, 2017 Report of Findings – [redacted]), and we do not have blood toxicology test results for [redacted], it not possible to say with any certainty that [redacted] was impaired by these drugs at the time of the accident. It is also pertinent to note that the police officer at the scene noted no signs of impairment in [redacted], despite spending some time with her following the accident and while driving her to the hotel. This supports that she had not used these drugs around the time of the accident and was not under the influence of these drugs when the accident occurred.

2. Mr. [redacted] has speculated and has maintained that [redacted] somehow tried to dilute her urine sample, despite there being valid scientific evidence to the contrary. As I stated in my report dated January 26, 2017, the sample validity testing performed by Quest laboratories, which measures a urinary protein,

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creatinine, to detect possible attempts at sample dilution, was "within acceptable range" with "no adulterants present". Had [REDACTED] attempted to dilute her urine or added chemical adulterants, it would have been indicated in this portion of the testing. Quest would obviously not use this type of test to indicate a reliable sample and a lack of an attempt at dilution, if it was an "unreliable" test, as Mr. [REDACTED] has stated. Therefore, I find his speculation about the urine test results completely lacks any scientific foundation.

3. Mr. [REDACTED] has provided correspondence between the attorney that hired him, Mr. [REDACTED], and a [REDACTED] from the law firm [REDACTED], which presumably contains the responses (cut and pasted) from Quest Laboratories that allegedly supports Mr. [REDACTED]'s opinions relating to the amphetamine positional isomer, β-methylphenylethylamine (BMPEA). However, there is no Quest Laboratory signature block, email address or name associated with any of the 5 emails in the string. In my opinion, this is an inappropriate surrogate for actual correspondence from Quest Laboratories and should not be relied upon by itself. If the information is in fact from Quest, then it serves to clarify that the GC/MS testing conducted in 2013 for [REDACTED] urine does differentiate between BMPEA and α-methylphenylethylamine (amphetamine). This would rule out BMPEA as one of the potential adulterants that [REDACTED] consumed in her weight loss supplement. However, Mr. [REDACTED]'s assertion that current laboratory forensic drug testing day does not result in errors of mistaken identity between amphetamine positional isomers of amphetamines such as BMPEA, is clearly incorrect, as the two forensic toxicology articles by Cohen et al. (2015) and Choblinski et al. (2014) clearly state. Both of these articles were referenced in my first report.

4. In his supplemental report, Mr. [REDACTED] failed to specifically address my opinion that the scientific and popular literature also supports that [REDACTED] could have consumed the supplement adulterant Fenproporex. This chemical is metabolized to α-amphetamine and would therefore be indistinguishable from her having taken amphetamine directly. He also incorrectly stated that I did not provide any evidence that GNC sold any supplements that were adulterated with amphetamines. I provided several references that supplements sold by GNC were adulterated with amphetamines and compounds that could be metabolized to amphetamines in my first report. These include the FDA’s document entitled “Questions and Answers about FDA’s Initiative Against Contaminated

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6 Quest Diagnostics' forensic laboratory testing records for the urine specimen identified by SID No. 5233836. PDF p. 26, 123.
7 Email from [REDACTED] dated February 21, 2017.
8 Cohen et al. 2015. An amphetamine isomer whose efficacy and safety in humans has never been studied, β-methylphenylethylamine (BMPEA), is found in multiple dietary supplements. Drug Test. Analysis 2016, 8, 328–333.
Weight Loss Products”, last updated in March 2016, and CNN’s October 2015 article, “GNC Accused of Selling Supplements Laced with an Amphetamine-Like Substance”, as well as Dr. Peter Cohen and Dr. Choblinksi’s articles on BMPEA.  

I also provided a scientific publication on Fenproporex that supports that the levels of amphetamine present in urine (2.1 mg/L) were consistent with those present in urine from the metabolism of Fenproporex for weight loss (2.9 to 4.2 mg/L from a 10 mg dose). I would further reiterate, as I did in my first report, that the levels of amphetamine found in urine are NOT consistent with levels of amphetamine that have been associated with the abuse of the drug (10-100 mg/L) and therefore it is unlikely that she used amphetamine illicitly or that the reported level in her urine would have had an impairing effect on her if it was even in her blood at the time of the accident.

5. Mr. has inexplicably found a problem with my interchangeable use of the metric units micrograms per milliliter (µg/mL) and milligrams per liter (mg/L), perhaps not understanding that these are equivalent units? I have worked as a research scientist for over 25 years, 16 of those years “at the bench” of an academic research institution where I took part in basic and clinical research. I can assure the reader that “microgram” is not the only metric unit used to report clinical laboratory, forensic laboratory, or any laboratory values. Metric units and values are interchanged all the time to compare laboratory values to published values in the literature, such as those for amphetamine, which are most often presented in mg/L. They are also interchanged for a variety of other reasons. References to support the use of mg/L comparative values for amphetamine were provided in my first report. In fact, it’s quite obvious that microgram is not a universal “clinical” measurement as Mr. has suggested, drug test values were reported in nanograms per milliliter (ng/mL). This opinion of Mr. that one must use the unit “microgram” exclusively to be scientifically correct is the most absurd opinion I have yet had to respond to.

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11 Cohen et al. 2015. An amphetamine isomer whose efficacy and safety in humans has never been studied, β-methylphenylethylamine (BMPEA), is found in multiple dietary supplements. Drug Test. Analysis, 8, 328–333.
15 Metric unit conversion calculator. Available at: http://www.endmemo.com/sconvert/mg_lug_ml.php
6. Importantly, Mr. [redacted] has failed to provide a single scientific reference in either of his two "forensic toxicology reports" to support his opinions concerning the drug test results of [redacted] and his opinion that these results show that "AMP along with her marijuana usage are likely, possible and substantial contributing factors leading to the MVC". Failing to provide scientific references to support scientific opinions, is something that is highly unusual in the fields of toxicology and forensic toxicology. Essentially in doing so, Mr. [redacted] is asking the reader to trust his opinions without providing any scientific basis for them beyond his own opinions. Taken together with the absurd and incorrect "opinion" that micrograms are the only suitable unit of measurement for clinical laboratory reporting and discussion, I have serious doubts as to Mr. [redacted] qualifications to offer opinions in the capacity that he has in this case.

7. Finally, it is my professional opinion that the scientific laboratory testing of [redacted] urine and police officer-obtained behavioral evidence that is available for review in this case, does not adequately support that [redacted] was impaired with either amphetamine or marijuana at the time of the motor vehicle accident that is the subject of this lawsuit.

This supplemental report was prepared for the exclusive use of [redacted] and was not intended for any other purpose. My report was based on the information available to me at this time. Should additional information become available, I reserve the right to determine the impact, if any, the new information may have on my opinions and conclusions and to revise them if necessary and warranted.

Thank you for allowing me to provide this service. If you have any questions or need additional assistance, please call me at [redacted].

Sincerely,

[redacted] CONSULTING GROUP

Attachments:
B - [redacted], M.S. F-ABT March 2, 2017 Forensic Toxicology Report
SCENE PHOTOGRAPHS
Taken: Monday, March 30, 2015
Camera: Nikon S-110

DATE OF CRASH: Sunday, June 29, 2014
LOCATION: US 67 @ Ferguson Lane, CR 147
Reagan County, Texas

MRY File # 150205

1. On US 67, looking west from 500 feet east of the area of impact.
2. On US 67, looking west from 400 feet east of the area of impact.
3. On US 67, looking west from 300 feet east of the area of impact.
4. On US 67, looking west from 200 feet east of the area of impact.
5. On US 67, looking west from 100 feet east of the area of impact.
6. On US 67, looking southwest from 100 feet east of the area of impact.
7. On US 67, looking west from 50 feet east of the area of impact.
8. On US 67, looking southwest from 50 feet east of the area of impact.
10. On US 67, looking west from 25 feet east of the area of impact.
15. On US 67, looking east, from the area of impact.
17. South of US 67, looking east, from 25 feet west of the area of impact.
Date Ordered: 4/6/94 (DOT DRUG PANEL U/75)

Specimen Validity Testing

Converting Adulterants Negative

U液晶 MA Panel

<table>
<thead>
<tr>
<th>Substance</th>
<th>Initial Test Level</th>
<th>MS Confirm Test Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMPHETAMINE</td>
<td>POSITIVE 500 ng/mL</td>
<td>250 ng/mL</td>
</tr>
<tr>
<td>METHAMPHETAMINE</td>
<td>Negative</td>
<td>250 ng/mL</td>
</tr>
<tr>
<td>BCP-ANALOGUES</td>
<td>Negative</td>
<td>500 ng/mL</td>
</tr>
<tr>
<td>BCP-METABOLITES</td>
<td>Negative</td>
<td>150 ng/mL</td>
</tr>
<tr>
<td>BCP-METABOLITES</td>
<td>POSITIVE</td>
<td>50 ng/mL</td>
</tr>
<tr>
<td>OPIATE</td>
<td>Negative</td>
<td>2000 ng/mL</td>
</tr>
<tr>
<td>METILENEPHINORPHINE</td>
<td>Negative</td>
<td>10 ng/mL</td>
</tr>
<tr>
<td>PHENCYCLIDINE</td>
<td>Negative</td>
<td>25 ng/mL</td>
</tr>
</tbody>
</table>

Drug Quantitative Results

<table>
<thead>
<tr>
<th>Substance</th>
<th>Amount (ng/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMPHETAMINE</td>
<td>3140</td>
</tr>
<tr>
<td>METHAMPHETAMINE</td>
<td>5500</td>
</tr>
</tbody>
</table>

CERTIFYING SCIENTIST: [Redacted]

Report received and processed in the Leona DHHS certified laboratory.

Quest Diagnostics-Leona
10101 Renner Blvd
Leona, KS 67457

End of Report
Summary of Plaintiff’s Drug Test Results and Expert Opinions Regarding Same

Following the accident, an ambulance transported Plaintiff to a local hospital. Pursuant to her company policy, the medical personnel collected a urine sample in order to conduct a toxicology screen. The test yielded, in pertinent part, the following test results:

<table>
<thead>
<tr>
<th>Adulterants</th>
<th>Initial Test Level</th>
<th>Confirm Test Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amphetamines</td>
<td>500 ng/ml</td>
<td></td>
</tr>
<tr>
<td>Amphetamine</td>
<td>positive</td>
<td>250 ng/ml</td>
</tr>
<tr>
<td>Methamphetamines</td>
<td>negative</td>
<td></td>
</tr>
<tr>
<td>Marijuana metabolites</td>
<td>positive</td>
<td>50 ng/ml</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15 ng/ml</td>
</tr>
</tbody>
</table>

At her deposition, Plaintiff testified that she smoked marijuana on a single occasion two days before the accident. She denied ever consuming any amphetamines, but Plaintiff stated that she consumed an over-the-counter weight loss supplement sold by a well-known, national vitamin and supplement store.

Competing expert’s reviewed the drug test results as reported by the lab and rendered opinions which are summarized as follows:

For the plaintiff: Plaintiff retained Dr. [Redacted], an accepted toxicologist whose credentials are not in dispute, in order to determine whether the test results support that Plaintiff was impaired at the time of the accident. After reviewing the pertinent documentary evidence, Dr. [Redacted] concluded as follows:

- The marijuana metabolite reflected on the test is an inactive marijuana metabolite incapable of causing impairment.
- The test does not reliably offer any information on when Plaintiff last used marijuana; a positive test above the cutoff level can be obtained several days after using marijuana even in occasional users.
- There is no mention of the parent compound in Plaintiff’s blood at the time of the test and the metabolite may remain in the urine long after it is no longer in the blood. It’s the presence of the parent compound which is required to infer intoxication and thus impairment.
- Since the inactive compound cannot cause impairment and the amount, if any, of the parent compound is unknown, it is not possible to reliably establish that Plaintiff was impaired by marijuana at the time of the accident.
• The test results show that Plaintiff’s creatine level was within an acceptable range with no adulterants present. If she attempted to drink excessive fluid to dilute the results, it would be reflected in this part of the test.
• Several appetite suppressants sold by the vitamin and supplement store in question have been found to contain synthetic and natural amphetamine derivatives which are not disclosed on the label. Some of these derivatives are identical chemically as the standard used to determine the presence of amphetamines in a urine sample.
• The FDA has also noted that other adulterants in weight loss supplements may cause false positives when testing for amphetamines.
• With respect to the amount of amphetamine reportedly present in Plaintiff’s sample, it reflects that she had not recently used the drug and was not an addict or abuser. The low level also indicates that she would not experience significant effects if the drug was in her system.

For the defendant: Mr. [redacted], an accepted forensic toxicologist whose credentials are not in dispute, opined as follows:
• The test delineates the difference between amphetamines and derivatives of amphetamines, and the presence of amphetamines was established.
• ‘Herbal preparations’ used in dietary supplements have been the subject of study by both the forensic community and the US DEA, but there is no proof that the supplement Plaintiff took contained this chemical. Other adulterants may be found in these preparations, but they are also delineated on the results and by the lab.
• Fluid intake can dilute urine concentrations and the normal range of creatine does not obviate the possibility of dilution.
• Amphetamines coupled with marijuana are likely, possible, and substantial contributing facts in a crash.