



# STEPHENS ANDERSON & CUMMINGS

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## *Let's Win This!*

A Monthly Newsletter - What You Need to Know  
About Personal Injury Law

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August 2019 - Issue 18



You knew the mild and sort of rainy start to the summer wouldn't last, didn't you?

So, here we are in North Texas in the middle of August, a series of sweltering days above the century mark already in the past and likely several more on the horizon.

And you knew it was going to happen.

You knew it because of your experience. Experience is a great - maybe the best - teacher.

The law recognizes how valuable experience is and how, in the right circumstances, experience is all that's necessary to qualify someone as an expert witness.

We saw in the last expert witness installment that the rules allow experts to testify as to their opinions, when most witnesses have to stick to "just the facts," as Joe Friday used to say.

This month, we begin to look at what makes an expert and how you don't necessarily have to have a bunch of academic credentials to be one.

What sort of experience do you have that might qualify you to testify as an expert? As we'll see, it all depends upon the circumstances.

If you have any questions about that – or about anything else to do with personal injury law, for that matter – give us a shout. We'll be happy to help.



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## What's an Expert?

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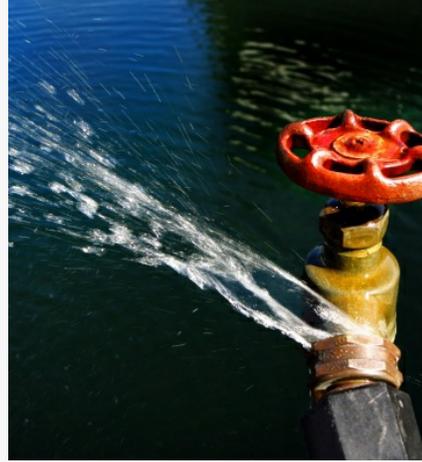
**You've heard the joke: What's an Expert?**

Break it down into its component parts:

Ex – a has-been, formerly but no longer important, past their prime, no longer valid.

That leaves “spurt” – a drip under pressure.

Combine them and you have an expert.



## Experts in Litigation

Despite the (sometimes justified) ridicule, expert witnesses are a crucial part of the modern world of litigation. In some instances, like cases involving professional malpractice, you simply can't prosecute or defend the suit without them.

Remember: an expert witness is permitted to testify by giving opinions – not just facts (we talked about that during the last Evidence installment of *Let's Win This!*, which you can find [HERE](#)). In personal injury cases, experts can be critical to the outcome in several different ways.

Let's consider a truck accident case involving an 18-wheeler and a car. As we've discussed in the past (you can find that issue [HERE](#)), negligence cases require three elements: Duty, Breach of Duty, and Damages. We usually group duty and the breach of the duty together under the general category of Liability. In the typical truck accident suit, expert witnesses might be called to testify in both the liability and damages areas of the case.

## Liability Expert

At first blush, you might not think that establishing a duty and the breach of the duty would require expert testimony – at least, not in a vehicular accident case. Everyone who has a driver's license knows the rules of the road, right? And the test is what a reasonable person would do, as we learned way back in [LWT Issue 2](#).

In most cases, you'd be right.

But what about if the folks involved in the accident have different memories – or no memory, at all – about what happened?

Think about something simple, like how fast would the truck have to be going to leave the skid marks that it did? In that instance, you might need an expert in accident reconstruction to give an opinion of the truck's speed immediately before the driver hit the brakes.

Many times, experts in vehicle accidents can re-create the entire scene from the physical evidence left at the end of the collision.

And what about the situation where the things the truck driver did wrong had

something to do with the specialized operation of big rig trucks? Most members of the jury won't have the knowledge necessary to understand how the driver was negligent.

So, your lawyer may want to put an experienced truck driver on the stand, qualify them as an expert, and have them give an opinion that no reasonable truck driver would have done what the driver in this accident did.



## What Makes an Expert?

That brings us to a very important point: What does it take for someone to be qualified to testify as an "expert witness"?

Remember in the last Evidence issue, *Let's Win This! No. 15*, we talked about Texas Rule of Evidence 702: An "expert" is someone who has special "knowledge, skill, experience, training, or education" may testify as an expert if their "scientific, technical, or other specialized knowledge will help the [jury] to understand the evidence or determine a fact in issue."

Most folks think about experts as being ivory-tower university professors or people with lots of degrees trailing after their names.

But in our hypothetical 18-wheeler accident case, a big-rig truck driver who never graduated high school but has who has, to quote the old Little Feat song, "driven every kind of rig that's ever been made" will qualify as an expert witness to testify as to the proper method for operating a semi and how the driver in the accident messed up.

Not only that, but the same non-academic expert might be able to testify as to what caused the accident. Usually, there are predictable consequences to not operating a vehicle in the proper fashion. At least, they're predictable to an experienced driver, and our expert can testify as to what they are and whether this particular accident probably resulted from the specific failure in this case.

This principle was beautifully and hilariously illustrated in the movie "My Cousin Vinny" by Marisa Tomei, who won a Best Supporting Actress Oscar for her performance as Mona Lisa Vito. If you haven't seen it, look it up.

## Other Areas of Expert Testimony

That about wraps it up for this month's edition of *Let's Win This!*

When we come back to our examination of expert testimony, we'll look at some other aspects of our hypothetical 18-wheeler accident that might require – or simply benefit from – an expert witness. We'll also start to take a closer look at the role of the judge in acting as a “gatekeeper” for expert testimony.

Until then, if you have questions or want to talk about anything related to the world of personal injury law, please give us a call, shoot us an email, or chat through the website. We'd love to hear from you and we're to help.

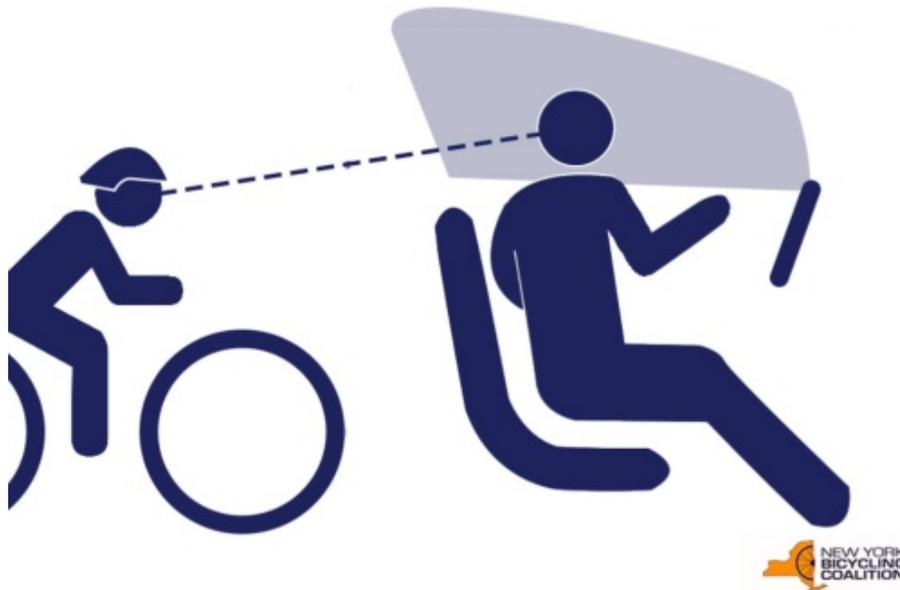
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## Stephens Anderson & Cummings Back to School Safety - The Dutch Reach

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Can you hear it? The grumbling and whining from kids all over Texas (and the slightly-less-audible celebratory shouts of parents)?

It's time for back-to-school!

It's good to be cautious all year long but throngs of kiddos taking to the streets during heavy traffic times means that this a good time to renew our commitment to safety. The National Safety Council has a great safety checklist that is worth a look. You can find it [HERE](#).

One very interesting technique to use in operating your car is called the “Dutch Reach.”

If you've ever been to the Netherlands, particularly Amsterdam, one of the things that you likely noticed was an astounding number of bicycles.



Bicycles are everywhere and most everyone rides them at one time or another.

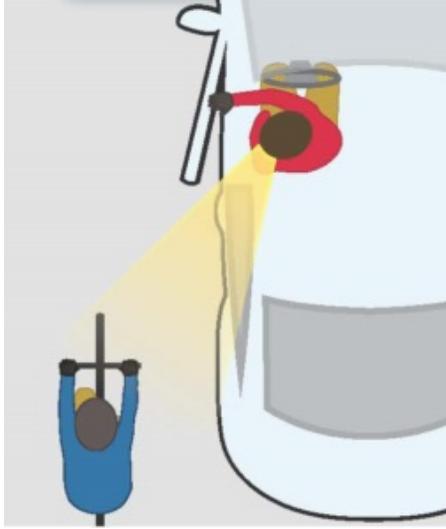
One of the most common - and dangerous - types of urban bicycle-vehicle accidents happens when a driver opens their door directly into the path of a passing bicycle. "Dooring" causes death and serious injury, not only to bicyclists but also to motorcyclists, passing motorists, even joggers.

The Dutch developed a simple yet amazingly effective safeguard against dooring: using the hand furthest from the door to open it.



Using the far hand requires you to shift your body and look outside of the car – into the side rear-view mirror or toward the back of the vehicle – as you open the door, letting you know if someone is coming.

It works. And it's a good habit to get into. You can find out all about the effort to make the Dutch Reach *the* way to open car doors, along with videos, graphics, and more [HERE](#).



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At Stephens Anderson & Cummings, every single client is unique; every single client is important. We pay personal attention to every single one.

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Righting wrongs for those injured or killed due to the negligence or wrongful conduct of others is what we do. Trust us with your client's case and

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