

The University of Texas School of Law  
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## Using Resources You Have to Get Causation You Need

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## Introduction

By far, most personal injury lawsuits filed in Texas arise from car crashes. (See District Courts Activity Detail from September 1, 2018 to August 31, 2019). Many car crashes claims do not reach the litigation stage and are resolved pre-suit. Regardless of the value of the harm caused, the injured party/plaintiff has the burden of proving liability and injury causation. This paper intends to help the car crash lawyer identify evidence and resources that are generally available in most car crashes and how to use them to prove liability and injury causation. The ways in which the information can be used in any specific case depends on the facts and circumstance of the case. This paper is practically focused.

## Liability Causation

Proving liability and injury causation in personal injury cases has always been the plaintiff's burden. See *Morgan v. Compugraphic Corp.*, 675 S.W.2d 729, 731-32 (Tex. 1984). The Supreme Court of Texas clearly states liability for an occurrence and injury causation are independent of one another that have separate issues of proving causation. See *id.* at 732. Consequently, the plaintiff must present evidence showing a link between the defendant's actions, the resulting event, and plaintiff's injury.

In determining what evidence is needed to meet the liability burden, one starts at the end of the case and looks at what the court's charge to the jury requires. The jury charge liability question in most car

crash cases is the Texas Pattern Jury Charge broad form joint submission of negligence and proximate cause question:

**Did the negligence, if any, of those named below proximately cause the [injury] [occurrence] in question?**

Tex. Pattern Jury Charge 4.1 (2018)

The term "injury" should ordinarily be used in cases where there is some allegation of plaintiff's pre-occurrence negligence that is "injury causing" but not "occurrence causing," such as plaintiff's failure to wear a seat belt. *Nabors Well Services, Ltd. v. Romero*, 456 S.W.3d 553, 563-64 (Tex. 2015); Texas Pattern Jury Charges 4.1 comment. "Occurrence" is used where there are no allegations of plaintiff's injury-causing negligence or where a single occurrence allegedly resulted in injuries to multiple plaintiffs. *Id.*

To prevail on a negligence cause of action, plaintiff must establish the existence of a duty, a breach of that duty, and damages proximately caused by the breach. See *Doe v. Boys Clubs of Greater Dallas, Inc.* 907 S.W.2d 472, 477 (Tex.1995). Proximate cause has two elements: cause in fact and foreseeability. *Travis v. City of Mesquite*, 830 S.W.2d 94, 98 (Tex.1992). "These elements cannot be established by mere conjecture, guess, or speculation." *Doe*, 907 S.W.2d at 477. The test for cause in fact is whether the act or omission was a substantial

factor in causing the injury without which the harm would not have occurred. *Marathon Corp. v. Pitzner*, 106 S.W.3d 724, 727 (Tex. 2003). If the defendant's negligence merely furnished a condition that made the injuries possible, there can be no cause in fact. *See IHS Cedars Treatment Ctr. of Desoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 799 (Tex.2004). A plaintiff does not have to establish proximate cause with absolute certainty nor must the plaintiff exclude every other possibility. *See Purina Mills, Inc. v. Odell*, 948 S.W.2d 927, 936 (Tex. App.—Texarkana 1997, writ denied). All that is required is proof of a causal connection beyond the point of conjecture or mere possibility. *Id.*

It is important to understand that not every car crash case requires extensive evidence to understand how it took place and who was at fault. *See Ten Hagen Excavating, Inc. v. Castro-Lopez*, 503 S.W.3d 463, 485 (Tex. App.—Dallas 2016, pet. denied); *Pilgrim's Pride Corp. v. Smoak*, 134 S.W.3d 880, 894 (Tex. App.—Texarkana 2004, pet. denied). In basic car crash cases, proving causation can be as simple as presenting fact witness testimony and pictures of physical evidence. *Id.* Conversely, in more complex car crash cases, where causation is hotly disputed, it may be necessary for plaintiff to put forth more evidence. There are few instances in which disputed evidence is conclusive. *Castro-Lopez*, 503 S.W.3d at 485 (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005)). Regardless of whether the liability question uses the term “injury” or “occurrence” plaintiff still has

to prove defendant’s negligence was a proximate cause.

The following evidence and resources are commonly available to aid plaintiffs in proving negligence causation in a car crash case:

- Texas Peace Officer Crash Report
  - Crash Report Code Sheet
  - Instructions to Police for Reporting Crashes
- Photographs
- Google Earth
- Video
- Physical evidence
- Texas Transportation Code
- Texas Driver Handbook
- Light sequencing charts

#### **Texas Peace Officer’s Crash Report:**

NOTE: Attached as Appendix A is “Police Officer as Experts, and The Admissibility of Their Reports” authored by Paula J. Wyatt and Gavin McInnis of Wyatt Law Firm, LTD., which provides an in-depth analysis of the crash report topic. Please read it. I personally thank Paula and Gavin for allowing me to include their paper here as it is a great resource for all lawyers who represent parties in car crashes. Below is an overview of the topic.

The Texas Peace Officer’s Crash Report (form CR-3 1/1/2018) is the current report form used by all police authorities that investigate car crashes in Texas for crashes that occurred on or after January 1, 2018. The form was revised in 2010,

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