

Trucking Experts: Witnesses & Opinions

COKERLAW

TRIAL ATTORNEYS

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45 YEARS OF JUSTICE

COKERLAW

TRIAL ATTORNEYS



Trucking Expert Witnesses & Opinions

- Areas of Expert Testimony
- Trucking Experts
- Daubert-Proofing Your Experts' Opinions
- Sample Expert Opinions From a Recent Trial

Areas of Expert Testimony

- Reconstruction
- Driving Standards
- Transportation Safety
- Compliance
- Maintenance
- Broker/Shipper
- Human Factors
- Loading
- Fitness & Fatigue

Areas of Expert Testimony

- Reconstruction
 - Vehicle Inspection
 - Data Download
 - Vehicle Dynamics
 - Avoidance Maneuvers
 - Animations
 - Reenactments

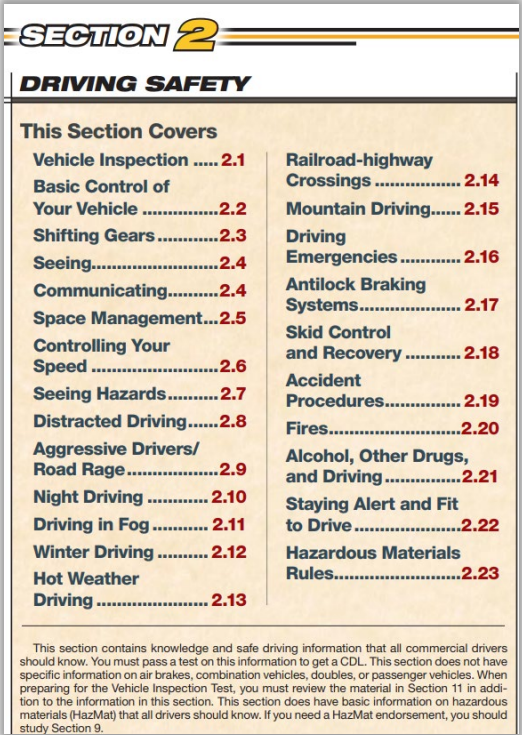


Areas of Expert Testimony

- Roadway/Traffic
 - Ingress/Egress
 - Routing
 - Pedestrian Traffic
 - Traffic Control Devices

Areas of Expert Testimony

- Driving Standards
 - Reasonable Care (for a truck driver)
 - State Traffic Laws
 - F.S.A. 316.302
 - Federal Regulations
 - CDL Handbook
 - Training Materials
 - Smith System
 - J. J. Keller
 - National Safety Council
 - Truck Driving School
 - Alice Adams



SECTION 2

DRIVING SAFETY

This Section Covers

Vehicle Inspection 2.1	Railroad-highway Crossings 2.14
Basic Control of Your Vehicle 2.2	Mountain Driving..... 2.15
Shifting Gears 2.3	Driving Emergencies 2.16
Seeing..... 2.4	Antilock Braking Systems..... 2.17
Communicating..... 2.4	Skid Control and Recovery 2.18
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Controlling Your Speed 2.6	Fires..... 2.20
Seeing Hazards..... 2.7	Alcohol, Other Drugs, and Driving 2.21
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This section contains knowledge and safe driving information that all commercial drivers should know. You must pass a test on this information to get a CDL. This section does not have specific information on air brakes, combination vehicles, doubles, or passenger vehicles. When preparing for the Vehicle Inspection Test, you must review the material in Section 11 in addition to the information in this section. This section does have basic information on hazardous materials (HazMat) that all drivers should know. If you need a HazMat endorsement, you should study Section 9.

Areas of Expert Testimony

- Transportation Safety
 - Hiring
 - Retention
 - Training
 - Supervision
 - Safety Policies
 - Mode of Operation



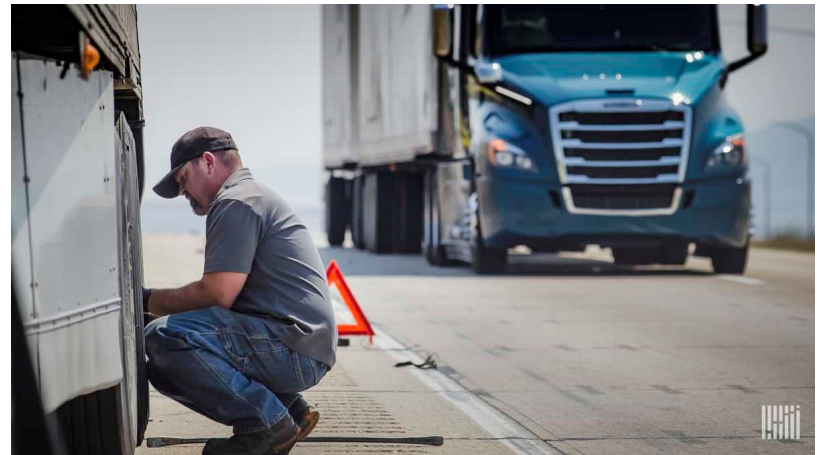
Areas of Expert Testimony

- Compliance
 - Hours of Service
 - Driver Qualification
 - Drug & Alcohol Policies
 - Driver Qualification
 - Maintenance & Inspection



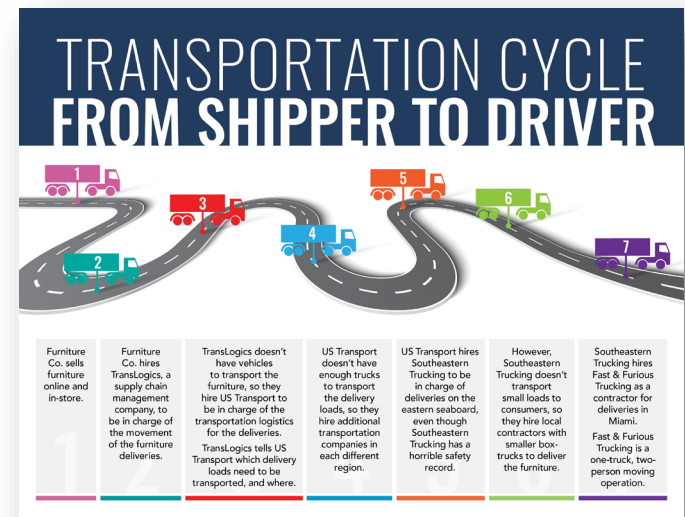
Areas of Expert Testimony

- Maintenance & Equipment
 - Foreseeability of Failure
 - Tires
 - Brakes
 - Conspicuity Elements
 - Engine Faults & Failures
 - Load Securement
 - Mirrors
 - Underride Barriers



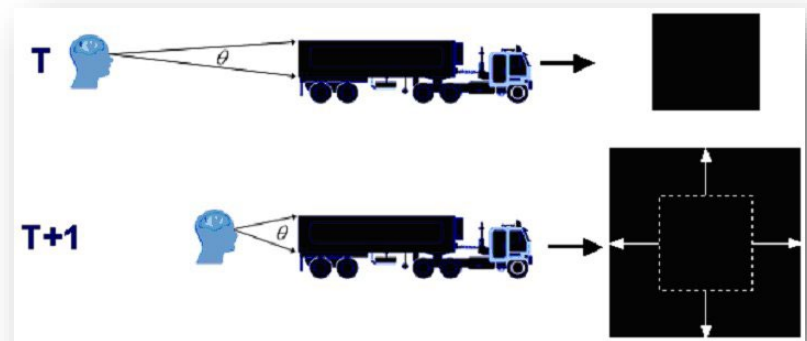
Areas of Expert Testimony

- Broker/Shipper
 - Agency
 - Regulatory Responsibility
 - Double Brokering
 - “Hidden Motor Carrier”
 - Contractual Duties
 - Negligent Selection



Areas of Expert Testimony

- Human Factors
 - Distractions
 - Hazard Perception
 - Looming Distance
 - PRT



Areas of Expert Testimony

- Loading
 - Load Securement
 - Load Collapse
 - Overhang & Obscurement



Areas of Expert Testimony

- Fitness & Fatigue
 - Hours of Service
 - Apnea
 - Vision
 - Medications
 - Medical Emergencies



Trucking Experts

- Reconstruction

- William “Bill” Fischer, P.E. (Punta Gorda)
- Bryant Buchner, PE (Tallahassee)
- Martin Garcia, P.E. (Palm City)
- Rachel Keller, P.E. (Tampa)
- Perry Ponder, P.E. (Tallahassee)
- Dr. Farhad Boeshaghi, PhD (Palm Beach)
- Dr. Brian Pfifer, PhD (Tallahassee)
- James Crawford (Port St. Lucie)
- Chip O’Toole (Orlando)
- Sean Alexander (Georgia)

Trucking Experts

- Roadway/Traffic
 - Rowland Lamb, P.E. (Tallahassee)
 - William “Bill” Fischer, P.E. (Punta Gorda)
 - Soan Chau (Orlando)
 - Dr. Brian Pfifer (Tallahassee)

Trucking Experts

- Driving Standards
 - Lew Grill (Montana)
 - Adam Grill (Montana)
 - Peter Phillbrick (California)
 - David Dorrity (South Carolina)
 - Michael Napier (Georgia)
 - Paul Herbert (Arizona)

Trucking Experts

- Transportation Safety
 - Michael Napier (Georgia)
 - David Dorrity (South Carolina)
 - Paul Herbert (Arizona)
 - Peter Phillbrick (California)
 - Dr. William “Dick” Carr (Jacksonville)

Trucking Experts

- Compliance

- Whitney Morgan (Alabama)
- Michael Napier (Georgia)
- Dr. William “Dick” Carr (Jacksonville)
- Bob Richard (Virginia) - HazMat

Trucking Experts

- Maintenance & Equipment
 - Jay Zembower (Orlando)
 - Phil J. Smith (Colorado)
 - Greg Wright (California)
 - Aaron Jones (Illinois)
 - Perry Ponder, P.E. (Tallahassee)

Trucking Experts

- Broker/Shipper
 - Tom Corsi (Maryland)
 - Ken Lacey (Pennsylvania)

Trucking Experts

- Human Factors
 - Jeff Muttart (Connecticut)
 - Kevin Rider (Ohio)
 - Michael Maddox (North Carolina)

Trucking Experts

- Loading
 - Paul Herbet (Arizona)
 - Paul Singh (Michigan)
 - Bob Richard (Virginia) - HazMat

Trucking Experts

- Fitness & Fatigue
 - Dr. Stefanos Kales (Massachusetts)
 - Dr. Terrence Moore (Texas)

“The Daubert Standard”

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- b) the testimony is based on sufficient facts or data;
- c) the testimony is the product of reliable principles and methods; and
- d) the expert has reliably applied the principles and methods to the facts of the case.

The Daubert Standard

1) Qualification

2) Helpfulness

3) Sufficient Factual Basis

4) Reliable Principles and Methods

5) Application of Facts to Principles

Daubert - Qualification

- CDL
- Safe Miles
- Actual Consulting
- Practical Experience

1 A No.

2 Q Of all of the work that you do today,
3 what percentage of it is related to this setting,
4 litigation versus consulting?

5 A Right now it's about 50/50. The
6 previous couple of years, it was a little bit
7 stronger in consulting, but anymore it's
8 about 50/50.

9 Q How many current consulting clients do
10 you have?

11 A Currently, two.

12 Q One is a small company that has two
13 trucks?

14 A They have -- I don't know exactly how
15 many they do have now. They were wanting to
16 build. I haven't talked to them in about a month.

17 Q Are they still your client?

18 A We have -- I do a pay-as-needed or
19 on-retainer answer questions, so I guess you could
20 say I am their guy, but I don't know.

21 Q So one of your active consulting
22 clients is a company that you don't know how many
23 powered units they have?

24 A Right now, I don't, no.

25 Q Well, what's the other client?

1 A The other client is Panhandle Express
2 out of the Amarillo area. Hereford, Texas.

3 Q That has got about what, 60 power
4 units?

5 A At last count they were ramping up to
6 have 72, 74, but they were planning on decreasing
7 some of the older units and bringing in new. And
8 again, I spoke to the -- the last time I spoke to
9 the owner was right before the 4th of July. And I
10 was having a big event and my calendar has been a
11 little cluttered, so I haven't spoken to them
12 again since right before the 4th.

13 Q How many litigation cases do you
14 currently have active?

15 A 19 or 20.

16 Q It doesn't sound like 50/50, does it?

17 A Well, I count it as money. Money being
18 50/50. Not necessarily numerical. But as far as
19 time, time is money and the money is equivalent
20 50/50.

21 Q You haven't worked for any of these
22 clients for at least a month?

23 A Correct.

24 Q But you have 20 active litigation cases
25 right now?

The Daubert Standard

1) Qualification

2) Helpfulness

3) Sufficient Factual Basis

4) Reliable Principles and Methods

5) Application of Facts to Principles

Daubert - Helpfulness

- We Don't Know What We Don't Know





Florida Statutes 316.122

Vehicle turning left - The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway **shall yield the right-of-way to any vehicle approaching from the opposite direction**, or vehicles lawfully passing on the left of the turning vehicle, which is **within the intersection or so close thereto as to constitute an immediate hazard**.

Daubert - Helpfulness

- We Don't Know What We Don't Know
- Ultimate Issues of Fact

The Daubert Standard

1) Qualification

2) Helpfulness

3) Sufficient Factual Basis

4) Reliable Principles and Methods

5) Application of Facts to Principles

Daubert – Sufficient Facts

- All relevant evidence in the case
- Enough factual basis for the opinion
 - Expert cannot opine that company has a “bad safety culture” without having examined the entire company’s operation. Citing the subject incident as evidence of a company-wide problem was not a sufficient factual basis. DeWitt v. UPS, N. D. Fla.

Daubert – Sufficient Facts

803(8) Public Records.

A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

The Daubert Standard

- 1) Qualification
- 2) Helpfulness
- 3) Sufficient Factual Basis
- 4) Reliable Principles and Methods
- 5) Application of Facts to Principles

Daubert – Reliable Principles

- State Traffic Code
- FMCSR
- CDL Manual
- USDOT Publications – Preventability Manual
- Industry Training Materials
- Other Company Materials
- Personal Knowledge, Training & Experience



49 C.F.R. 383.111

**All CMV operators must have knowledge
of the following 20 general areas:**

- | | |
|------------------------------|-------------------------------|
| (1) Safe Operations | (11) Night Operation |
| (2) Safe Vehicle Control | (12) Extreme Conditions |
| (3) CMV Safety Systems | (13) Hazard Perception |
| (4) Basic Control | (14) Emergency Maneuvers |
| (5) Shifting | (15) Skid Control & Recovery |
| (6) Backing | (16) Cargo v. Control |
| (7) Visual Search | (17) Vehicle Inspections |
| (8) Communication | (18) Hazardous Materials |
| (9) Speed Management | (19) Mountain Driving |
| (10) Space Management | (20) Fatigue & Awareness |



49 C.F.R. 383

113 - Required Skill

(c) Safe on-road driving skills.

(4) Ability to **choose a safe gap** for changing lanes, passing other vehicles, as well as **for crossing or entering traffic**;

49 C.F.R. 383.111

All CMV operators must have knowledge of the following 20 general areas:

- (1) Safe Operations
- (2) Safe Vehicle Control
- (3) CMV Safety Systems
- (4) Basic Control
- (5) Shifting
- (6) Backing
- (7) Visual Search
- (8) Communication
- (9) Speed Management
- (10) Space Management**
- (11) Night Operation
- (12) Extreme Conditions
- (13) Hazard Perception
- (14) Emergency Maneuvers
- (15) Skid Control & Recovery
- (16) Cargo v. Control
- (17) Vehicle Inspections
- (18) Hazardous Materials
- (19) Mountain Driving
- (20) Fatigue & Awareness

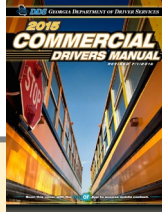
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Georgia CDL Manual: 2.7.7 Space Needed to Cross or Enter Traffic

Because of slow acceleration and the space large vehicles require you may need a much larger gap to enter traffic than you would in a car. Acceleration varies with the load. Allow more room if your vehicle is heavily loaded.

Before you start across a road, make sure you can get all the way across before traffic reaches you.

Federal Highway Administration

COMMERCIAL VEHICLE

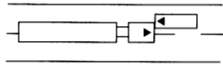
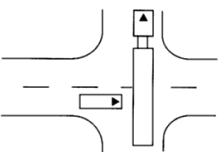


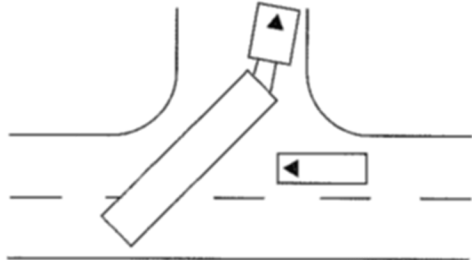
U. S. Department of Transportation
Office of Motor Carriers


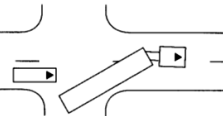


U. S. Department of Transportation
Office of Motor Carriers

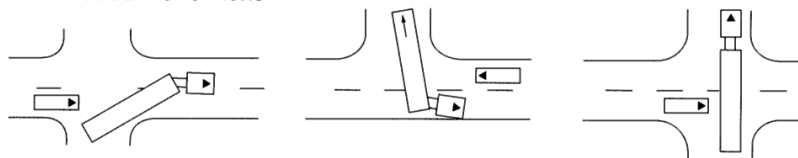
TABLE OF ACCIDENT SITUATIONS AND COUNTERMEASURES

ACCIDENT SITUATIONS	POTENTIAL CAUSES	COUNTERMEASURES
<p>Over-the-centerline head-on</p> 	<p>Illness or fatigue</p> <p>Drug impairment</p> <p>Adverse conditions</p> <p>Inattention or drowsiness</p> <p>Mechanical defect</p>	<p>B8 Using and changing lanes</p> <p>B5 Passing</p> <p>B11 Driving in adverse conditions</p> <p>A5 Drinking and substance abuse</p> <p>A6 Illness and fatigue</p> <p>C1 Preventive maintenance and inspection procedures</p>
<p>Intersection collision</p> 	<p>Misjudging speed and closeness of vehicles</p> <p>Misjudging time for vehicle to clear intersection</p> <p>Failure to obey traffic control device</p> <p>Failure to use mirrors</p>	<p>B7 Crossing intersections</p> <p>B1 Defensive driving</p> <p>B2 Right-of-way</p> <p>C10 Vehicle lighting and conspicuity</p>
<p>Right turn squeeze</p>	<p>Failure to scan space to the</p>	<p>B6 Turning left and right</p>

<p>Left turn across opposing traffic</p> 	<p>Misjudging speed of oncoming traffic</p> <p>Misjudging time for vehicle to clear intersection</p> <p>Failure to obey traffic control device</p>	<p>B6 Turning left and right</p> <p>B1 Defensive driving</p> <p>B2 Right-of-way</p> <p>C10 Vehicle lighting and conspicuity</p>
---	--	--

	<p>to clear intersection</p> <p>Failure to obey traffic control device</p>	<p>B2 Right-of-way</p> <p>C10 Vehicle lighting and conspicuity</p>
<p>Obstructing traffic flow when entering roadway</p> 	<p>Failure to give right-of-way to passing traffic</p> <p>Assuming other driver will see and avoid</p> <p>Aggressive or reckless driving attitude</p> <p>Misjudging speed of oncoming traffic</p>	<p>B2 Right-of-way</p> <p>B1 Defensive driving</p> <p>C10 Vehicle lighting and conspicuity</p>

TYPICAL ACCIDENT SITUATIONS



COUNTERMEASURE

Objective:

To prevent accidents by giving the "right-of-way" until it is apparent that the right-of-way is being given by the other driver.

Description:

Generally the driver who arrives last gives the right-of-way to those who were already there. You give the right-of-way when entering traffic. You give the right-of-way when turning left in front of approaching traffic. You give the right-of-way when changing lanes. You move into your intended path or direction only after you are assured you will not conflict with other traffic.

Questions for management:

- Do your drivers understand the meaning of right-of-way?
- Do you periodically have a qualified person ride with your drivers to evaluate their behavior in right-of-way situations?

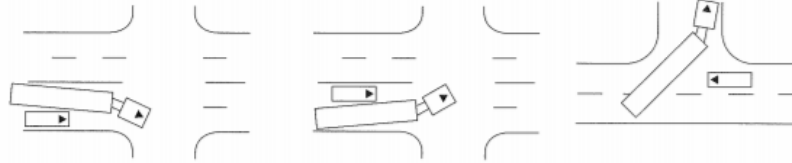
- Do not force other drivers to brake or steer because of your obstructive maneuver into their path.
- Assume other drivers will not see you and avoid you when you maneuver into their path.
- Move into your intended path or direction only after you are assured you will not conflict with other traffic.

REGULATIONS: FMCSR 383.110; 383.111; 383.113; 383.115.

REFERENCES: D1.



TYPICAL ACCIDENT SITUATIONS



COUNTERMEASURE

Objective:

To prevent turning accidents by anticipating the hazards involved and knowing how to safely avoid them.

Description:

Making left or right turns with long vehicles creates problems that automobile drivers do not have. Blind spots make it difficult to see other vehicles. Vehicle length forces drivers to make wide turns, encroaching upon adjacent lanes of traffic. Improper tracking of vehicles makes it difficult for the driver to judge position. Turning takes longer to complete, thus increasing exposure time to hazards. Drivers should recognize the hazards created while

Left turns:

- As you approach turn with signal on, watch for drivers who may misinterpret this signal as an intention to turn somewhere before your intended turning point.
- Don't start turning until there is enough time for the rear of vehicle to clear the intersection without forcing opposing drivers to slow down or swerve.
- Don't assume opposing drivers will see you. They may be looking elsewhere.
- Be careful that improper tracking does not cause the vehicle or trailer to interfere with pedestrians and other vehicles.

- Be careful that improper tracking does not cause the vehicle or trailer to ride up onto curb or strike stationary objects.

Left turns:

- As you approach turn with signal on, watch for drivers who may misinterpret this signal as an intention to turn somewhere before your intended turning point.
- Don't start turning until there is enough time for the rear of vehicle to clear the intersection without forcing opposing drivers to slow down or swerve.
- Don't assume opposing drivers will see you. They may be looking elsewhere.
- Be careful that improper tracking does not cause the vehicle or trailer to interfere with pedestrians and other vehicles.

REGULATIONS: FMCSR 383.111; 383.113; 383 Appendix to Subpart G.

REFERENCES: M1; M2; C2; D1.

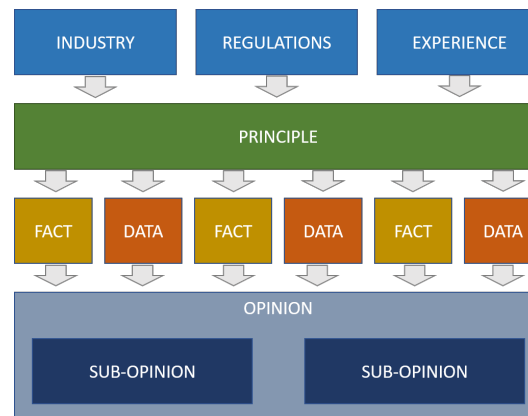


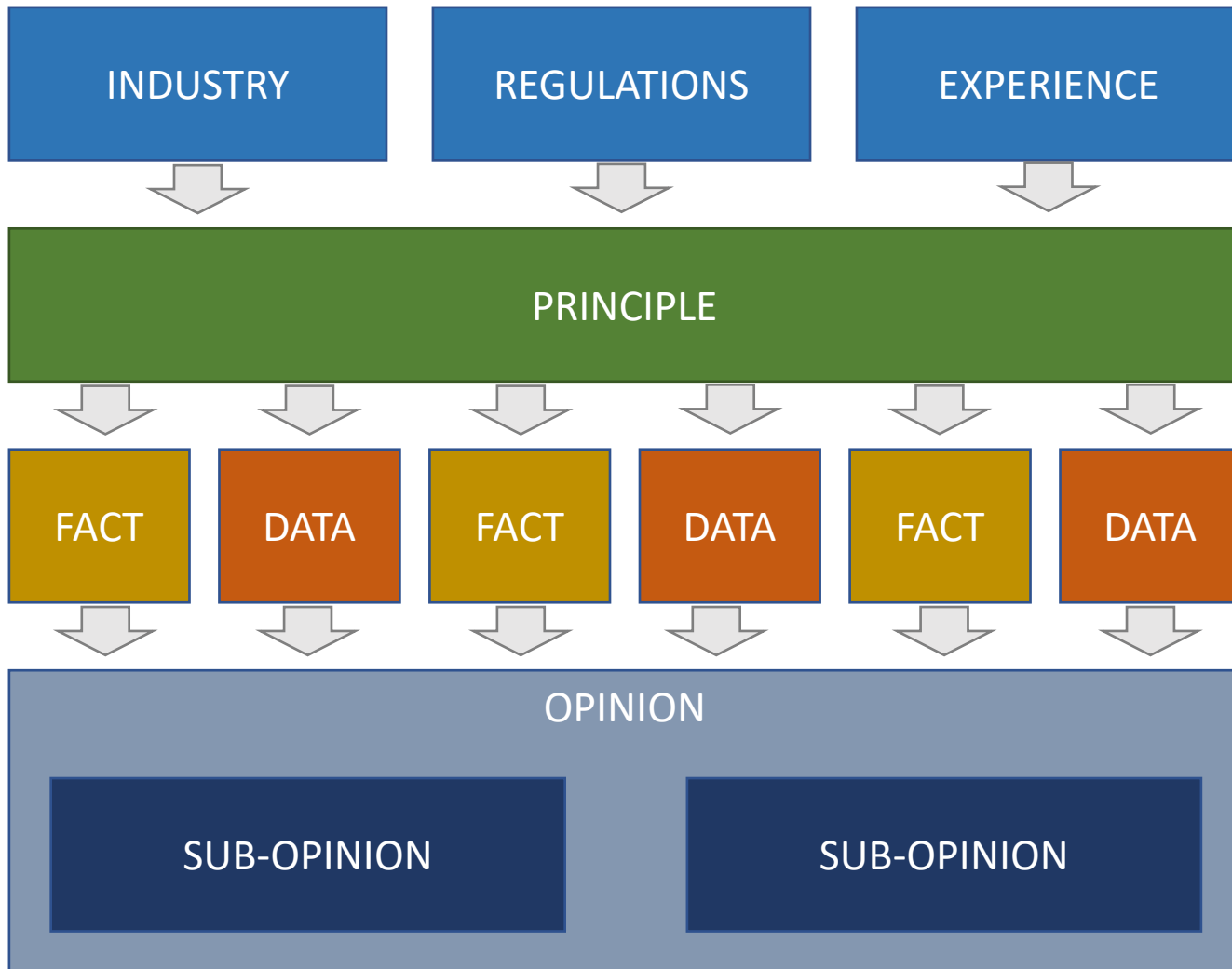
The Daubert Standard

- 1) Qualification
- 2) Helpfulness
- 3) Sufficient Factual Basis
- 4) Reliable Principles and Methods
- 5) Application of Facts to Principles

Daubert - Application

- Preventability Assessment
 - Reasonable and Safer Alternative
- Match up the jury instructions language
- Opinion-Principle-Bases Matrix







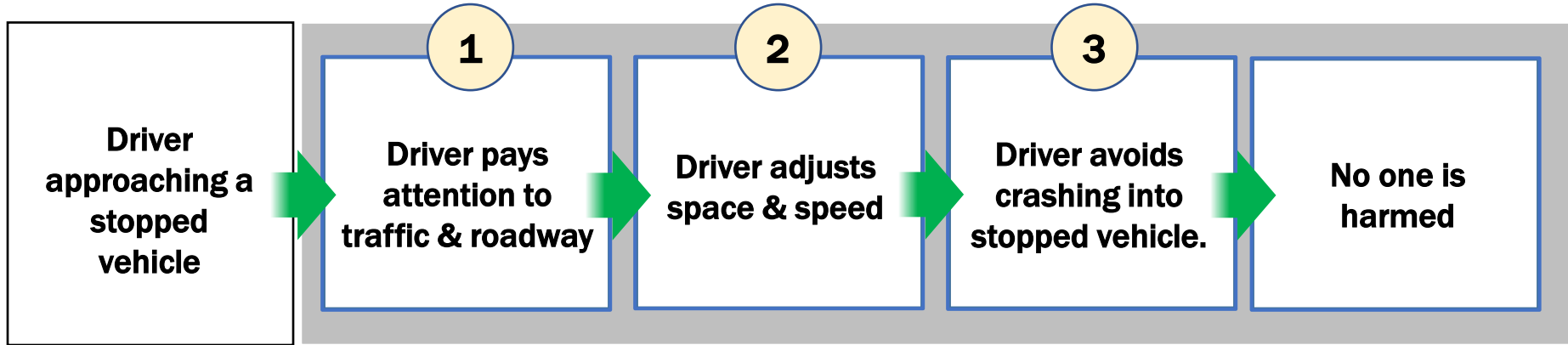






Truck Drivers

What must they do to avoid causing harm to road users?

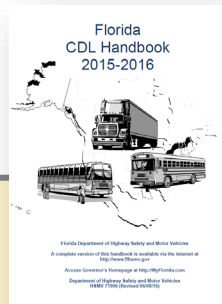




**Florida Statutes
316.1925(1)
Careless Driving**

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for ... traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

**Drivers must
pay attention to
traffic and road
conditions.**



2.4.1 – Seeing Ahead

Because stopping or changing lanes can take a lot of distance, knowing what the traffic is doing on all sides of you is very important. You need to look well ahead to make sure you have room to make these moves safely.

How Far Ahead to Look.

Most good drivers look at least 12 to 15 seconds ahead.

**Truck Drivers
must look ahead
12-15 seconds**



**Federal Motor Carrier
Safety Regulations
49 CFR 392.14
Hazardous conditions;
extreme caution.**

Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, *rain*, dust, or smoke, *adversely affect* visibility or *traction*. *Speed shall be reduced when such conditions exist.*

**Truck Drivers
must reduce
speed when
driving on wet
roads.**

Truck Drivers must watch traffic ahead, as well as sides and rear.

True False



Denilson Castilho

Plaintiff's
Exhibit 12

Truck Drivers must be attentive to road hazards ahead.

True False



Denilson Castilho

Plaintiff's
Exhibit 13

Truck Drivers must adjust speed to traffic conditions ahead.

True False



Denilson Castilho

Plaintiff's
Exhibit 15

Truck Drivers must not drive distracted.

True False



Denilson Castilho

Plaintiff's
Exhibit 17

Principles

- Truck Drivers must watch traffic 12-15 seconds ahead.
- Truck Drivers must anticipate and adjust speed for:
 - Roadway Conditions;
 - Traffic; and,
 - Hazards.



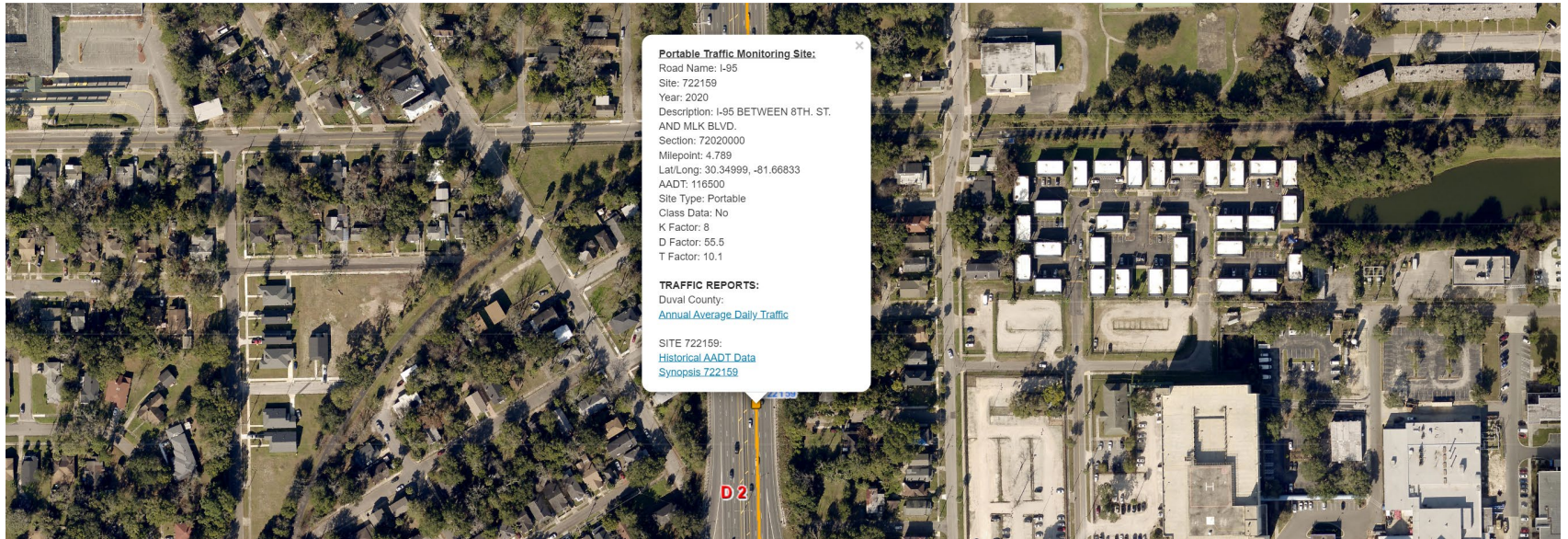
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Index	Elevation	Leg Distance	Leg Time	Leg Speed	Leg Course	Time	Position
1422	89 ft	524 ft	0:00:08	45 mph	358.6° true	8/12/2018 5:09:31 PM	N30° 20.920' W81° 40.097'
1423	87 ft	189 ft	0:00:06	22 mph	358.4° true	8/12/2018 5:09:39 PM	N30° 21.006' W81° 40.100'
1424	95 ft	9 ft	0:00:07	0.9 mph	358.0° true	8/12/2018 5:09:45 PM	N30° 21.037' W81° 40.101'
1425	94 ft	0 ft	0:00:25	0 mph	0.0° true	8/12/2018 5:09:52 PM	N30° 21.039' W81° 40.101'
1470	94 ft	0 ft	0:00:33	0 mph	0.0° true	8/12/2018 5:31:01 PM	N30° 21.039' W81° 40.101'
1471	92 ft	4 ft	0:00:10	0.2 mph	0.0° true	8/12/2018 5:31:34 PM	N30° 21.039' W81° 40.101'
1472	94 ft	0 ft	0:00:19	0 mph	0.0° true	8/12/2018 5:31:44 PM	N30° 21.039' W81° 40.101'

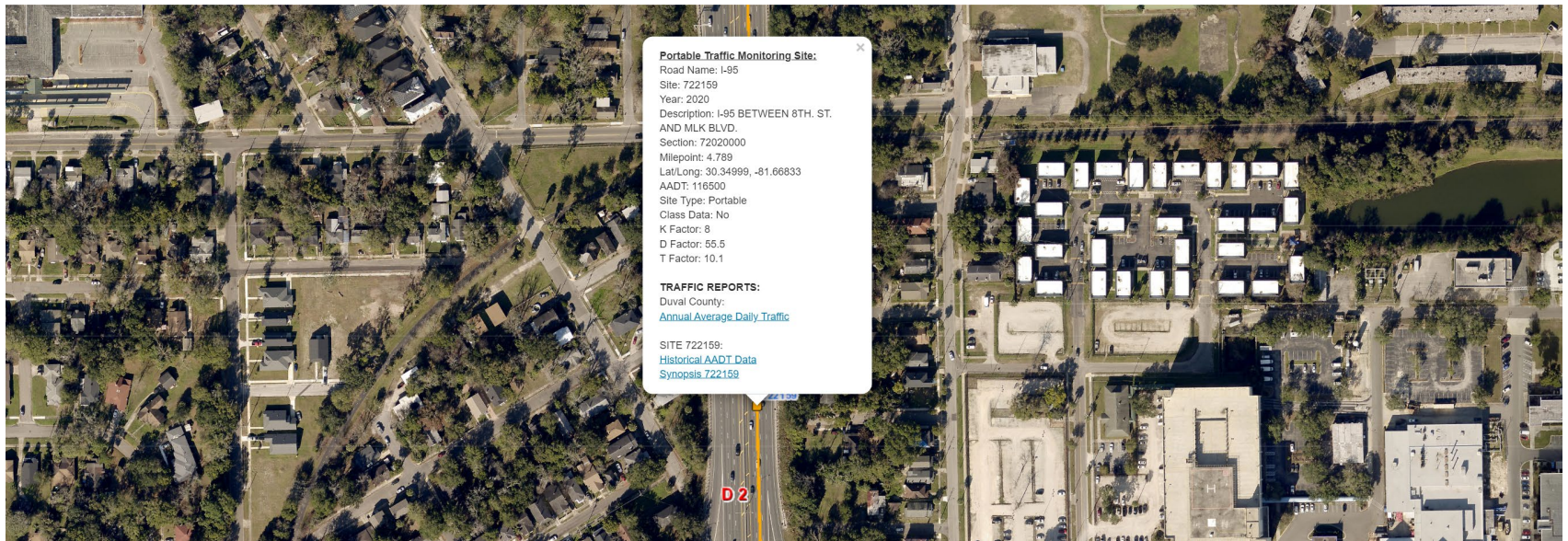


W Fischer P F
Traffic Engineer

August 1, 2019
Right Lane Traffic: 31 / min.
Right Lane Truck: 3/min.



22 minutes:
Approximately 682 vehicles (68 trucks)
avoided the stopped truck



Castilho was looking down in his truck.

Castilho never slowed down or braked as we approached the stopped truck.

There were several triangles behind the stopped truck.

There was no other truck in front of Castilho.

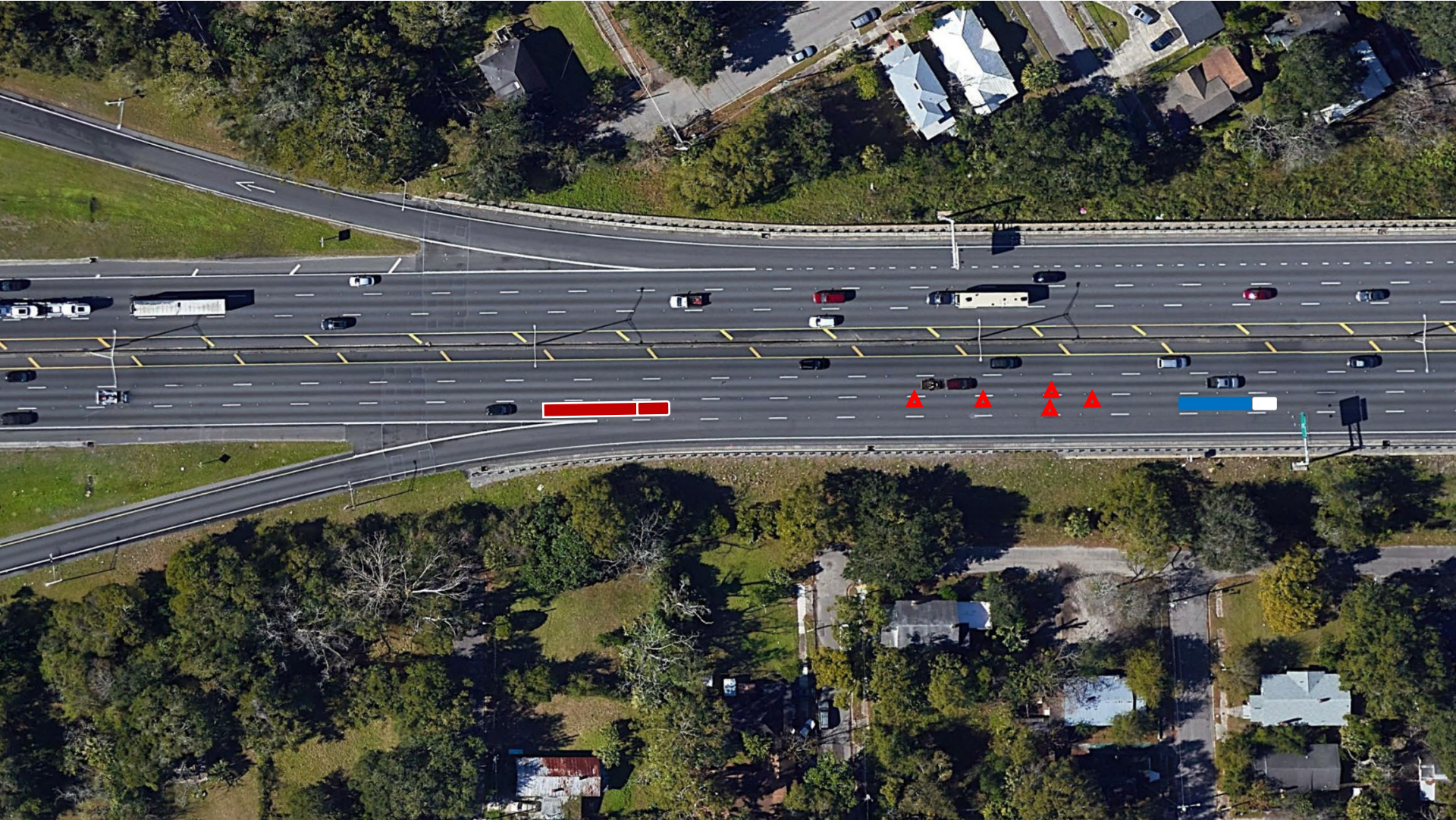


Donna Davenport
Independent Witness

Proficient Truck Data

Asset	Time	Hard Brake (Max)	Hard Brakes	Hard Brakes >10mph/s	Hard Brakes >5mph/s	Hard Brakes >7.5mph/s	Latitude	Longitude	Speed
455 (sold)	8/12/2018 12:57						27.07394	-80.2476	
455 (sold)	8/12/2018 12:58						27.08884	-80.25429	67
455 (sold)	8/12/2018 12:59						27.10287	-80.26311	67
455 (sold)	8/12/2018 13:00	7.7398	1	0	1	1			
455 (sold)	8/12/2018 13:00						27.11593	-80.27354	65.5
455 (sold)	8/12/2018 13:01						27.12982	-80.2831	67
455 (sold)	8/12/2018 17:29						30.31891	-81.68074	57
455 (sold)	8/12/2018 17:29						30.32221	-81.68099	54.5
455 (sold)	8/12/2018 17:30						30.33242	-81.6721	54
455 (sold)	8/12/2018 17:30						30.33728	-81.6685	55
455 (sold)	8/12/2018 17:31						30.35072	-81.66838	24
455 (sold)	8/12/2018 17:31						30.351	-81.66836	
455 (sold)	8/12/2018 17:32						30.35199	-81.6683	0
455 (sold)	8/12/2018 17:32						30.35199	-81.6683	
455 (sold)	8/12/2018 17:32						30.352	-81.6683	0
455 (sold)	8/12/2018 17:35						30.352	-81.6683	
455 (sold)	8/12/2018 17:42						30.352	-81.6683	
455 (sold)	8/12/2018 17:52						30.352	-81.6683	
455 (sold)	8/12/2018 17:57						30.352	-81.6683	
455 (sold)	8/12/2018 18:02						30.352	-81.6683	
455 (sold)	8/12/2018 18:02						30.352	-81.6683	0
455 (sold)	8/12/2018 18:05						30.352	-81.6683	

Plaintiff's
Exhibit 40





Final Rest of Defendant's Truck GPS with 0 speed

550 ft

0 mph 8/12/2018 17:32

Approximate area of impact

Undisputed Facts & Data

- Approximately 341 vehicles were able to avoid a crash.
- Castilho did not apply even mild hard-braking.
- Castilho did not swerve until the last moment.
- Castilho did not see any of the warning triangles.
- Castilho travelled over 550 feet after the collision.

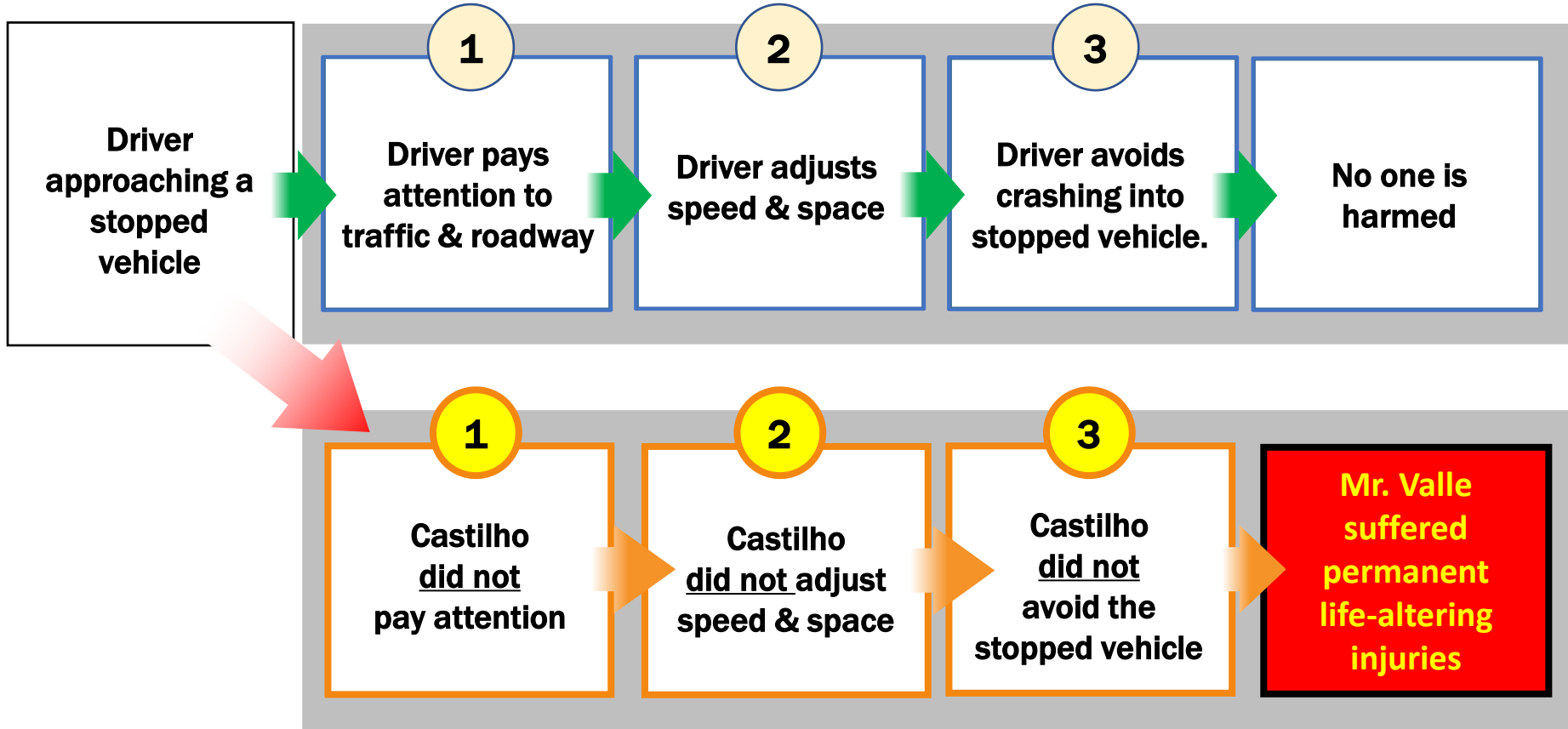
Conclusion:

- Castilho was not watching traffic 12-15 seconds ahead.
- Castilho did not properly adjust his speed for the:
 - Roadway Condition;
 - Traffic head; and,
 - Present Hazard.

Castilho was not paying attention.

Truck Drivers

What must they do to avoid causing harm to road users?



4. State the percentage of any negligence which was a legal cause of damage to Plaintiff, **ORLANDO VALLE** that you charge to (if you answered **NO** to any of the above questions enter 0 as to that litigant in this question):

DENILSON CASTILHO	<u>80</u>	%
PROFICIENT AUTO TRANSPORT	<u>20</u>	%
ORLANDO VALLE	<u>0</u>	%

The total must equal 100%

Compassion & Communication

Com | passion

Com -> co -> with, together

Passion -> pati -> suffer, endure

Comm|uni|cation

Common -> shared

Uni -> one

Cation -> actio -> act

Thank you!

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