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HOW DID YOU
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CONFIDENTIAL SETTLEMENT

Federal Express Tractor-Trailer Collision Cases

Multi-Fatality Highway Crash involving FedEx Truck
that Crashed into Charter Bus Full of Students
Headed to Humboldt State University





Christine Spagnoli is a partner of Greene, Broillet & Wheeler specializing in product liability, personal injury and legal malpractice actions. She has obtained many multimillion-dollar verdicts, including a landmark \$4.9 billion verdict against General Motors in a case involving a defective fuel tank. Christine received the Consumer Attorneys of California's 2014 Robert E. Cartwright Award and its 2010 Marvin E. Lewis Award as well as the Consumer Attorneys Association of Los Angeles Trial Lawyer of the Year Award in 2012 and its Ted Horn Memorial Award in 2005.



Christian Nickerson is a trial attorney at Greene Broillet & Wheeler, LLP specializing in employment litigation, business litigation, catastrophic personal injury, and wrongful death cases. He has achieved over \$160 million in jury verdicts and negotiated settlements on behalf of clients, and is a two-time finalist for CAOC's Consumer Attorney of the Year Award. Christian was named Top 40 under 40 by the National Trial Lawyers and recognized as a Southern California Rising Star, 2015 – 2020.



Arash Homampour is a trial attorney who in the last five years has obtained many successful trial results (ranging from \$2.5 million to \$60 million) against Sunbeam Products, the State of California, Costco Stores, Farmers Insurance Exchange, Allstate Insurance, and Louisville Ladder in a wide array of cases involving dangerous roads, dangerous ladders, dangerous premises, and unlawful employment practices. In 2016, 2018 and 2019, he has been named one of the Top 30 Plaintiff's attorneys in the State by the Daily Journal.



April 10, 2014 at approx. 5:40 p.m.



Highway Accident Report

Truck-Tractor Double Trailer
Median Crossover Collision With Motorcoach
and Postcrash Fire on Interstate 5
Orland, California
April 10, 2014



National
Transportation
Safety Board

Highway Accident Report

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Orland, California
April 10, 2014

Probable Cause

The National Transportation Safety Board (NTSB) determines that the probable cause of the Orland, California, crash was the inability of the FedEx Freight truck driver to maintain control of the vehicle due to his unresponsiveness for reasons that could not be established from available information. Contributing to the severity of some motorcoach occupant injuries were high impact forces; the release of combustible fluids, leading to a fast-spreading postcrash fire; difficulties in motorcoach egress; and lack of restraint use.

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⁶⁴ With an initial speed of 59–57 mph and departing the right southbound travel lane at an angle similar to that of its off-pavement path of travel, the truck-tractor likely struck the motorcoach in about 6.3–6.6 seconds.

Based on the truck driver's lack of braking or other appropriate reaction prior to or during the crash sequence—and witness accounts concerning the driver's behavior and condition—he was unresponsive due to an unknown cause, which prevented him from controlling his vehicle and led to the crash.

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As a result of its investigation, the NTSB determined that the following factors did *not* contribute to the cause of the crash:

- ***Driver experience:*** The truck and motorcoach drivers held current CDLs, were familiar with their vehicles, and had several years of driving experience.
- ***Driver substance impairment and alcohol or drug use:*** Postcrash toxicology test results revealed that neither driver had used alcohol or drugs (prescription or otherwise) prior to the crash.
- ***Driver distraction:*** Neither the truck driver nor the motorcoach driver was using a cell phone just prior to, or at the time of, the truck-tractor's departure from the southbound travel lanes of I-5. Furthermore, there is no suggestion that any other driver distraction caused or contributed to the crash.
- ***Driver operation:*** Precollision braking tire marks found at the scene and witness statements indicated that the motorcoach driver initiated evasive steering and braking just prior to the collision. Furthermore, there is no suggestion that either driver made any operational decisions or errors that caused or contributed to the crash.





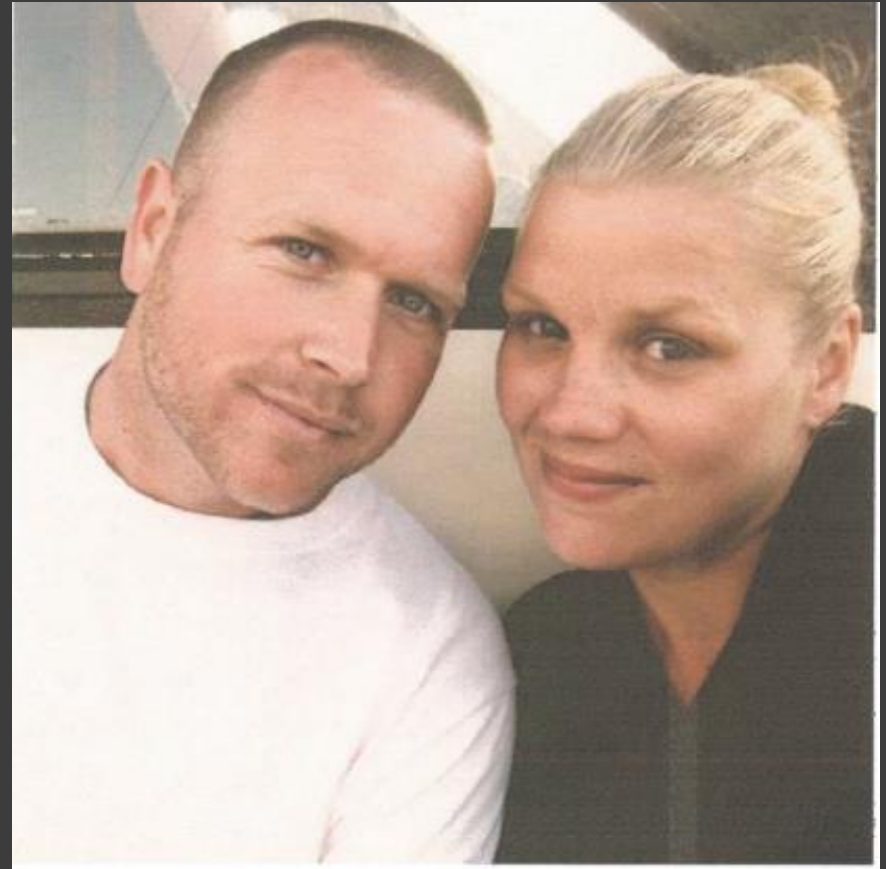
What Really Happened?

- Sudden death?
Or
- Cell Phone Use?



Fed Ex Freight Driver Timothy Evans

- 32 years old
- Married to Candace Evans
 - 2 children
- June, 2011 FX Driver Apprentice Program
 - (trained with Sayra Bautista)
- Class A License August, 2011
- On-call City Driver
 - (Aug. 2011 – Oct. 2013)
- On-call Road Driver
 - (Oct. 2013 – Apr. 2014)





MAIT000847

Medical Emergency Defense

FedEx has the burden of proof that Evans' was not negligent because of sudden unexpected medical emergency. In order to win on this defense, FedEx must prove each of the following three elements:

- 1) that a medical condition or illness was the cause of Evans' loss of control of the truck; AND
- 2) the cause of the medical condition or illness, AND
- 3) that the illness or medical condition was unanticipated by Evans.

Defense Claim of Sudden Incapacitating Medical Emergency?

1. Whitman testimony
2. Ben Lopez
3. Path of vehicle
4. Autopsy findings
 - a) Liver laceration – minimal blood = low blood pressure
 - b) Carboxyhemoglobin percentage negligible
 - c) Minimal soot in trachea

Ben Lopez Statement

9 OFFICER HORNER: You said you got a good look at
10 him?

11 BENJAMIN LOPEZ: Yeah. Well, no, not a good
12 look, but I did get to see a body.

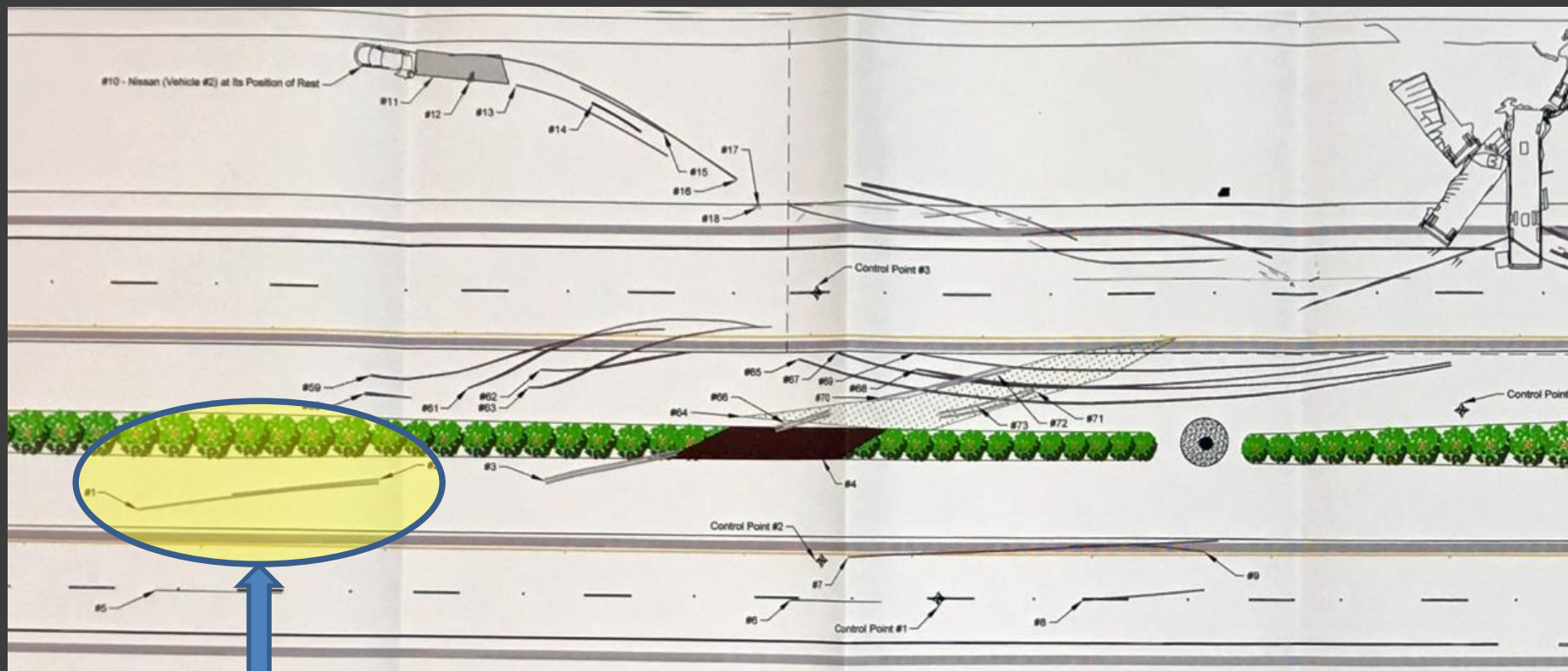
13 OFFICER HORNER: Okay.
14 Could you tell if he -- his nationality?

15 BENJAMIN LOPEZ: No.

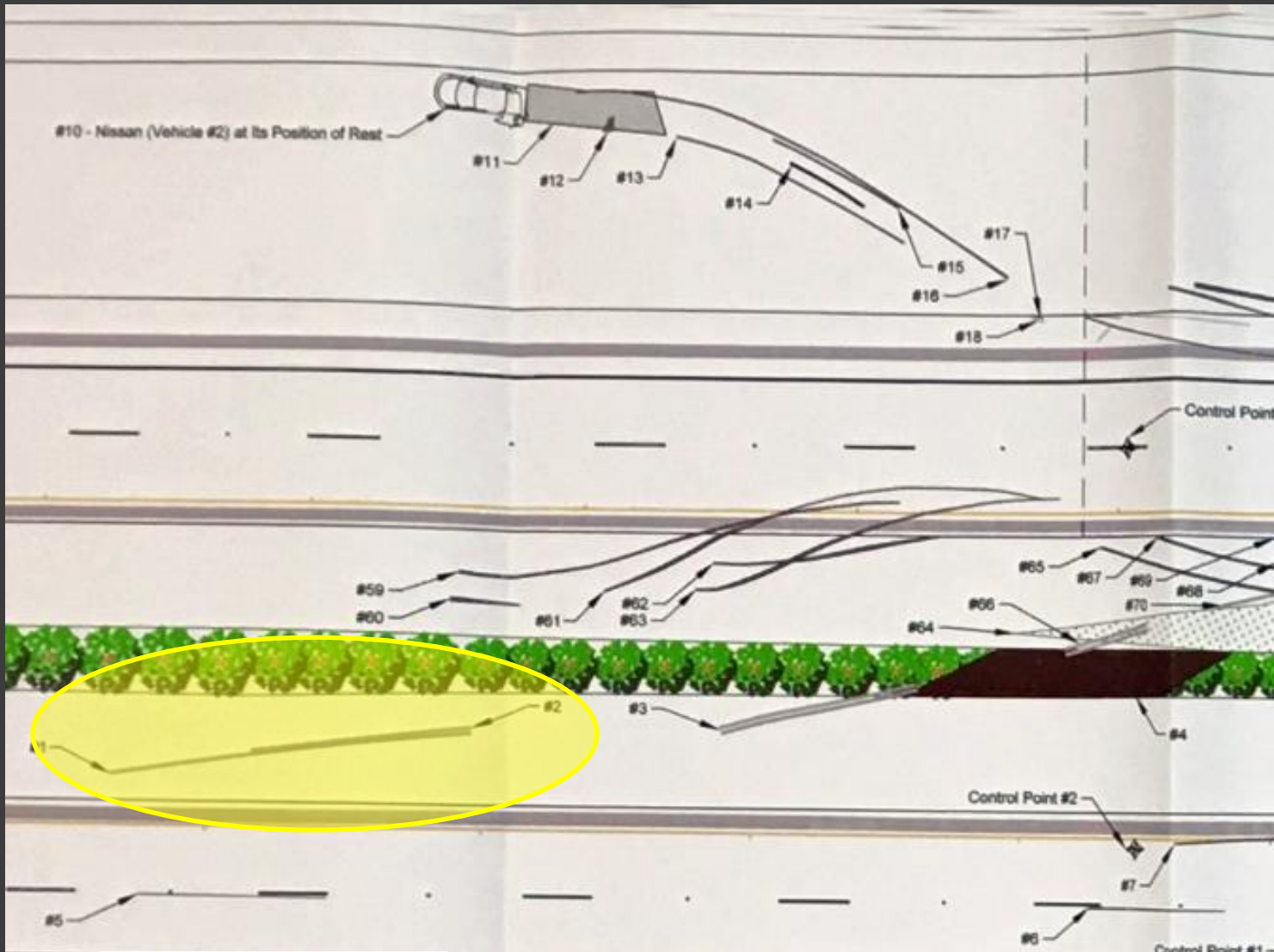
16 OFFICER HORNER: And he would -- you said to the
17 left, so he's slumped towards the door?

18 BENJAMIN LOPEZ: Yeah.

Path of Vehicle Determined by CHP MAIT Team and NTSB



Tire marks 1 and 2



Tire marks 1 and 2







MAIT001117

CHP MAIT TEAM – Missed Tire Marks



Evidence Identification



Green Survey Paint

Path of travel into northbound lanes based on correct tire marks



Defense Expert Admission

Vehicle Dynamics Driver Input

Edward Caulfield of Caulfield Engineering

3 Q. ... since he's consciously steered left into
 4 the median?
 5 A. I'll give you that he consciously steered
 6 left. I won't give you that he consciously steered
 7 into the median.
 8 Q. Okay. He --
 9 A. Those are -- he's not suicidal.
 10 Q. Right. He goes to the left consciously. 01:05PM
 11 You believe that to be --
 12 T. --
 13 Q. --
 14 A. --
 15 speaking of --
 16 Q. -- got no evidence to
 17 support a --
 18 A. Well, do I tell of -- that would cause that,
 19 road grade would cause that, I don't see that;
 20 misalignment could cause that, I don't see that. 01:05PM
 21 He basically has the input, and I'll give
 22 that. COULD BE steered it. I'M BEING
 23 open-minded. He could have gone out at that point
 24 and then tugged on the wheel a little bit. That's
 25 not much steering wheel input. 01:06PM
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1 or the way I've seen that happen -- it's
 2 happened to me. When you normally drive a truck,
 3 and I've driven a lot of them on test track, the
 4 same way that you drive your car. You don't hold
 5 your steering wheel straight. You go back and
 6 forth, back and forth, probably to 12:00 o'clock and
 7 1:00 o'clock.
 8 If he went to do one of the six and then
 9 went out, he'll end up at 11:00. You know what I
 10 mean. YOU DIDN'T -- 01:27PM

11 Q. Well, but you've told us conscious left
 12 steer up to 11:00 on the clock gets him in the
 13 median; right?
 14 A. Halfway between 12:00 and 11:00. If he
 15 keeps that he goes -- he initially goes over the 02:02PM
 16 line.
 17 Now, as he goes over, it'll start to
 18 do first let go on this, we'd probably get the same
 19 thing.
 20 Q. Well, but we're not talking about what you
 21 might do or what you probably did.
 22 what you did do and what your work 02:03PM
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1 demonstrates is that he's got his hands on the
 2 wheel, he's turned to the left, he gets into the
 3 median and then, according to you, lets go.
 4 Getting into the median is not reasonable;
 5 correct? 02:03PM
 6 MR. BONSOM: Object to incomplete
 7 hypothetical, vague and ambiguous --
 8 THE WITNESS: No.

A. I'll give you that he consciously steered left.

Vehicle Dynamics Accident Reconstruction

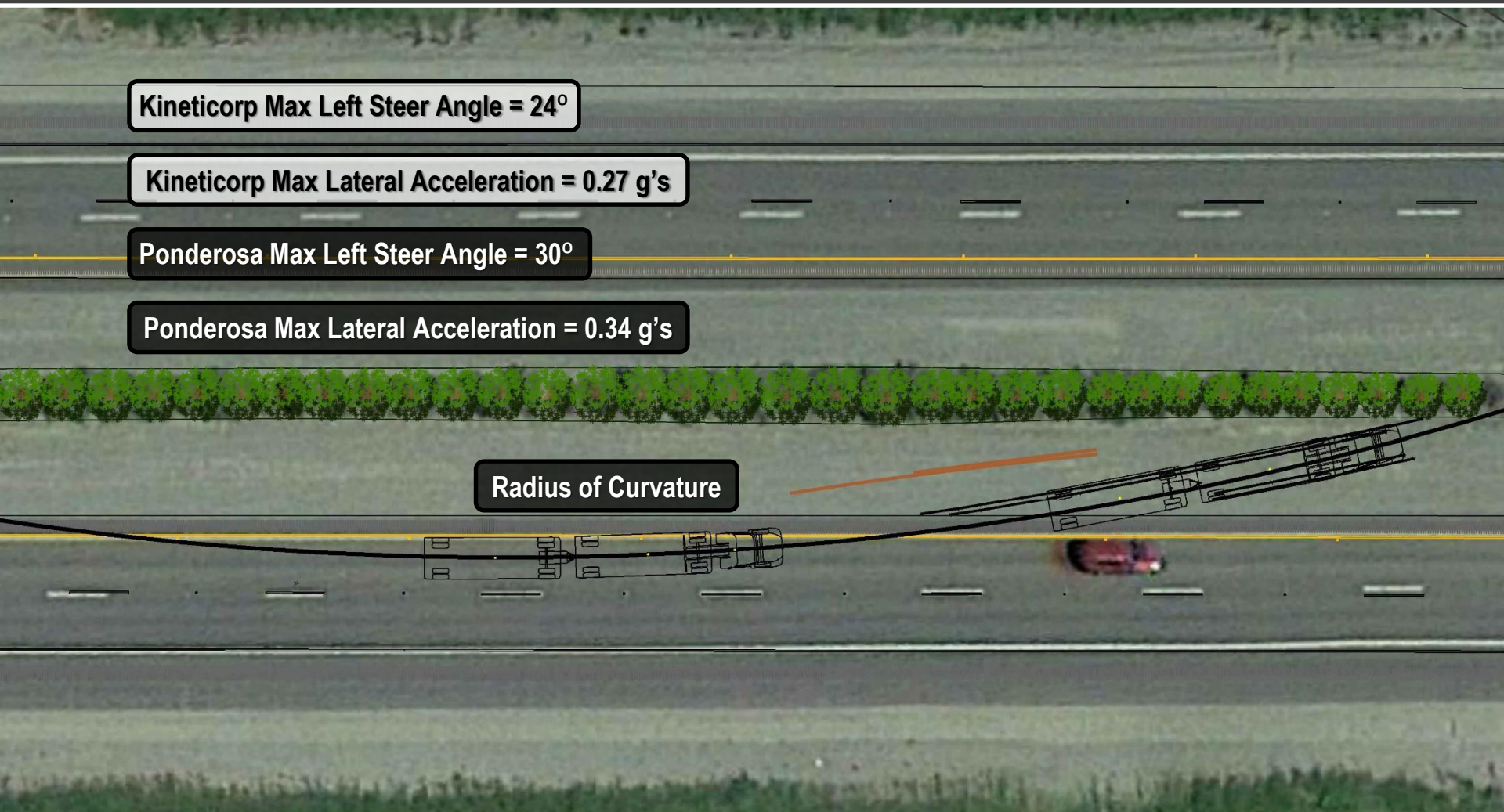
Kineticorp Max Left Steer Angle = 24°

Kineticorp Max Lateral Acceleration = $0.27 \text{ g}'\text{s}$

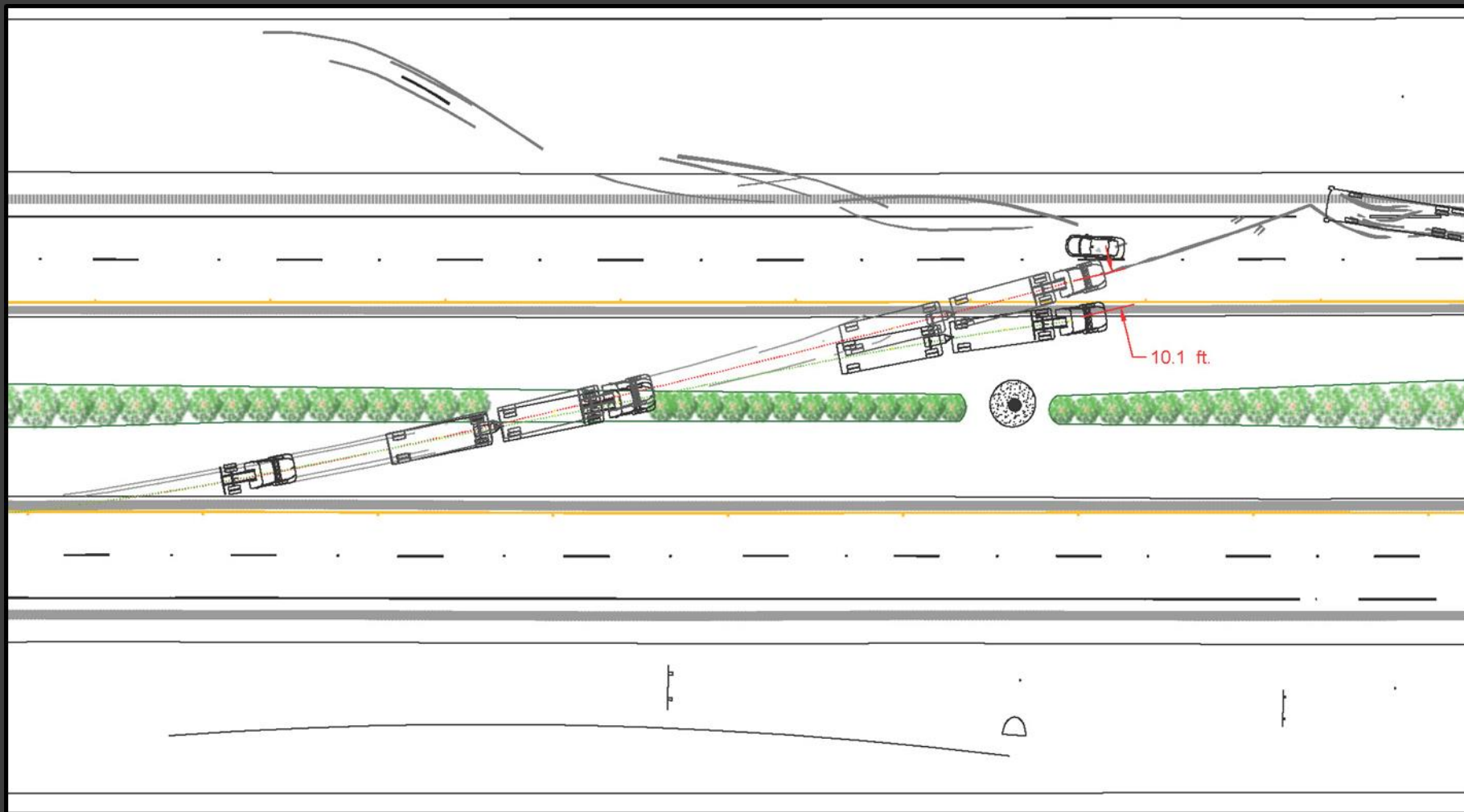
Ponderosa Max Left Steer Angle = 30°

Ponderosa Max Lateral Acceleration = $0.34 \text{ g}'\text{s}$

Radius of Curvature

An aerial photograph of a multi-lane highway with a grassy median and shoulder. A black line indicates a curve in the road. A white vehicle model is positioned at the start of the curve, and a red vehicle model is further along. A black line with an arrowhead points from the 'Radius of Curvature' label to the curve. An orange line is drawn parallel to the road's edge on the right side.

Vehicle Path With and Without Steering Using HVE Program



Was There a Sudden Incapacitating Medical Emergency?

1. Autopsy findings

- a) Liver laceration – minimal blood = low blood pressure
- b) Carboxyhemoglobin percentage negligible
- c) Minimal soot in trachea

Are Evans Autopsy Findings Significant?

Evans Autopsy Findings

- Carboxyhemoglobin level negligible (<3%)
- No carbon monoxide detected
- No cyanide detected
- Small amount of soot in trachea

Bus Passenger Autopsy Findings

- Denise Gomez
- Ishmael Jimenez
- Michael Myvette
- Mattison Haywood
- All had negligible carboxyhemoglobin (<3%)
- No cyanide or carbon monoxide detected
- All died from asphyxiation
- Small amounts of soot

What Really Happened?

- Sudden death?
Or
- Cell Phone Use?



April 10, 2014 at 5:38 p.m.

4/10/14	Mobile Internet	11:22 AM	0.1533	Megabytes
4/10/14	Mobile Internet	11:37 AM	1.1220	Megabytes
4/10/14	Mobile Internet	1:25 PM	1.0458	Megabytes
4/10/14	Mobile Internet	2:45 PM	1.8740	Megabytes
4/10/14	Mobile Internet	4:31 PM	0.8281	Megabytes
4/10/14	Mobile Internet	5:38 PM	0.0488	Megabytes

April 10, 2014 at approx. 5:40 p.m.



4/10/14	Mobile Internet	11:22 AM	0.1533	Megabytes
4/10/14	Mobile Internet	11:37 AM	1.1220	Megabytes
4/10/14	Mobile Internet	1:25 PM	1.0458	Megabytes
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4/10/14	Mobile Internet	4:31 PM	0.8281	Megabytes
4/10/14	Mobile Internet	5:38 PM	0.0488	Megabytes

T-Mobile bill large enough to be:

- (1) a sent or received email message;
- (2) a message on a web-based messaging app;
- (3) viewing a picture/article on the internet;
- (4) accessing or refreshing a mobile website, or
- (5) using an internet to check the weather, the news, or a sports score.



Q. So there's more -- more data being transmitted/received according to your experiment than is reflected for the time period on the bill; correct?

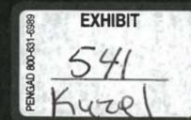
A. So, yeah. According to the experiment, the amount of data transmitted and received between 3:29 and 4:23 is greater than the amount tagged at 4 p.m. of 8.9, yeah.

Q. Is the activity of Exponent employee Kevin running YouTube on his phone at 4:15 p.m. on June 1, 2017 reflected on the T-Mobile bill?

THE WITNESS: Well, the specific actions that he took at 4:15 aren't reflected by a time stamp at 4:15.

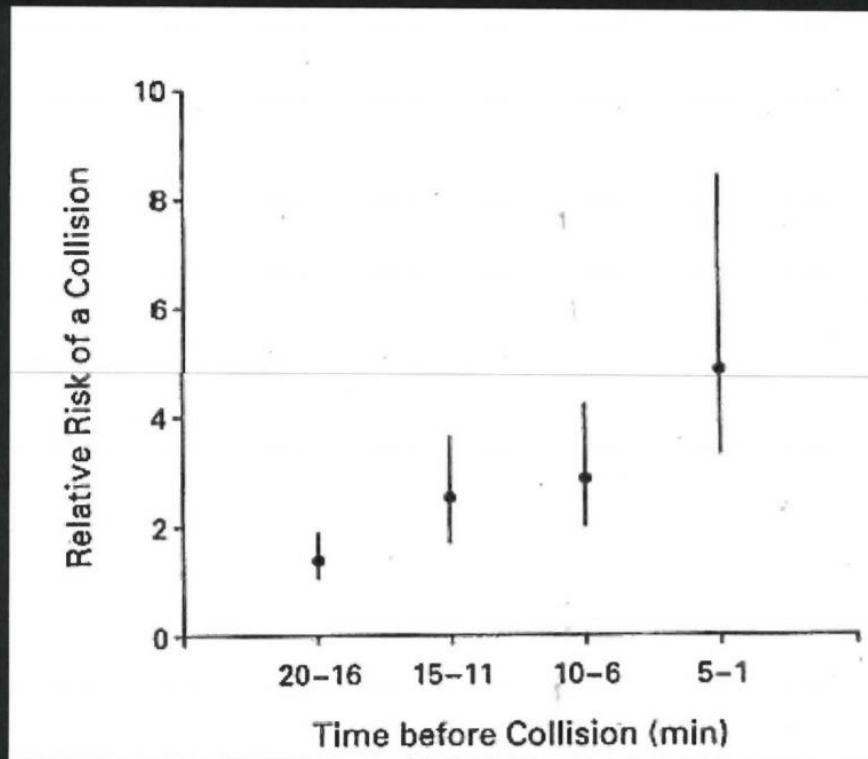
Cell phone distracted drivers, testing the margins of safety

Michael J. Kuzel, P.E., CHFP
Exponent, Inc.



Exponent®

Relating cell use to risk of collision



Exponent

Its ok, I'm looking at the road

- Looking at \neq attending to
- Our eyes can be looking in one direction and our attention directed to another
 - e.g., adjusting the radio while keeping your eyes on the road.



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Key Court Rulings

- Defense MIL #1: Exclude cell phone data usage
- Defense MIL #2: Exclude cell phone text/phone usage
- Plaintiffs' MIL #1 NTSB Report
- Plaintiffs' MIL #2 CHP/MAIT Report

Plaintiffs' MILS to Exclude NTSB and MAIT Reports

PLAINTIFFS' MOTION IN LIMINE NOS. 1 & 2

Both motions are granted.

Plaintiffs move to preclude FedEx from referencing the National Transportation Safety Board report on the accident at issue. FedEx concedes that, per section 1154 of title 29 of the United States Code, which states, “No part of a report of the [National Transportation Safety] Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.” (49 U.S.C. § 1154(b).) However, this provision bars admission of “the report containing the [National Transportation Safety] Board's determinations, including the probable cause of an accident[.]” (49 C.F.R. § 835.2.) It does not bar admission of “the report containing the results of the investigator's investigation of the accident.” (*Ibid.*) Thus, FedEx concedes that it cannot introduce the May 13, 2015 Highway Accident Report by the National Transportation Safety Board, but contends it may introduce any reports of facts investigators for the National Transportation Safety Board observed.

Defense MILs RE Cell Phone Records

DEFENDANT'S MOTION IN LIMINE NO. 1

The court denies FedEx's motion to preclude Hoyt from introducing, referencing, and relying at trial on mobile internet billing records relating to the cell phone number associated with Timothy Evans, the truck driver. (Defendant's Motion in Limine No. 1, p. 2.)

Defense MIL #2

Re Prior Cell Phone Use

DEFENDANT'S MOTION IN LIMINE NO. 2

The motion is denied.

FedEx moves to preclude Hoyt from “introducing, referencing, and relying at trial on billing records relating to the calls and text messages made from and received by the cell phone number associated with Timothy Evans, the truck driver, . . . ; and (b) making any argument or suggestion that Evans was on a call or sending/receiving text messages at the time of the accident.” (Defendant’s Motion in Limine No. 2, p. 2.)

These records tend to show that, while driving, Evans was in the habit of bringing his phone with him and leaving it turned on. This fact affects the probability that the 5:38 p.m. data transmission affected Evans’s driving: it raises the probability above zero. How much beyond zero is for the jury to decide. Moreover, these records are relevant to rebut the inference that Hoyt obeyed FedEx's rule barring cell phone use.

CONCLUSION / QUESTIONS

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