Case #: 1046219

No. 59273-8

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ROBIN STANLEY,

Appellants,

v.

SIERRA PACIFIC LAND & TIMBER d/b/a SIERRA PACIFIC INDUSTRIES, d/b/a SIERRA PACIFIC WINDOWS, d/b/a SIERRA PACIFIC INDUSTRIES INC., Foreign Corporations registered in Washington; and MARCIA TOBEY and JOHN DOE TOBEY, husband and wife, and the marital community comprised thereof,

Respondents.

PETITION FOR REVIEW

KIRKPATRICK SYMANSKI PARKER
Dan Kirkpatrick, WSBA 38674
Zach Parker, WSBA 53373
6161 NE 175th Street, Suite 203
Kenmore, WA 98028
(206) 629-5489
Attorneys for Respondents Sierra Pacific Industries, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. IDENTITY OF PETITIONER

Petitioners are defendants Sierra Pacific Industries Inc. ("SPI") and its employee Marcia Tobey.

II. CITATION TO COURT OF APPEALS DECISION

Petitioners ask the Washington Supreme Court to review the Washington State Court of Appeals Division Two opinion *Stanley v. Sierra Pac. Land & Timber*, 567 P.3d 1161, filed April 29, 2025, and the Washington State Court of Appeals Division Two's "Denying Motion for Reconsideration" dated August 27, 2025.

III. ISSUE PRESENTED FOR REVIEW

1) Did the Court of Appeals err by finding that a driver with special training (such as a commercial driver's license) has an enhanced duty of care while driving?

IV. STATEMENT OF THE CASE

A. Summary of Case

This is a personal injury lawsuit arising from a motor vehicle collision at an intersection. Plaintiff took a blind left in

front of Ms. Tobey, and they collided. It was a typical favored v. disfavored driver accident, and the Superior Court judge dismissed plaintiff's claims against Ms. Tobey and SPI on summary judgment because liability was clear. The Court of Appeals reversed and remanded, finding that Ms. Tobey, as a holder of a commercial driver's license ("CDL"), potentially had special driving abilities that created an issue of fact about liability. In effect, the Court of Appeals created a new tort for negligent commercial driving.

Until the Court of Appeals decision, no Washington court had imposed an enhanced duty of care on a driver with a CDL. Most other states that have considered this enhanced duty of care have rejected it. Even if it made sense to apply an enhanced duty of care in certain situations (say, when a CDL holder was performing a driving maneuver unique to a commercial vehicle), an enhanced duty is inappropriate in a standard motor vehicle collision like this.

This collision happened on May 21, 2019, on Portland Avenue in Tacoma and it was filmed by Petitioner's dash camera. That footage shows plaintiff taking a blind left turn in front of Ms. Tobey's lane. The dash cam footage shows in the bottom right corner the seconds that elapsed before, during, and after the collision (circled in red):

CP Ex. 1. The collision occurred at 08:13:47. Ms. Tobey had one second to avoid striking plaintiff.

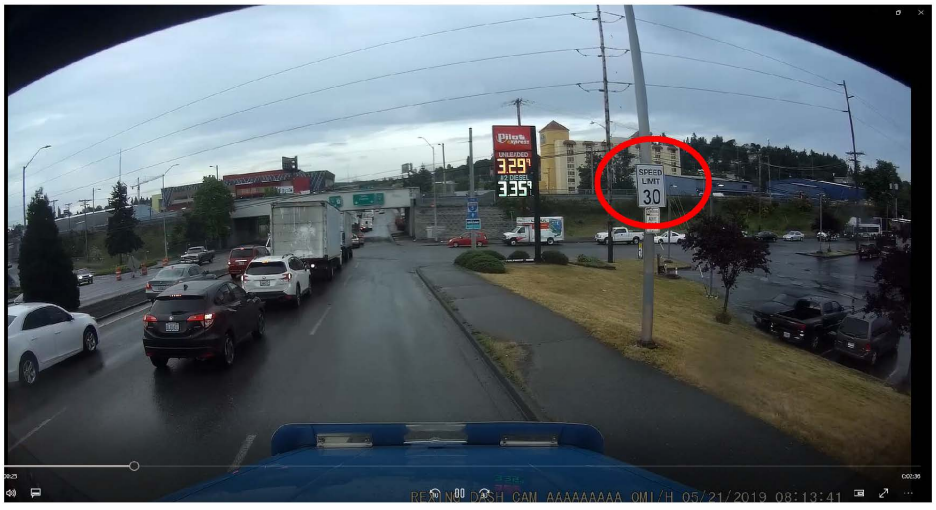
Pierce County Superior Court judge Phillip K. Sorensen granted SPI and Ms. Tobey's motion for summary judgment, dismissing all claims against them. Plaintiff continued to litigate

the lawsuit in Superior Court against the driver and owner of the white truck (on the left side of the photo above) and then, after resolving those claims, plaintiff appealed Judge Sorensen's Order granting summary judgment. Without holding oral argument, Division II of the Court of Appeals reversed and remanded.

B. The Collision, Second by Second

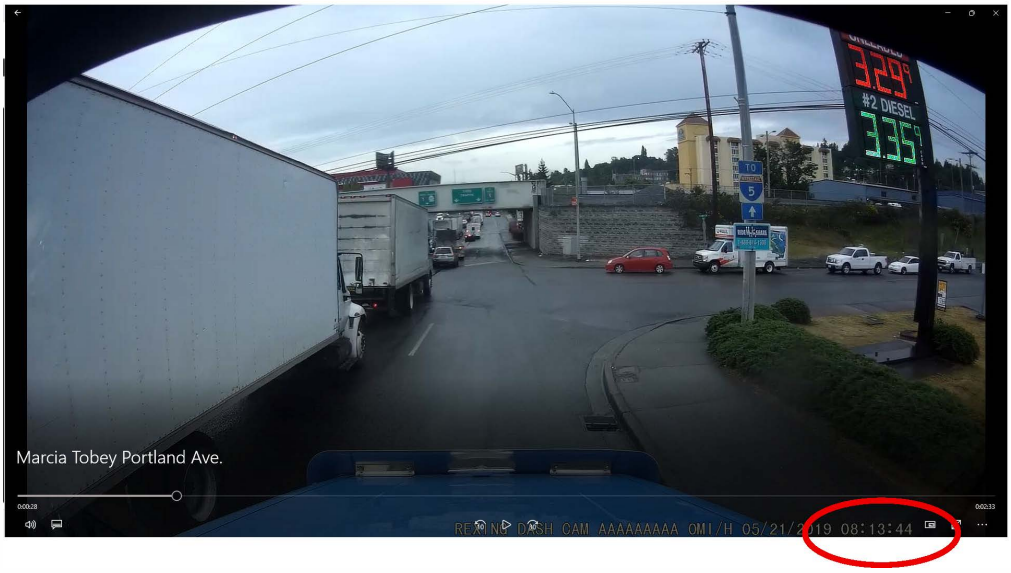
On May 21, 2019, Ms. Tobey was driving a blue semi-truck owned by her employer SPI along Portland Avenue toward Interstate 5 ("I-5") in Tacoma. In the direction that Ms. Tobey was driving, Portland Avenue is three lanes wide. At the time of the collision, the two left lanes were stop-and-go, as pictured below (with the blue hood of Ms. Tobey's vehicle in the foreground):

CP Ex. 1 (screen shot of dash cam footage from ten seconds before collision). Ms. Tobey merged into the far-right lane (or, "curb lane") and proceeded toward I-5. The posted speed limit is 30 miles per hour:



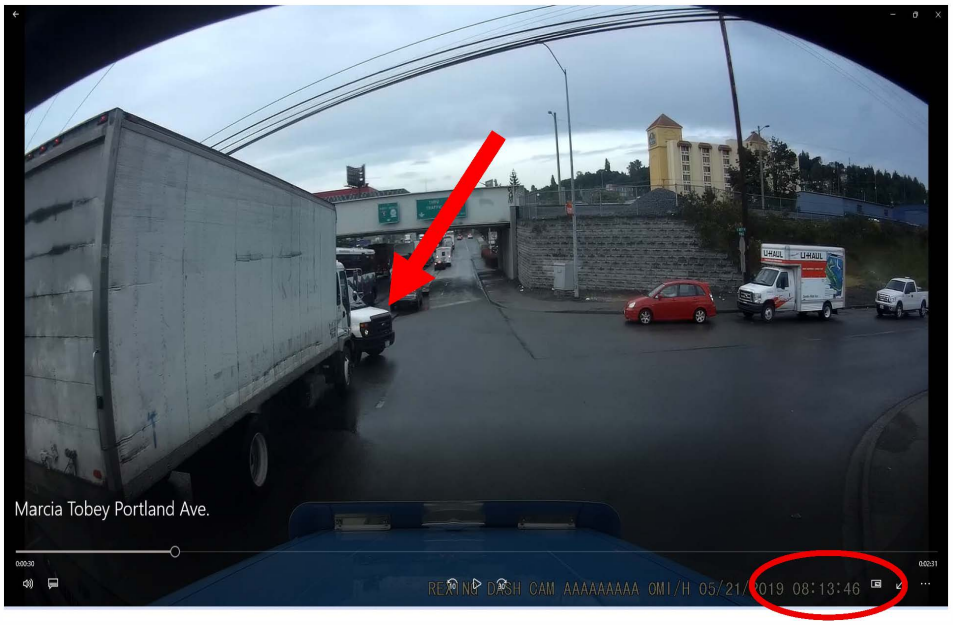
CP Ex. 1 (screen shot of dash cam footage from six seconds before the collision). Plaintiff's white van is not visible at this point.

The traffic that was stopped in the lanes to the left of Ms. Tobey obstructed her view of any attempts to turn left across her lane.. That traffic also limited her ability to swerve out of the way of plaintiff's turning white van, which was still not visible three seconds before the collision:



CP Ex. 1 (screen shot of dash cam footage from three seconds before the collision).

The screenshot below shows the first moment that plaintiff's vehicle (indicated by the red arrow) became visible to Ms. Tobey, which was one second before the collision:

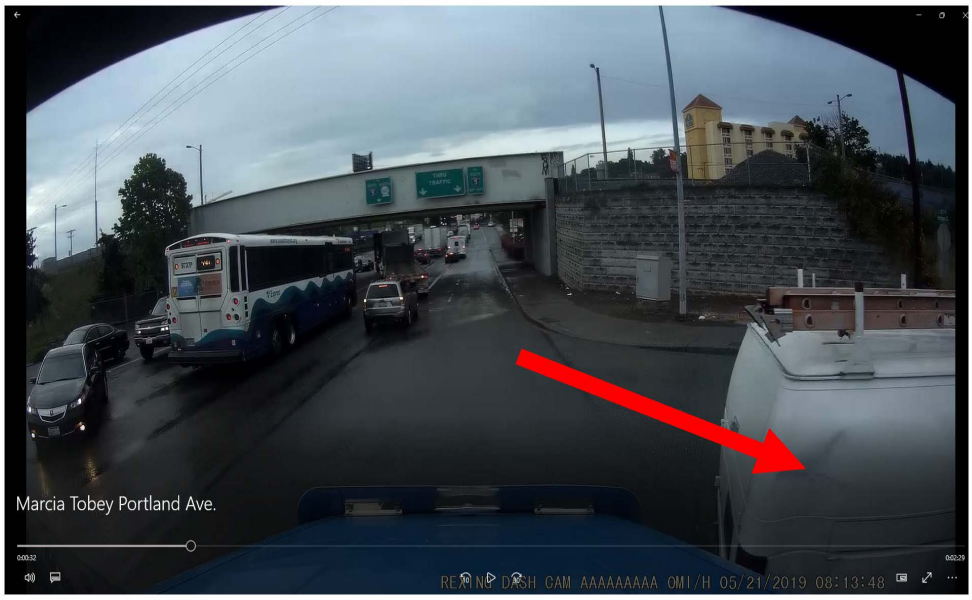


CP Ex. 1 (screen shot of dash cam footage from one second before the collision). The time stamp is 08:13:46.

Plaintiff turned left across the uncontrolled intersection and, one second later, was in front of Ms. Tobey's truck:

CP Ex. 1 (screen shot of footage immediately before the collision). The time stamp for this moment is 08:13:47, which is one second after the previous image's time stamp of 08:13:46. Ms. Tobey had one second to try to avoid colling with plaintiff.

The front of Ms. Tobey's truck struck the rear passenger side of plaintiff's van:



CP Ex. 1. Ms. Tobey did not have enough time to avoid the collision. CP 78-79 (Declaration of Marcia Tobey ¶ 3). The dash cam footage at 08:13:46-08:13:47 (just before impact) shows Ms. Tobey's truck shaking in response to her emergency braking. CP Ex. 1.

While Ms. Tobey was proceeding in the curb lane, no other vehicles turned left across that lane except plaintiff. CP Ex. 1 dash cam footage. The dash cam footage shows Ms. Tobey traveling below the posted speed limit of 30 miles per hour, and plaintiff does not allege that she exceeded that speed limit.

C. Plaintiff Admits He Drove Across an Oncoming Lane That He Could Not See

In his written discovery responses, plaintiff explained that the traffic in two of the three lanes of oncoming traffic had stopped for him, and that even though his view of the third lane of oncoming traffic (the curb lane, where Ms. Tobey was driving) was "partially obstructed," he "relied on the driver of the white truck in the center lane to verify it was safe to cross":

> Prior to making the left turn I was yielding to vehicles travelling southeast on Portland Ave E. I waited until the southeast bound vehicles came to a complete stop. I had moved to the point where I could best observe, and I could see that the vehicles in the leftmost and center southeast bound lanes had come to a complete stop and had left the intersection open and clear for me to turn left. At the point that I could most clearly observe the slow lane, the slow lane was clear of vehicles, however, ***because my view of the lane was partially obstructed by a white truck in the center lane heading southeast on Portland Avenue E, I looked up at that driver.*** The driver of the white truck that was stopped in the center lane then waved me to enter and cross the slow lane.
>
> ***I relied on the driver of the white truck in the center lane to verify it was safe to cross when the driver waved me on indicating that it was safe to***

> ***cross the slow lane.*** I moved forward in front of the white truck in the center lane and was almost all the way across when I was violently hit by a large Sierra Pacific tractor trailer.

CP 120 (emphasis added).

D. Procedural History

Plaintiff sued SPI and Ms. Tobey for negligence, alleging that Ms. Tobey should have avoided colliding with him. CP 22-42 (Amended Complaint dated April 28, 2022; plaintiff also alleged that the driver of another vehicle waived him on, encouraging him to take his left). SPI and Ms. Tobey moved for summary judgment dismissal of all claims against them. The Court viewed the dash cam footage as part of the motion. The Court granted summary judgment and dismissed all claims against SPI and Ms. Tobey. The Court denied plaintiff's Motion for Reconsideration. After plaintiff resolved his claims against the owner and driver of the white truck, he appealed the Superior Court's order granting summary judgment.

The Court of Appeals reversed and remanded, holding that Ms. Tobey "possessed a CDL at the time of the accident" and "enjoyed knowledge and expertise that an ordinary driver does not." *Stanley v. Sierra Pac. Land & Timber*, 567 P.3d at 1169. Because of this special knowledge and expertise, "the finder of fact must consider whether a reasonable semitruck driver with the same knowledge and expertise would have conducted themselves in the same manner as Sierra's driver." *Id.* Before issuing its published opinion, the Court of Appeals did not hold oral argument. SPI and Ms. Tobey moved for reconsideration, which the Court of Appeals denied.

V. ARGUMENT

The Court should accept review under RAP 13.4(b) because this petition presents an issue of substantial public interest, and the Court of Appeals decision conflicts with Court of Appeals, Division Three's published opinion *Mossman v. Rowley*, 154 Wn. App. 735, 229 P.3d 812 (2009).

A. The Petition Involves an Issue of Public Interest

"A petition for review will be accepted by the Supreme Court only: . . . (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b). This case is of substantial public interest because of how many drivers on Washington roads have a CDL (or other special training, such as defensive driving courses). While the actual number of CDL holders is unknown, Washington requires a CDL of anyone driving a vehicle that:

> (a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of any towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or
>
> (b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater; or
>
> (c) Is designed to transport 16 or more passengers, including the driver; or
>
> (d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or
>
> (e) Is a school bus regardless of weight or size.

RCW 46.25.010; *see also* RCW 46.25.050 ("Drivers of commercial motor vehicles must obtain a commercial driver's license as required under this chapter.") This definition covers many commercial vehicles commonly seen on the road. Under the Court of Appeals' opinion, the analysis these drivers' liability "encompasses their knowledge and expertise as a CDL driver." *Stanley*, 567 P.3d at 1170. The Court of Appeals of Ohio considered this same issue and correctly saw the problem with a heightened duty of care on CDL drivers:

> A heightened duty of care for commercial drivers in Ohio would place some portion of the responsibility for ***every accident*** on a commercial driver, ***simply because he or she has been instructed to be a defensive driver.***

Davis v. Brown Local Sch. Dist. 131 N.E.3d 431, 446 (Ohio Ct. App. 2019) (emphasis added).

Division II of the Court of Appeals insisted it was "not adopting a heightened standard of care for CDL drivers" but instead was "relying on long-standing principles of tort law that

incorporate special skill when applying the ordinary standard of care." *Stanley*, 567 P.3d at 1170. This makes the Court's holding broader and of even greater public interest because it applies not just to CDL holders, but also to anyone with a "special skill" related to driving. Under the Court's opinion, it is now relevant how many years someone has been driving; whether they have taken defensive driving courses; whether they have worked as a commercial driver; and whether they have driven professionally for rideshare services. Left-turning litigants will now deny liability and blame the driver with the right-of-way if there is any evidence that the right-of-way driver had a "special skill." The Court's opinion opens that door and encourages litigants to make liability in motor vehicle collision cases more complicated than it should be. This will harm defendants *and* plaintiffs because plaintiffs usually are the favored driver and defendants, who are usually disfavored drivers, often admit liability. The Court of Appeals' opinion encourages defendants to deny liability in

standard car accident lawsuits and instead do discovery on whether the plaintiff had special driver training.

This case is also of public interest because the Court of Appeals applied a heightened duty of care on a CDL driver in a *routine collision*. This makes the Court of Appeals' opinion apply across the state in any collision, just as long as one driver (which could be a plaintiff or a defendant) has some training beyond what is required to get a regular driver's license.

It would perhaps make sense to hold drivers with extra training to a different standard of care if they caused an accident while performing a specialized task but imposing a heightened duty of care in a typical collision like this means this opinion applies to all collisions involving a motorist with extra training. For this reason, one out-of-state case rejected the heightened duty of care because that case was a standard car crash, not a crash involving a technical aspect of trucking:

> Turning to the case at bar, perhaps a more specialized instruction would have been warranted had defendant been driving a truck which contained

> hazardous materials and plaintiff was injured by exposure to those hazardous materials after an accident. But this was an ordinary traffic accident with an ordinary question: was the truck driver negligent in turning when he did rather than yielding the right-of-way and waiting for the bus to pass. While it is certainly true that if a person is driving a vehicle that takes longer to complete a turn, then greater distance must be allowed with respect to the oncoming traffic before starting the turn. But that does not change the nature of the duty. The duty remains that of ordinary care as exercised by a reasonably careful person.

Tavorn v. Cerelli, 268311, 2007 WL 2189075, at *2 (Lexis cite: No. 268311, 2007 Mich. App. LEXIS 1860, at *5-6) (Ct. App. July 31, 2007). The Court of Appeals invented a heightened standard of care in a garden-variety intersection collision.

B. The Court of Appeals' Decision Conflicts with a Published Opinion of the Court of Appeals

The Supreme Court may accept a case for review "[i]f the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals . . ." RAP 13.4(b)(2). The Court of Appeals' decision conflicts with Division Three's opinion *Mossman v. Rowley*, 154 Wn. App. 735, 229 P.3d 812 (2009),

which was also about a motion for summary judgment brought by the favored driver against the disfavored, left-turning driver. The facts were not ideal for the favored driver, but the Court of Appeals still affirmed the summary judgment dismissal. The favored driver, defendant Rowley, was driving 15 to 40 miles above the speed limit, and he told police that before driving he had drunk two beers at home. "[H]e was driving because he was the most sober of the drivers." *Mossman* at 738.

He was driving north when he saw plaintiff approaching in the opposite direction. She had her left-turn signal on. He saw her turn left from beginning to end, and he collided with her:

> Mr. Rowley stated that Ms. Mossman started to make the left turn, then hesitated halfway and, at the last second, darted out onto the road. The front of Mr. Rowley's truck hit the back passenger side of Ms. Mossman's SUV while both vehicles were in the left lane of the northbound lanes of Monroe.

Mossman, 154 Wn. App. at 738. Defendant fled the scene and later pleaded guilty to reckless driving. *Mossman*, 154 Wn. App. at 739.

Plaintiff sued Mr. Rowley and alleged that even though she was the disfavored driver, defendant (the favored driver) was speeding and was at fault for the collision. Mr. Rowley moved for summary judgment, which the Superior Court granted. The Court of Appeals affirmed the summary judgment dismissal because plaintiff was the disfavored driver and there was insufficient evidence that Mr. Rowley could have avoided the collision:

> Ms. Mossman failed to show that Mr. Rowley had enough time to avoid the collision. Both drivers and Mr. Fazio stated that Ms. Mossman made a quick turn. The trial court did not err by granting summary judgment in favor of Mr. Rowley.

Mossman, 154 Wn. App. at 742. The Court of Appeals rejected plaintiff's argument that Mr. Rowley was speeding and therefore at fault.

In *Mossman* the defendant/favored driver Mr. Rowley had some "bad facts": he was possibly intoxicated; speeding (at least 15 miles above the speed limit and possibly up to 40 miles above); and he had some warning that the plaintiff might turn

left—but the Court of Appeals still held that summary judgment dismissal was proper. Unlike in *Mossman*, Ms. Tobey was not speeding and she was not intoxicated. In *Mossman*, the defendant saw the plaintiff indicate through two actions that she might turn left: her left turn signal was on and before turning left, "Ms. Mossman started to make the left turn, then hesitated halfway . . ." *Mossman*, 154 Wn. App. at 738. Ms. Tobey received no such notice: plaintiff was hidden from Ms. Tobey's view until the last second. In *Mossman*, the collision was not videorecorded: the Superior Court granted summary judgment based on its review of witness statements. Here, the Court has the benefit of a filmed collision.

SPI and Ms. Tobey relied heavily on *Mossman* in their briefing, but the Court of Appeals "decline[d] to apply *Mossman* as Sierra suggests" and attempted to distinguish it:

> A strict application of RCW 46.61.185 seen in *Mossman* has the effect of denying any recovery based on a plaintiff's fault, which disregards Washington's comparative negligence model. *See* 154 Wn. App. at 741-42, 229 P.3d 812; RCW

> 4.22.005. Moreover, there are distinctions between *Mossman* and the case before us. In *Mossman*, the accident took place at an intersection at night and involved a sports utility vehicle (SUV) and a truck—two regular vehicles. 154 Wn. App. at 738-39, 229 P.3d 812. Here, in contrast, the accident involved a van and a semitruck, where the semitruck driver is required to have knowledge, expertise, and qualifications beyond the average driver. And the collision took place in an intersection backed up with heavy traffic, which could put a driver on notice that they might need to proceed with caution. Here, the finder of fact must consider whether a reasonable semitruck driver with the same knowledge and expertise would have conducted themselves in the same manner as Sierra's driver.

Stanley, 567 P.3d at 1170. To distinguish *Mossman*, the Court had to impose a heightened duty on Ms. Tobey, which no court in Washington had done before.

It is not just *Mossman* that the Court of Appeals departed from—it went against all similar "no-time-to-react" left-turn cases. U.S. District Court Judge Ricardo Martinez observed that where the favored driver has only seconds to react, Washington courts routinely reject contributory negligence claims made by left-turning disfavored drivers:

> Washington courts routinely fail to credit a contributory negligence defense where the favored driver had only seconds to react to an emergency situation created by the disfavored driver. For instance, Division One in *Boerner* found error in instructing the jury to consider the favored driver's contributory negligence where she had under four seconds to react to the disfavored driver's execution of a left turn into her lane. *See Boerner*, 9 Wn.App. at 152. Similarly, Division Three in *Kilde*, found that plaintiffs were not contributorily negligent where they had about two seconds to react to a pickup truck turning left into the path of their car. *See Kilde v. Sorwak*, 1 Wn. App. 742, 463 P.2d 265 (1970).

Keone v. United States, No. C13-419RSM, 2014 U.S. Dist. LEXIS 163505, at *18 (W.D. Wash. Nov. 21, 2014); *see also Ferara v. Makayle G.,* 187 Wn. App. 1015 (2015) (Ct. App. Apr. 27, 2015) (Court of Appeals affirms dismissal of left-turning driver's claims and rejects attempts to create issue of fact on favored driver). Judge Martinez is correct. And until the Washington Supreme Court holds otherwise, the Court of Appeals should not create a heightened duty of care for certain drivers and ignore clear cases like *Mossman*.

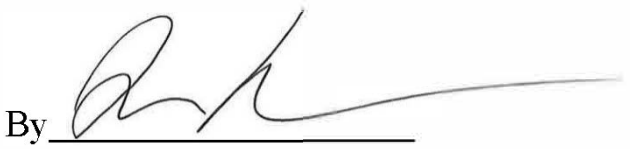
VI. CONCLUSION

SPI petitions the Supreme Court to review *Stanley v. Sierra Pac. Land & Timber*, 567 P.3d 1161 because the Washington Supreme Court should be the final word on whether CDL holders and other drivers with special skills are subject to a heightened duty of care.

This document contains 3820 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 26th day of September, 2025.

KIRKPATRICK SYMANSKI PARKER



By _____
Dan Kirkpatrick, WSBA 38674
Zach Parker, WSBA 53373
Attorneys for Respondents Sierra Pacific Industries, Inc

CERTIFICATE OF SERVICE

I certify that on the date below I electronically filed the PETITION FOR REVIEW with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

Attorney for Appellant Robin Stanley

Morgan G Adams
Jason J. Gillis
Seattle Truck Law, PLLC
222 Alaskan Way S
Seattle, WA 98104

Adams@TruckWreckJustice.com
jason@seattletrucklaw.com
Michelle@SeattleTruckLaw.com

DATED this 26th day of September, 2025.

s/Erin Bour
Erin Bour Paralegal

APPENDIX

Filed
Washington State
Court of Appeals
Division Two

April 29, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

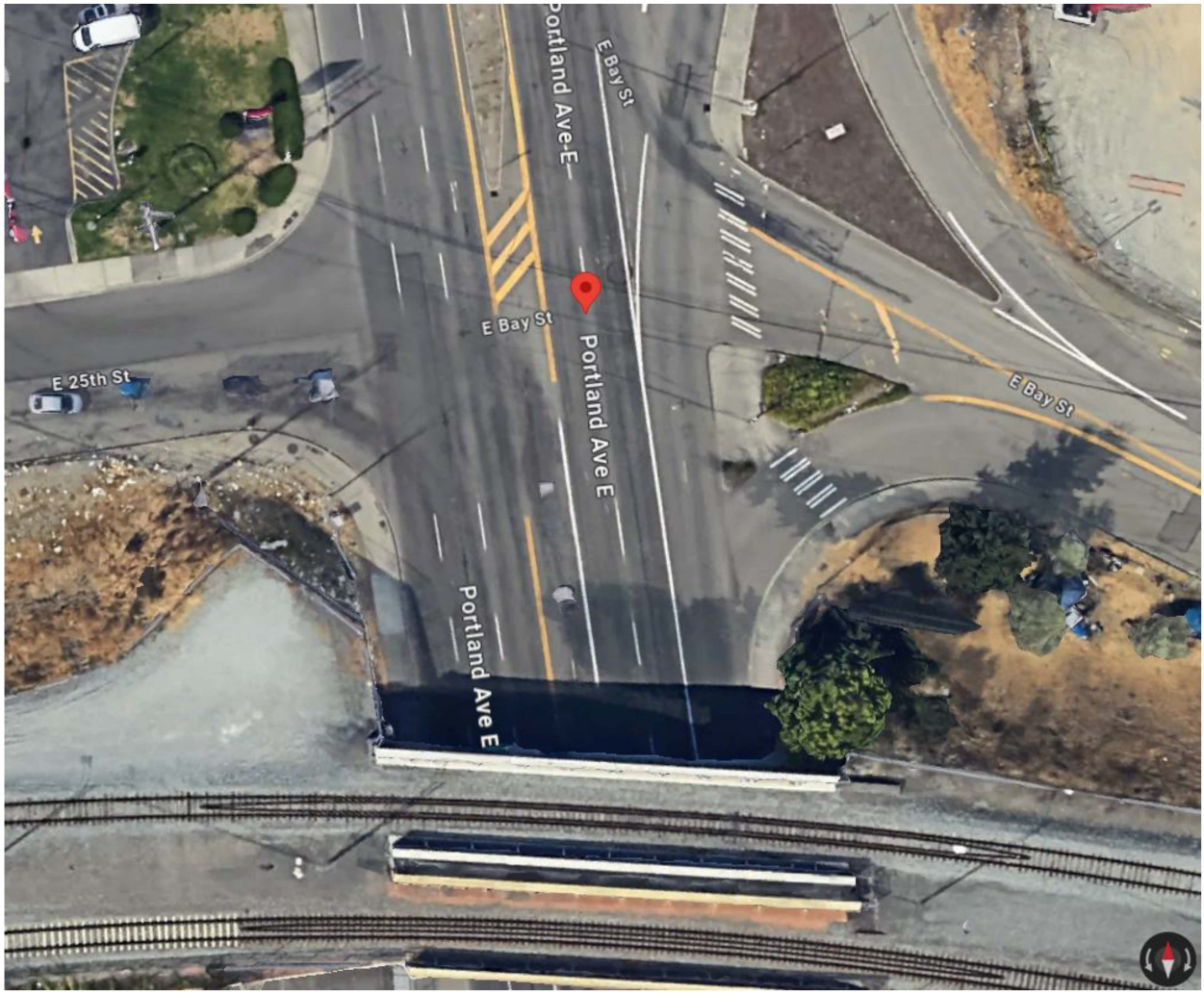
ROBIN STANLEY, Appellant, v. SIERRA PACIFIC LAND & TIMBER d/b/a SIERRA PACIFIC INDUSTRIES, d/b/a, SIERRA PACIFIC WINDOWS, and d/b/a SIERRA PACIFIC INDUSTRIES, INC., foreign corporations registered in Washington; and MARCIA TOBEY and JOHN DOE TOBEY, husband and wife and the marital community comprised thereof; JOHN and JANE DOE, husband and wife and the marital community comprised thereof as uninsured motorists, and ALLSTATE INSURANCE COMPANY, Respondents.	No. 59273-8-II PUBLISHED OPINION

VELJACIC, A.C.J. — Robin Stanley appeals the dismissal of his negligence claim against Sierra Pacific Land & Timber and Marcia Tobey (collectively referred to as Sierra) arising out of an automobile collision. Because there is a material issue of fact as to whether a reasonable semitruck driver with the same knowledge and expertise as Sierra's driver would have acted in the same manner, the trial court erred in granting summary judgment in favor of Sierra. Therefore, we reverse and remand.

FACTS

I. THE ACCIDENT[1]

On the morning of May 20, 2019, Robin Stanley "was headed northwest on Portland Ave E, just north of [Interstate 5], in Tacoma at the intersection with E. 25th Street" in a white van. Clerk's Papers (CP) at 170. Shortly after passing under the "railroad overpass," Stanley approached an uncontrolled intersection at Portland Avenue East and East 25th Street. CP at 170. Stanley moved into the left turn lane and turned on his blinker. An image depicting the intersection is provided below:



[1] The parties contest the facts surrounding the accident.

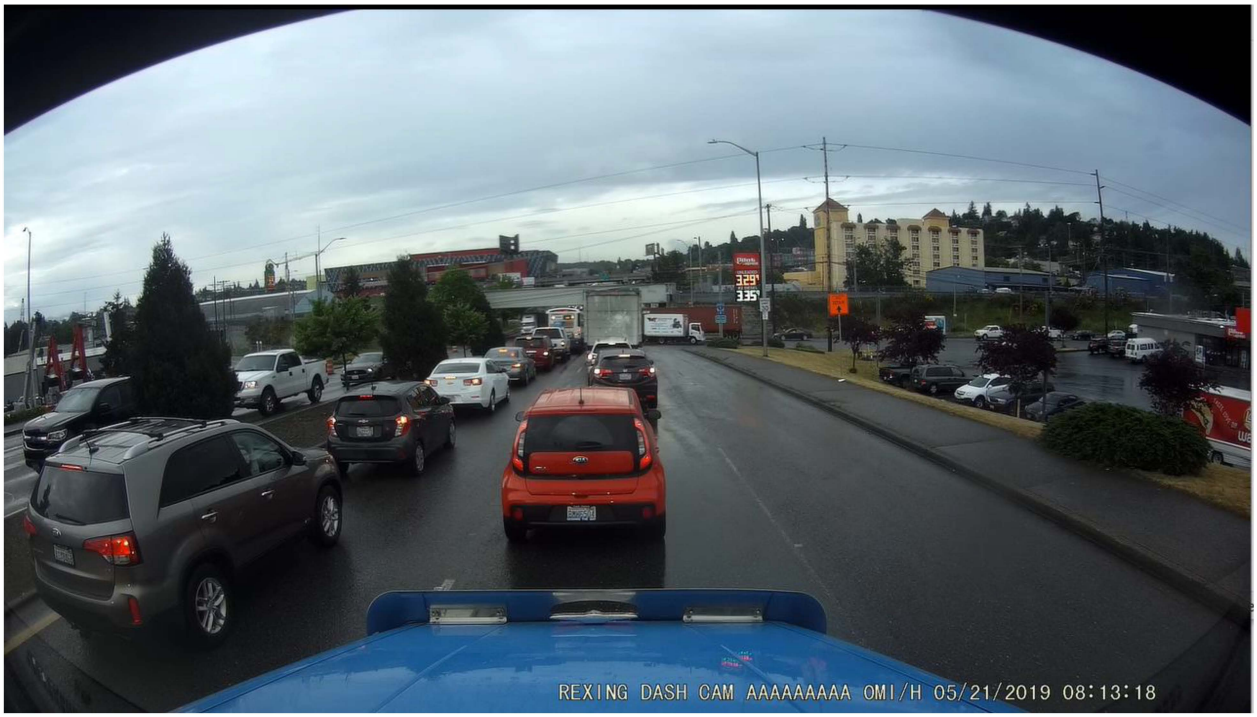
Portland Ave. E. & E. 25th St., GOOGLE MAPS, https://maps.app.goo.gl/grgbWccnTUdDbGaEA.[2]

Sierra's driver, who had a commercial driving license (CDL) at the time of the accident, was operating a blue semitruck[3] and was heading south toward Interstate 5. Sierra's driver's perspective was recorded on her vehicle's dash camera (dashcam) footage (the blue semitruck hood is visible at the bottom of the photo). The footage begins with Sierra's driver in the southbound center lane, approximately six vehicle lengths before the intersection at East 25th Street (Pilot Gas Station).

That morning, heavy traffic caused the southbound lanes of Portland Avenue East to be backed up. From Sierra's driver's perspective, several vehicles from the opposite direction could be seen turning west, crossing Sierra's Driver's three lanes of traffic, onto East 25th Street, even though her view of the entire intersection was partially obstructed.

[2] We take judicial notice of a map depicting Portland Avenue East and East 25th Street. *See State v. Nichols*, 161 Wn.2d 1, 5 n.1, 162 P.3d 1122 (2007) (noting that courts "routinely take judicial notice of maps").

[3] A semitruck is also referred to as a semitrailer, which is a "freight trailer that when attached is supported at its forward end by the fifth wheel device of the truck tractor." *Semitrailer*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/semitrailer (last visited Apr. 22, 2025). Additionally, semitrucks can be classified as tractor trailers, which are defined as "a large truck with a long trailer attached to the back of it." *Tractor Trailer*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/tractor%20trailer (last visited Apr. 22, 2025).



Ex. 1.[4]

After several vehicles went through the intersection, Stanley alleges that his van was visible in the left turn lane facing northwest.

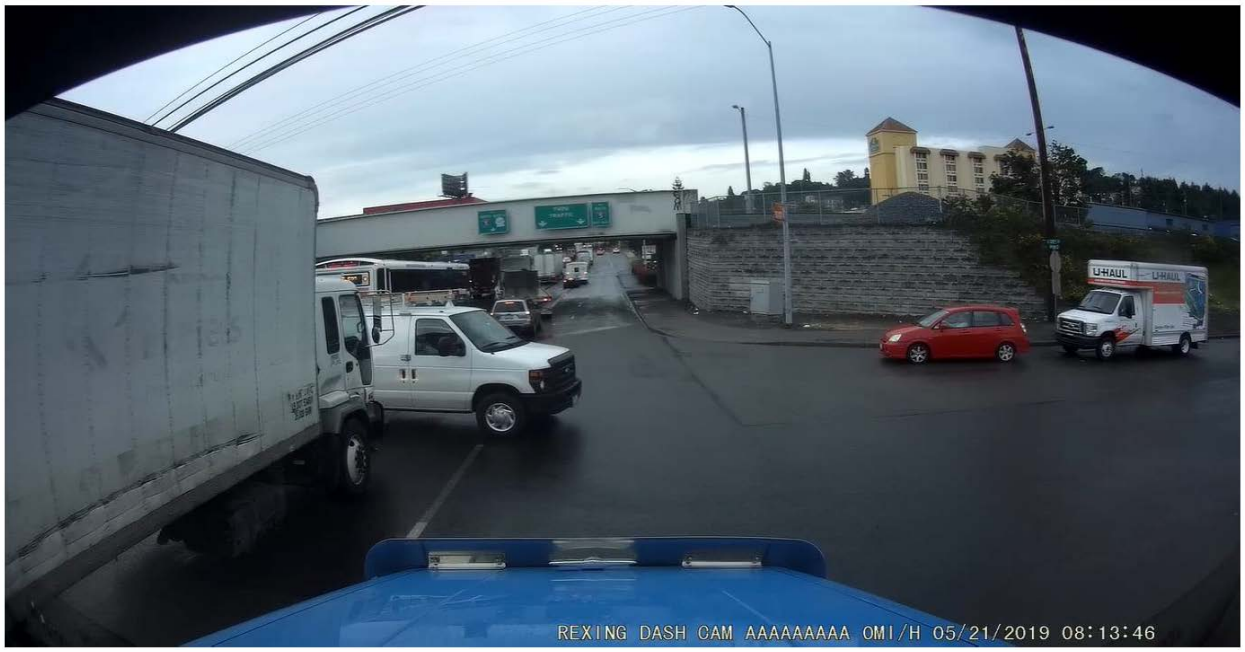
Ex. 1.

[4] Exhibit 1 is the dashcam footage from Sierra's driver's semitruck. The following screenshots of the footage depict the events leading up to the collision.

Stanley was one of the northwest bound vehicles attempting to turn left (west) across southbound traffic onto East 25th Street. While Stanley was waiting to turn, he "observed a white pickup in the [southbound] left lane, as well as a white box-truck in the [southbound] center lane." CP at 172. The two vehicles had stopped before the intersection, which allowed Stanley and the vehicles behind him to turn left (west) onto East 25th Street. Prior to Sierra's driver reaching the East 25th Street intersection, she maneuvered the truck into the southbound right lane, which had minimal traffic, and travelled toward the intersection.

Ex. 1. Simultaneously, Stanley began to proceed through the intersection, turning left to proceed west on East 25th Street, even though his view of the southbound right lane (the one Sierra's driver was in) was obstructed by the other vehicles. Stanley was allegedly waved on by the driver in the white box truck that was waiting in the center southbound lane, indicating that it was safe to proceed.

Sierra's driver's view of the intersection was mostly obstructed by the southbound traffic in the southbound left and center lanes. Just before Sierra's driver entered the intersection, Stanley attempted to cross the southbound right lane toward the end of his left turn.



Ex. 1.

Sierra's driver's truck hit the back-right portion of Stanley's van, causing visible damage.

Ex. 1. Other vehicles could be seen turning left along Stanley's path after the accident.

Stanley claimed the collision caused him injury and brought a negligence action against Sierra and the driver.[5]

II. SIERRA'S MOTION FOR SUMMARY JUDGMENT

Sierra moved for summary judgment. Stanley submitted the affidavit of V. Paul Herbert, an alleged expert on commercial vehicle safety and compliance. In their affidavit, Herbert explained that "[b]ecause a tractor trailer is bigger and longer than other vehicles, less maneuverable, and takes longer to brake and stop due to air brakes and mass, drivers of tractor trailers need more specialized knowledge and skill than drivers of single vehicles such as a car." CP at 188. Based on the dashcam footage and other evidence, Herbert concluded that Sierra's driver "failed to exercise [the] degree of care that a reasonably careful commercial truck driver would have exercised under the same or similar circumstances." CP at 190.

At the hearing for Sierra's motion, the court questioned whether a CDL enhanced the duty of care for a truck driver. Sierra maintained that there was no enhancement of duty, explaining the standard was the "ordinary duty of care." Rep. of Proc. (RP) at 7. Stanley argued that Sierra's driver operating "an 18-wheeler [was] different than a driver driving a small, maneuverable car." RP at 21. Ultimately, the court granted Sierra's motion for summary judgment. Stanley moved for reconsideration, which the court denied.

Stanley appeals.

[5] Stanley also brought an action against the driver in the white box truck and Allstate Insurance. Both claims were resolved separately. Stanley made several claims in his suit. Here, we are concerned only with negligence regarding the auto collision itself.

ANALYSIS

I. THE COURT ERRED IN GRANTING SUMMARY JUDGMENT.

Stanley argues that the court erred in granting Sierra's motion for summary judgment. We agree.

We review orders granting summary judgment de novo, "'engag[ing] in the same inquiry as the trial court.'" *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014) (internal quotation marks omitted) (quoting *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000)). "A court may grant summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000); CR 56(c). A material fact is a "'fact upon which the outcome of the litigation depends, in whole or in part.'" *Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 349, 588 P.2d 1346 (1979) (quoting *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974)). We view all submitted facts and reasonable inferences in the light most favorable to the nonmoving party. *Hunt*, 181 Wn.2d at 140.

Generally, an expert opinion on an ultimate issue of fact is sufficient to establish a triable issue and defeat summary judgment. *Strauss v. Premera Blue Cross*, 194 Wn.2d 296, 301, 449 P.3d 640 (2019). "'[S]peculation and conclusory statements,'" however, "'will not preclude summary judgment.'" *Id.* (quoting *Volk v. DeMeerleer*, 187 Wn.2d 241, 277, 386 P.3d 254 (2016)). "'The expert's opinion must be based on fact and cannot simply be a conclusion or based on an assumption if it is to survive summary judgment.'" *Id.* (quoting *DeMeerleer*, 187 Wn.2d at 277).

To establish negligence, a plaintiff must show "'(1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause.'" *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008) (quoting *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 48, 914 P.2d 728 (1996)). Summary judgment is proper if a plaintiff cannot meet any one of these elements. *Id.* at 553. The threshold question in a negligence action is whether the defendant owes the plaintiff a duty of care. *Estate of Kelly v. Falin*, 127 Wn.2d 31, 36, 896 P.2d 1245 (1995).

A duty may be predicated on a violation of common law principles of negligence, a statute, or a regulation. *Bernethy v. Walt Failor's, Inc.*, 97 Wn.2d 929, 932, 653 P.2d 280 (1982). All drivers owe a duty of care to other nearby drivers, including a duty to exercise ordinary care to avoid endangering others. *Martini ex rel. Dussault v. State*, 121 Wn. App. 150, 160 n.23, 89 P.3d 250 (2004). And drivers may assume that others will obey the rules of the road. *Brown v. Spokane County Fire Prot. Dist. No. 1*, 100 Wn.2d 188, 191-92, 668 P.2d 571 (1983). A trier of fact may consider the violation of a traffic rule imposed by statute or ordinance as evidence of negligence. RCW 5.40.050; *see Pudmaroff v. Allen*, 138 Wn.2d 55, 67-68, 977 P.2d 574 (1999).

"Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances." 6 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CIVIL 10.02, at 128 (7th ed. 2019). It is a fundamental concept of tort law that the reasonable person standard encompasses an individual's knowledge and expertise. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 12 (AM. L. INST. 2010) ("If an actor has skills or knowledge that exceed those possessed by most others, these skills or

knowledge are circumstances to be taken into account in determining whether the actor has behaved as a reasonably careful person.").[6]

Washington operates under a comparative negligence model. *See* RCW 4.22.005. Consequently, any "fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's . . . fault, but *does not bar recovery*." *Id.* (emphasis added). "Under comparative fault principles, the trier of fact must allocate fault between a negligent plaintiff and a negligent defendant." *Tegman v. Accident & Med. Investigations, Inc.*, 150 Wn.2d 102, 117, 75 P.3d 497 (2003). A court may only take the issue of comparative negligence away from the jury when a reasonable person "could reach only one conclusion from all of the evidence." *Hansen v. Friend*, 118 Wn.2d 476, 485, 824 P.2d 483 (1992); *Bauman v. Complita*, 66 Wn.2d 496, 497, 403 P.2d 347 (1965).

Washington law requires "[t]he driver of a vehicle intending to turn to the left within an intersection . . . [to] yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard." RCW 46.61.185(1). And a driver must "drive at an appropriate reduced speed when approaching and crossing an intersection . . . when special hazards exists with respect to pedestrians or other traffic." RCW 46.61.400(3). Therefore, under RCW 46.61.185, the disfavored driver[7] has the primary duty to yield the right-of-way. *Bowers v. Marzano*, 170 Wn. App. 498, 506, 290 P.3d 134 (2012). And that duty rests with the disfavored driver "even if it can be shown that the oncoming vehicle was

[6] Considering superior knowledge within the reasonable person standard is not a new concept for Washington Courts. *See Harris v. Robert C. Groth, M.D., Inc.*, 99 Wn.2d 438, 444, 663 P.2d 113 (1983) ("Superior knowledge, skill, or training is always taken into account with the application of any reasonable person standard.").

[7] A disfavored driver is the individual who does not have the right-of-way. *See Pollard v. Rossoe Mfg. Co.*, 56 Wn.2d 862, 863, 355 P.2d 979 (1960).

proceeding unlawfully." *Doherty v. Mun. of Metro. Seattle*, 83 Wn. App. 464, 470, 921 P.2d 1098 (1996). Critically, however, "'all rights of way are relative and the duty to avoid accidents or collisions at street intersections *rests upon both drivers*.'" *Hough v. Ballard*, 108 Wn. App. 272, 288, 31 P.3d 6 (2001) (emphasis added) (quoting *Bennett v. Karnowsky*, 24 Wn.2d 487, 491, 166 P.2d 192 (1946)).

Stanley relies on *Roberts v. Leahy*, 35 Wn.2d 648, 214 P.2d 673 (1950), for the proposition that his duty to yield under RCW 46.61.185 was relieved under the circumstances of the accident. We disagree. In *Roberts*, our Supreme Court explained that a disfavored driver may be "discharged [of] his duty of using due care . . . in proceeding into [an] intersection" if "the disfavored driver looks to his right from a *proper place* and cannot see the favored vehicle because it is hidden by a condition *in the street*." 35 Wn.2d at 651 (emphasis in the original). But *Roberts* is not entirely helpful. *Roberts* was decided in 1950 and pre-dated Washington's revision to its comparative fault model. *See* RCW 4.22.005. Consequently, the case addressed only one party's negligence and did not evaluate the potential fault of the other party. While *Roberts* has not been overruled, it does not aid our analysis because it only contemplates an outdated, unilateral negligence scheme.

Even though Stanley was not discharged of his duty, when viewing the evidence, including the expert opinion, in the light most favorable to Stanley, a reasonable jury could conclude that Sierra and Sierra's driver were negligent. Under RCW 46.61.185, Stanley, who was turning left onto East 25th Street, was the disfavored driver and had the primary duty to yield to oncoming traffic. This fact, however, does not absolve Sierra of any obligation to avoid the accident. *See Ballard*, 108 Wn. App. at 288. Sierra's driver, like any other driver, had an obligation to "drive at an appropriate reduced speed when approaching and crossing an intersection . . . when special

hazards exists with respect to . . . traffic." RCW 46.61.400(3). And viewing the evidence in the light most favorable to the nonmoving party as we must, a reasonable jury could conclude that Sierra's driver was not approaching the intersection at an appropriate speed for the circumstances.

Sierra maintains that this was an ordinary automobile collision, thereby warranting an ordinary standard of care that does not consider Sierra's driver's experience. Contrary to Sierra's assertion, however, the operation of a semitruck holds a special significance in this case. Sierra's driver, who possessed a CDL at the time of the accident, enjoyed knowledge and expertise that an ordinary driver does not. The average driver does not have the skillset or qualifications to operate a semitruck. *See* RCW 46.25.050(1) ("Drivers of commercial motor vehicles *must obtain a commercial driver's license*.") (emphasis added). And there is good reason for this because "[a] typical commercial tractor trailer is approximately 70-80 feet long, 8.5' wide, 13'6" tall, and weighs up to 80,000 pounds." CP at 188. Therefore, Sierra's driver's experience must be taken into consideration when evaluating the reasonableness of their conduct. *See* RESTATEMENT (THIRD) OF TORTS § 12. Stanley submitted an affidavit from Herbert, an individual specializing in commercial vehicle safety and training. Herbert concluded that "a reasonably careful commercial truck driver would not have proceeded down the right lane at an accelerating speed past the stopped traffic in the left and center lanes" knowing there was an intersection ahead. CP at 190. Herbert's opinion relates to an ultimate issue: whether Sierra's and its driver's duty was breached. *Strauss*, 194 Wn.2d at 301. This establishes a genuine issue of fact. It is a material fact because it relates to Sierra's and Sierra's driver's potential negligence.

Sierra relies on *Mossman v. Rowley*, 154 Wn. App. 735, 229 P.3d 812 (2009), a Division Three case, to support the trial court's entry of summary judgment. In that case, Rowley collided with Mossman in an intersection as Mossman attempted to turn left. *Id.* at 737-38. Mossman, the

disfavored driver, attempted to argue that had Rowley been driving slower, the accident could have been avoided. *Id.* at 741. The court upheld summary judgment under RCW 46.61.185, reasoning that because Mossman was the disfavored driver, it did "not matter what speed . . . Rowley was traveling prior to the collision." *Id.* The court upheld summary judgment in spite of the fact that Rowley had allegedly been driving between 45 to 70 miles per hour (m.p.h.) in a 30 m.p.h. zone and had drank a couple beers before getting into their vehicle. *Id.* at 738.

We decline to apply *Mossman* as Sierra suggests. A strict application of RCW 46.61.185 seen in *Mossman* has the effect of denying any recovery based on a plaintiff's fault, which disregards Washington's comparative negligence model. *See* 154 Wn. App. at 741-42; RCW 4.22.005. Moreover, there are distinctions between *Mossman* and the case before us. In *Mossman*, the accident took place at an intersection at night and involved a sports utility vehicle (SUV) and a truck—two regular vehicles. 154 Wn. App. at 738-39. Here, in contrast, the accident involved a van and a semitruck, where the semitruck driver is required to have knowledge, expertise, and qualifications beyond the average driver. And the collision took place in an intersection backed up with heavy traffic, which could put a driver on notice that they might need to proceed with caution. Here, the finder of fact must consider whether a reasonable semitruck driver with the same knowledge and expertise would have conducted themselves in the same manner as Sierra's driver.[8]

[8] Sierra cites to two other cases citing RCW 46.61.185. *Ferara v. Makayla G.*, No. 71535-6-I (Wash. Ct. App. Apr. 27, 2015) (unpublished), http://www.courts.wa.gov/opinions/; *Keone v. United States*, No. C13-419RSM, 2014 WL 6632344 (W.D. Wash. Nov. 21, 2014) (court order). Because both opinions are unpublished, they are merely persuasive authority. We take no position on them.

Sierra also cites to several cases from foreign jurisdictions, most of which are unpublished, that purportedly stand for the proposition that CDL drivers do not have a heightened duty of care.[9] Some of the cases clearly do not support Sierra's position.[10] But again, we are not adopting a heightened standard of care for CDL drivers; rather, we are relying on long-standing principles of tort law that incorporate special skill when applying the ordinary standard of care. *See* RESTATEMENT (THIRD) OF TORTS § 12.

As a matter of law, Sierra's driver's duty of reasonable care encompasses their knowledge and expertise as a CDL driver. *See* RESTATEMENT (THIRD) OF TORTS § 12.[11] Consequently, there exists genuine issues of material fact regarding Sierra's and its driver's fault, which precludes summary judgment. Therefore, we conclude the court erred in granting summary judgment in favor of Sierra.

---

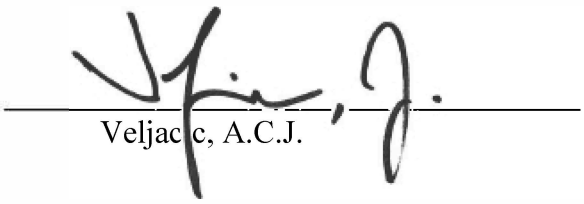
[9] *Davis v. Brown Local Sch. Dist.*, 2019-Ohio-246, 131 N.E.3d 431, 445-46 (Ct. App.) (holding that there is no "heightened duty of care for CDL drivers" because "[a] heightened duty of care for commercial drivers in Ohio would place some portion of the responsibility of every accident on a commercial driver, simply because she or she has been instructed to be a defensive driver"); *Dahlgreen v. Muldrow*, No. 1:06-cv-00065-MP-AK, 2008 WL 186641, at *7 (N.D. Fla. Jan. 18, 2008) (court order) (holding that "a commercial motor vehicle operator[]is held to the ordinary standard of care); *Tavorn v. Cerelli*, No. 268311, 2007 WL 2189075, at *2 (Mich. Ct. App. July 31, 2007) (unpublished) (holding that the ordinary standard of care applied because the action arose under "an ordinary traffic accident").

[10] *Cameron v. Werner Enters., Inc.*, No. 2:13-CV-243-KS-JCG, 2016 WL 3030181, at *6 (S.D. Miss. May 25, 2016) (court order) (declining to address whether a heightened standard of care applied because the court did not have adequate briefing on the issue).

[11] Other jurisdictions have reached a similar result. *See Dakter v. Cavallino*, 363 Wis. 2d 738, 866 N.W.2d 656 (2015) (holding that a semi-truck driver's actions should be assessed through the conduct of a reasonable person with the same knowledge and expertise).

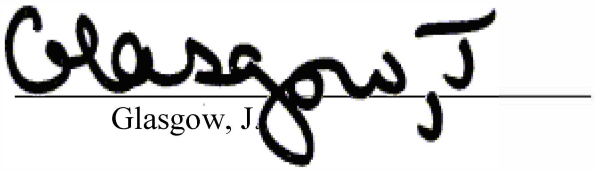
CONCLUSION

Accordingly, we reverse and remand the judgment for further proceedings consistent with this opinion.

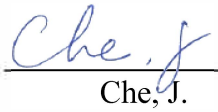


Veljacic, A.C.J.

We concur:



Glasgow, J.



Che, J.

Filed
Washington State
Court of Appeals
Division Two

August 27, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

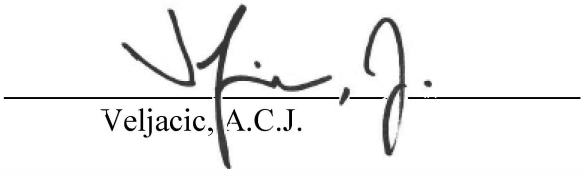
ROBIN STANLEY, Appellant, v. SIERRA PACIFIC LAND & TIMBER d/b/a SIERRA PACIFIC INDUSTRIES, d/b/a, SIERRA PACIFIC WINDOWS, and d/b/a SIERRA PACIFIC INDUSTRIES, INC., foreign corporations registered in Washington; and MARCIA TOBEY and JOHN DOE TOBEY, husband and wife and the marital community comprised thereof; JOHN and JANE DOE, husband and wife and the marital community comprised thereof as uninsured motorists, and ALLSTATE INSURANCE COMPANY, Respondents.	No. 59273-8-II ORDER DENYING MOTION FOR RECONSIDERATION

Respondent, Sierra Pacific Industries, moves this court to reconsideration its April 29, 2025 opinion. After consideration, we deny the motion. It is

SO ORDERED.

Panel: Jj. Glasgow, Veljacic, Che

FOR THE COURT:



Veljacic, A.C.J.

WAKEFIELD & KIRKPATRICK PLLC

September 26, 2025 - 1:22 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	59273-8
Appellate Court Case Title:	Robin Stanley, Appellant v. Sierra Pacific Land & Timber, et al., Respondents
Superior Court Case Number:	22-2-04771-8

The following documents have been uploaded:

- 592738_Petition_for_Review_20250926132143D2199297_9444.pdf
  This File Contains:
  Petition for Review
  The Original File Name was SPI Petition for Review to WA SC.pdf

A copy of the uploaded files will be sent to:

- ATorcolini@smithfreed.com
- Adams@TruckWreckJustice.com
- KDR@smithfreed.com
- davew@wiecklegal.com
- frederick.dore@seattle.gov
- jason@seattletrucklaw.com
- sandy@fmwlegal.com
- zach@ksplaw.com

Comments:

Sender Name: Daniel Kirkpatrick - Email: dan@ksplaw.com
Address:
6161 NE 175TH ST STE 203
KENMORE, WA, 98028-4800
Phone: 206-629-5489

Note: The Filing Id is 20250926132143D2199297