

## Fender Bender Exercise

Imagine you are presiding over a one-day trial involving a claim for motor vehicle negligence. (Don't worry about the law right now.) The plaintiff is the driver of one motor vehicle and represented by an attorney. The defendant is the driver of another motor vehicle represented by another attorney.

### **Testimony of Plaintiff**

On 4 November 2017 plaintiff, who was travelling in her Ford Focus south in the right-hand lane of Park Boulevard, a two-lane urban street, was injured in an automobile accident.

In the area where the accident occurred, the street was flat and level, the pavement was dry, and the right lane was bordered by a 2.5-foot curb and gutter.

She maintained a following distance of three seconds behind a red tractor-trailer travelling at thirty-five miles per hour in the right hand lane. The day was clear and the road was dry. She was followed by a white flat-bed truck.

As the red truck signaled to change lanes, plaintiff took her foot from the accelerator and signaled to turn her car into the left-hand lane as well. Plaintiff then glanced to the left to see if she could change lanes, but she saw, for the first time, a blue tanker truck, which was passing her in the left lane.

When plaintiff looked again ahead of her, the red truck had moved to the left. Plaintiff saw for the first time defendant's Toyota, which appeared to be stopped in her lane of traffic. Because the blue tanker truck was even with her in the left lane and she could not move over, plaintiff hit her brakes attempting to avoid rear-ending the Toyota. She skidded left and was struck twice, first by the blue truck passing her and then by the white flat bed truck which was following her.

### **Testimony of Witness Driving Red Tractor-Trailer**

He was traveling south on Park Boulevard at thirty-five miles per hour in the right-hand lane.

Defendant's Toyota was ahead of him. When he realized that defendant's Toyota looked like it was almost stopped, he whipped his truck into the left-hand lane to avoid running into the rear of the Toyota.

He saw the collision between plaintiff's vehicle and the blue and white trucks in his rear-view mirror and pulled off the left side of the street to render assistance.

### **Testimony of Witness Driving Blue Tanker Truck**

He was driving south on Park Boulevard in the left-hand lane and passing a white flat bed, plaintiff's Ford Focus, and a red tractor-trailer. He travelled at between thirty-seven and thirty-nine miles per hour. As he was passing plaintiff, he saw defendant's Toyota in the right-hand lane and estimated that it was traveling at six to eight miles per hour. Before he could take any action, the red tractor trailer moved to the left lane in front of him and plaintiff's car skidded to the left, colliding with his truck. He pulled over to the left-hand side of the street.

### **Testimony of Witness Driving White Flat-Bed Truck**

He was driving thirty-five miles per hour behind plaintiff's Ford Focus. When the red tractor trailer changed to the left-hand lane, he saw plaintiff signal to change lanes as well, but also saw that the blue tanker truck blocked plaintiff from changing lanes. Then plaintiff braked suddenly and skidded to the left. At that time he noticed defendant's Toyota moving at less than ten miles per hour in the right-hand lane. He braked but collided with plaintiff's vehicle.

### **Testimony of Defendant**

He was travelling south on Park Boulevard at thirty miles per hour in the right-hand lane in front of a red tractor-trailer when he noticed a collision in his rear-view mirror. He continued down the street at the same speed until the driver of the red tractor-trailer, running alongside his car on foot, beat on his window and told him to stop and wait until the police arrived.

The plaintiff has brought a claim that defendant was negligent and caused her harm.

**Exercise:** Write your findings of fact.

Adapted from *Page v. Tao*, 56 N.C. App. 488, 490–91 (1982), *aff'd*, 306 N.C. 739 (1982).

### **The Law, in case it's helpful**

“To successfully allege a negligence claim, plaintiffs must show (1) the defendant owed the plaintiff a duty of reasonable care, (2) the defendant breached that duty, (3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages as the result of the defendant's breach.” *Birtha v. Stonemor, N. Carolina, LLC*, 220 N.C. App. 286, 291–92 (2012) (cleaned up).