

## REAR END COLLISIONS AND SUDDEN STOPS

Ever since McNulty v Cusack, 104 So.2d 785 (Fla. 2<sup>nd</sup> DCA 1958), Florida Courts have imposed a presumption of negligence when a driver rear ends a preceding vehicle. The public policy behind this presumption is that while a plaintiff is required to prove the four elements of negligence: duty of care, breach of that duty, causation and damages, it is nearly impossible to prove either breach of duty or causation because a driver who has been rear ended has no way of knowing why the following driver caused the accident. See Jefferies v Amery Leasing, Inc., 698 So.2d 368 (Fla. 5<sup>th</sup> DCA 1997).

In Pierce v Progressive American Insurance Co., 582 So.2d 712 (Fla. 5<sup>th</sup> DCA 1991), the District Court held that an abrupt stop by itself was insufficient to overcome the presumption of negligence. In D.J. Spencer Sales v Clampitt, 704 So.2d 601 (Fla. 1<sup>st</sup> DCA 1997), the Court held that the defendant's testimony that the lead vehicle made a sudden stop was sufficient to rebut this presumption. The D.J. Spencer Sales case and the Pierce case came up for conflict jurisdiction before the Supreme Court in Clampitt v D.J. Spencer Sales, 26 F.L.W. S309 (Fla. May 10, 2001). In that case, the Supreme Court reviewed the applicable law on rear end collisions. It approved the case of Eppler v Tarmac America, Inc., 752 So.2d 592 (Fla. 2000). In that case the plaintiff suddenly and without any warning and for no apparent reason slammed on her brakes while in

the middle of a line of cars that had started after a light turned green. The Court held that arbitrary and abrupt braking in bumper to bumper accelerating traffic was so irresponsible as to invite a collision thus dissipating the presumption of negligence.

But, what of a case where the plaintiff's conduct in stopping suddenly is foreseeable? In the case at issue, three vehicles were traveling down a main highway at 55 miles an hour. The lead vehicle slowed and turned into a business establishment and the middle vehicle failed to stop in time to avoid striking the trailer attached to the turning vehicle. The last vehicle, a semi-truck, failed to observe either the turning vehicle or the vehicle which struck it until it was too late thus creating the collision. The deposition of the defendant driver produced testimony that he never saw either of the vehicles' brake lights come on or the turn signal on the first vehicle and that, in his opinion, the plaintiff in the middle vehicle made a sudden and unexpected stop on the roadway. The trial court granted a summary judgment and a large verdict was rendered on damages only. The District Court reversed, holding that the defendant's testimony raised questions of fact on the suddenness of the stop. The Supreme Court reinstated the verdict, holding as a matter of law, that a sudden stop, even as the result of an accident, was not sufficient to overcome the presumption of negligence in a rear end collision. The Court reasoned that a following vehicle has an obligation

to stay a safe distance behind all traffic and that it is the duty of every driver to anticipate that sudden stops may occur for a variety reasons.

This is a classic 'sudden stop' case. Clampitt's auto stopped abruptly on the highway as the result of a collision with Huguley's trailer, and Hetz's tractor-trailer rig was unable to stop in time. Unfortunately, accidents on the roadway ahead are a routine hazard faced by the driving public. Such accidents are encountered far too frequently and are to be reasonably expected. Each driver is charged under the law with remaining alert and following the vehicle in front of him or her at a safe distance.

The distinction made by the Court between Eppler, supra, and the case at bar is that it is only when there is no reasonable way that a driver can anticipate that a sudden stop could be made that the law enunciated in Eppler applies. Only if the plaintiff driver makes a stop at a place where no reasonable driver could anticipate such a stop being made, does the presumption of negligence dissipate.

The present case differs from *Eppler* wherein the forward driver allegedly made an abrupt and *arbitrary* stop in bumper-to-bumper accelerating traffic, i.e., a 'gotcha' stop. Rather, this case is similar to *Pierce v Progressive American Insurance Co.*, 582 So.2d 712 (Fla. 5<sup>th</sup> DCA 1991), and other 'sudden stop' cases wherein the forward driver merely stopped abruptly. The court in *Pierce* explained that a sudden stop standing alone is insufficient to overcome the presumption of negligence.

It is not merely an 'abrupt stop' by a preceding vehicle (if it is in its proper place on the highway) that rebuts or dissipates the presumption that the negligence of the rear driver was the sole proximate cause of a rear-end collision. It is a sudden stop by the preceding driver at a time and place where it could not reasonably be expected by the following driver that creates the factual issue.

In this case, the Florida Supreme Court reaffirms the presumption of negligence which exists in a rear end collision. The common place defense in those cases that the following driver didn't see the brake lights or that the stop was sudden has now been held to be insufficient to overcome the presumption and avoid a summary judgment on liability.

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