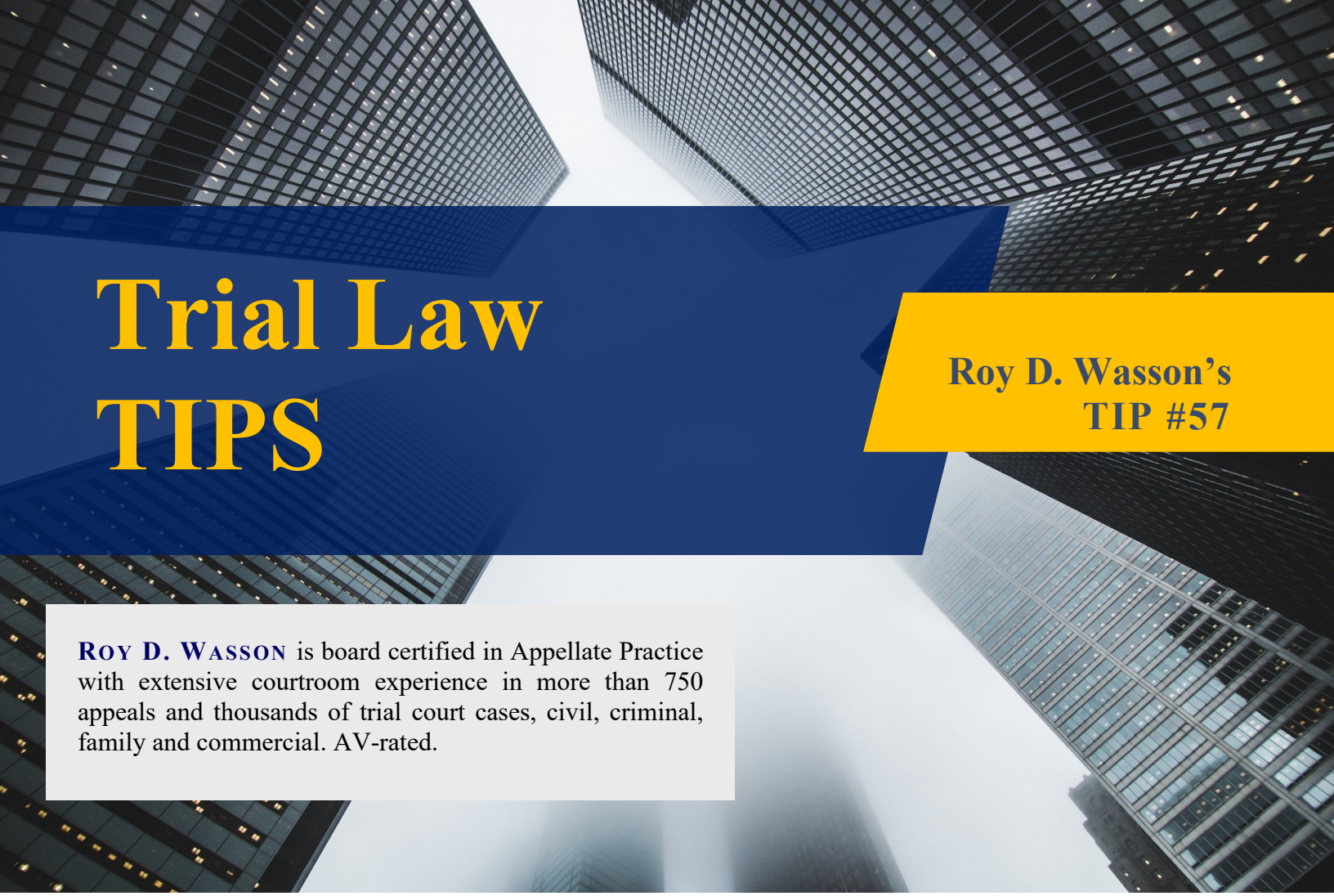

Trial Law TIPS

Roy D. Wasson's TIP #57

ROY D. WASSON is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

Overcoming the "Sudden Stop" Defense in Rear-End Collision Cases

Introduction

You may feel as if you have it made when you are retained by a new client who was seriously injured in a rear-end collision by a motorist with sufficient insurance. However, defendants in such a case invariably raise the "sudden stop" defense in an attempt to delay resolution of the case and possibly reduce your recovery. One approach to handling the "sudden stop" defense is to proactively move for partial summary judgment on that issue, educating the judge as to the law in that area and, potentially, convincing the adjuster on the case that settlement is the right thing to do. This TIP summarizes the law in this area and can serve as a start for your motion for partial summary judgment, trial brief on the issue, or demand letter refuting the sudden stop defense.

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Florida Law on "Sudden Stop" Defense

"In Florida, a presumption of negligence attaches to the driver of the rear vehicle in a rear-end collision." *Liriano v. Gonzalez*, 605 So. 2d 575, 576 (Fla. 3d DCA 1992). That presumption can be rebutted, but only "when the defendant produces evidence which ***fairly and reasonably tends to show"*** that the following driver was not negligent. *Gulle v. Boggs*, 174 So. 2d 26, 29 (Fla. 1965)(emphasis added). The burden on the defendant is not to come up with just any explanation, but one which is "substantial and reasonable." *Brethauer v. Brassell*, 347 So.2d 656 (Fla. 4th DCA 1977). In the absence of such a showing by the defendant, the trial court should grant summary judgment in favor of the plaintiff on the negligence issue. *See, e.g., Clampitt v. D.J. Spencer Sales*, 786 So. 2d 570, 575 (Fla. 2001)(approving trial court's grant of summary judgment on issue of the defendant driver's negligence in causing rear-end collision over "sudden stop" defense).

The courts have recognized "[t]hree general categories of affirmative explanations [which] serve to rebut the presumption of negligence." *Liriano*, *supra*, at 576. One of those categories is that the plaintiff stopped suddenly in front of the defendant. The other two categories involve unexpected mechanical failure and illegally parked vehicles. *See, e.g., Tozier v. Jarvis*, 469 So. 2d 884, 886-87 (Fla. 4th DCA 1985).

The defendant in a rear-end collision case cannot avoid entry of summary judgment simply by pleading that the plaintiff stopped abruptly in front of him or her, but must produce evidence that any reasonable driver following the plaintiff would have had no reason to anticipate that stop and avoid the collision, because the stop was both "abrupt ***and arbitrary."*** *See Eppler v. Tarmac America, Inc.*, 752 So. 2d 592, 594 (Fla. 2000)(emphasis added).

The present state of Florida law on this subject has developed in accordance with the Fifth District's decision in *Pierce v. Progressive American Ins. Co.*, 582 So. 2d 712 (Fla. 5th DCA 1991), in which the court held:

> 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. *See Cowart v. Barnes*, 370 So. 2d 103 (Fla. 1st DCA), *cert. denied*, 379 So. 2d 202 (Fla. 1979). 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. *Burton v. Powell*, 547 So.2d 330 (Fla. 5th DCA 1989).

Id. at 714 (emphasis added).

As the case law has developed following *Pierce*, where the leading vehicle occupied by a plaintiff slows or stops due to traffic or road conditions, such as a red light, or because other cars are stopping ahead of it, or in order to negotiate a turn that deceleration will not rebut the presumption of the defendant's negligence, even if the deceleration was rapid.

Only where a leading vehicle stops under inexplicable circumstances, will the presumption of defendant's negligence be rebutted, such as where the plaintiff stops in the middle of a block where there is no place to turn, without being forced to slow by other traffic or a traffic signal. *See Hunter v. Ward*, 812 So. 2d 601 (Fla. 1st DCA 2002). "Therefore, if a vehicle suddenly stops in a roadway, but the stop happens at a time and place where it can reasonably be anticipated . . . , then the presumption of negligence is not rebutted. However, if the stop is not expected, i.e., 'abrupt and arbitrary' in a place not reasonably expected as in *Eppler*, then the presumption is rebutted," *Id.* at 603.

The *Pierce* case involved a four-vehicle, chain reaction collision in which the parties were driving on a divided highway in moderately heavy traffic. The lead driver, Boone, looked ahead and saw a traffic light which had turned red at an intersection, and came to a "moderate" stop. The second car in the chain, driven by Reaves, then "came to a quick stop, skidding its tires a short distance." The third driver, Tiroff, "braked moderately at first, then increased the braking as he came to a quick stop some two feet behind Reaves

without striking him." Then the fourth vehicle, operated by Pierce, collided with the rear of Tiroff's automobile.

Reaves and Tiroff were granted summary judgments, which the *en banc* Fifth District affirmed on appeal. In rejecting the "sudden stop" argument made by Pierce, the court held:

> As a matter of law, it is not a substantial and reasonable explanation by Pierce to merely say that the vehicles ahead of him whether Boone Reaves, or Tiroff stopped abruptly. ***Such stops had to be reasonably anticipated at the time and place where they occurred*** according to Pierce's own testimony: in a crowded lane of traffic approaching a busy intersection controlled by a traffic signal which was in view of all four drivers at the time of the collisions.

582 So. 2d at 714 (emphasis added).

The Florida Supreme Court later approved the Fifth District's decision in *Pierce* in a case involving a three-vehicle chain reaction collision on U.S. Highway 27. The first vehicle was a pickup truck towing a small trailer and was being driven by Huguley at a speed of from forty-five to fifty-five miles per hour. Huguley put on his turn signal and began braking, planning to turn into his driveway. The plaintiff Clampitt, in the second car, struck Huguley's trailer and came to a "dead stop" on the highway. Clampitt's car was struck in the rear by a tractor-trailer rig owned by Spencer Sales and operated by Hetz, who was unable to stop and skidded 100 feet.

Clampitt sued Hetz, and Hetz raised the Plaintiff's collision into Huguley and resulting abrupt stop as a defense. The trial court rejected Hetz' defense and entered summary judgment in favor of Clampitt. That summary judgment was erroneously reversed by the First District, but then reinstated by the Supreme Court, which held:

> Based on this record, Spencer Sales failed to meet the *Gulle* standard: It failed to present evidence that "fairly and reasonably" tends to show that Hetz was not negligent in colliding with Clampitt's auto. ***The trial court properly granted Clampitt's motion for***

> ***summary judgment*** and the district court erred in ruling otherwise.
>
> 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.

786 So. 2d at 575.

As noted by the Supreme Court in the *Clampitt* case, even where the sudden stop by the plaintiff is the result of the Plaintiff colliding with a third driver who has stopped ahead of her, the defendant who thereafter crashes into the rear of the plaintiff's vehicle cannot overcome the presumption of negligence by asserting that the plaintiff was herself negligent in rear-ending the first vehicle. 786 So. 2d at 574 ("court in *Pierce* also rejected the notion that the rear driver can benefit from a claim that the forward driver was negligent in rear-ending the vehicle in front of him or her"). Even assumed negligence on the Plaintiff's part which results in a sudden stop will be no defense to the following driver who fails to foresee and avoid the second collision.

This "sudden stop" defense should be reserved for a case like *Eppler v. Tarmac America, Inc.*, 752 So. 2d 592 (Fla. 2000), which the Supreme Court in *Clampitt* characterized as involving a "***gotcha stop.***" *See Clampitt, supra,* 786 So. 2d at 574 (emphasis added). The facts of *Eppler* were as follows:

> In the present case, Tarmac came forward with evidence showing the following: (1) The Tarmac truck was stopped ten to eleven feet behind Eppler's auto in a line of traffic at a red light; (2) when the light turned green, all the vehicles in the line proceeded forward and were accelerating in a routine fashion; (3) the Tarmac driver, Morris, accelerated slowly

> with the other vehicles, shifted from first to second gear, and had been in second gear for three or four seconds when Eppler ***suddenly without warning and for no reason slammed on her brakes.*** Pursuant to the *Gulle* standard, this evidence "fairly and reasonably tends to show" that the presumption of negligence on Morris's part is misplaced, for an ***abrupt and arbitrary stop*** in such a situation is not reasonably expected. In fact, it is a classic surprise.

752 So. 2d at 594-95(emphasis added and footnotes deleted).

See also Wright v. Ring Power Corp., 834 So. 2d 329 (Fla. 5th DCA 2003)(reversing denial of directed verdict for plaintiff who suddenly stopped in intersection while attempting to turn left); *Hunter v. Ward*, 812 So. 2d 601 (Fla. 1st DCA 2002)(reversing denial of directed verdict for plaintiff struck from rear in chain-reaction while attempting left turn through median).

Conclusion

You may be able to remove the "sudden stop" defense from the defendant's arsenal by way of a motion for partial summary judgment. Even if such a motion is denied, the insurance adjuster assigned to your case is likely to view the claim in a more realistic light. Even if you don't immediately increase the settlement value of the case with such a motion for summary judgment, . . .

Keep Tryin!

Roy

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