STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2016 AUG 27 A 10:1

CIVIL DIVISION
Docket No. 35-1-18 Wncv

GEICO General Insurance Company
Plaintiff

FILED

v.

Michael Schumacher
Defendant

**DECISION**
**GEICO's Motion for Reconsideration**

This is a subrogation action by Plaintiff GEICO General Insurance Company for liability incurred due to an automobile collision allegedly caused by the negligence of Defendant Michael Schumacher. The court denied summary judgment in favor of GEICO on liability, ruling that the material facts relating to why the collision occurred, and whether it involved Mr. Shumacher's negligence, are disputed. GEICO now has filed a motion for reconsideration.

There is no dispute that the collision occurred when the vehicle Mr. Schumacher was driving ran into a stopped truck in his lane of travel and swerved into the oncoming lane, where it collided with the vehicle driven by GEICO's insured. GEICO maintains that those basic facts demonstrate that Mr. Schumacher is negligent as a matter of law. The record, fairly construed, reveals that Mr. Schumacher maintains that the truck ahead of him came to a sudden stop and that he was unable to reasonably avoid running into it and then running into the oncoming lane of traffic. According to him, the negligence, if any, was that of one of the drivers ahead of him. This is the central dispute in this case and it requires a finder of fact to resolve it.

On reconsideration, among other things, GEICO cites a 1959 case for the *apparent* proposition that any rear-end collision is the fault, as a matter of law, of the driver in back.

> Even in the operation of a private vehicle, the law requires the operator to govern his speed and maintain a reasonably safe distance behind the vehicle he is following to provide for the contingency of the lead vehicle coming to a sudden stop. In this situation, failure to so control the factors of time and space which results in the misfortune of injury constitutes negligence.

*Ploesser v. Burlington Rapid Transit Co.*, 121 Vt. 133, 141 (1959). To the extent that Ploesser could be read to indicate automatic liability for any driver in back, the Vermont Supreme Court quickly clarified that the full rule is more nuanced.

> The law required the operator of the plaintiff's car, in following the defendant, to control his speed and distance from the car ahead that he could adequately

> provide for the contingency of the defendant's sudden stopping. The failure to do so *may* constitute negligence. *It was for the jury to determine whether there was a shortage of care on the part of the plaintiff's operator in this respect and whether such fault should be imputed to the plaintiff.*

*Young v. Lamson*, 121 Vt. 474, 478 (1960) (citations omitted; emphasis added). More recently, although in an unpublished decision, the court again emphasized that rear-end collisions do not *necessarily* result from the negligence of the driver in back.

> Warner claims Vermont law provides that any time one vehicle hits another vehicle from behind, the driver of the rear vehicle is always negligent. Warner misstates the law. It is true that we have held that a driver must operate her vehicle at a speed and distance behind another vehicle to avoid collision in the event the vehicle in front stops suddenly. *That requirement does not mean, however, that each rear-end collision is the result of negligence by the driver in the back. The trier of fact must determine whether, under the circumstances, the vehicle's operator was driving at a reasonable speed and at a sufficient distance from the preceding vehicle.* We observe that if the law were as Warner suggests, we could dispense with jury trials on liability altogether in cases involving rear-end collisions because there would be nothing to decide but damages.

*Warner v. Swenor*, No. 2001-198, 2002 WL 34424329, at *2 (Vt. 2002). GEICO has misstated the law in precisely the same way that Warner did.

Whether Mr. Schumacher was negligent is disputed, and the extent to which negligence on his part caused injury is also disputed. These issues must be determined by a factfinder. Nothing in GEICO's reconsideration motion persuades the court that Mr. Schumacher is liable as a matter of law.

ORDER

For the foregoing reasons, while the court has reconsidered its decision, to the extent GEICO's motion seeks a change in the prior ruling, it is *denied*.

Dated at Montpelier, Vermont this 23rd day of August 2018.

Mary Miles Teachout

Mary Miles Teachout
Superior Judge