IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

KATHLEEN CROCKFORD,	)	CIVIL ACTION NO.
	)	3:10-cv-0813(JCH)
Plaintiff,	)	
v.	)	
	)	
LAWRENCE M. SPENCER, ET AL,	)	
	)	
Defendants	)	OCTOBER 6, 2011

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO PARTIAL MOTION FOR SUMMARY JUDGMENT

The plaintiff objects to the defendants' Motion for Partial Summary Judgment for the reasons that recklessness is a question of fact and this case presents numerous disputed issues of material fact, as further discussed below and in the accompanying Rule 56(a)(2) Statement of Disputed Facts. Accordingly, the Court should deny the defendant's Motion for partial Summary Judgment as to the Second and Third Counts of the plaintiff's Complaint.[1]

I. FACTUAL BACKGROUND

This action for damages arises out of a devastating collision that occurred on May 29, 2008 near the intersection of Route 1 and Route 1A in Stonington, CT, when the plaintiff's VW Beetle convertible was rear-ended by the defendants' fully-loaded flatbed

[1] The plaintiff will stipulate to dismissal of Counts Five through Eleven.

tractor-trailer truck weighing 76,350 lbs. *See Police Accident Investigation Report*. The plaintiff is Reverend Kathleen Crockford, a Congregational minister who was returning home from conducting a funeral. The tractor-trailer was driven by Lawrence Spencer, on his way to deliver a load of steel. At the time of the collision, Reverend Crockford was stopped behind another vehicle, a van operated by Lisa Stoner, who was waiting for oncoming traffic to pass before she could turn left onto Elm Street. The plaintiff was also intending to turn left, and the defendant testified that he was also going to make the same left turn at that intersection.

The defendant's claim that he was intent on making a left turn onto Elm Street begs the question: why was the defendant not preparing to stop behind the plaintiff's vehicle, and why had he not attempted to slow down well before the point he claims to have applied his brakes? There is a straight, unobstructed view of the area of impact for at least 1,000 feet, such that the defendant should have seen the Crockford vehicle long prior to when he came within 300 feet of her car. *Affidavit of Edward Haberek* (attached as Exh. 1); *Testimony of plaintiff's trucking expert Lew Grill (to be provided).* Witness Edward Haberek, who was following the tractor-trailer, told police he never saw brake lights. *See* Exh. 1.

The defendant told police and testified at his deposition that he applied his brakes as he approached the intersection but that the brakes "went to the floor;" that he tried

braking a second time with the same results; and that he then applied the vehicle's "maxi-brakes" (which lock the trailer's rear wheels while the vehicle is parked) when he was about 50 feet from Reverend Crockford's car. He told police these actions were insufficient to stop the vehicle and that he collided with her car, pushing it into the van operated by Ms. Stoner, causing heavy damage to both ends of the plaintiff's small car and serious injuries to the plaintiff.

Although the defendant testified he was approximately 150-200 feet away from the plaintiff's vehicle when he first applied his brakes, the police accident reconstruction report indicates that a set of double skid left by the defendant's vehicle began only 75 feet 11 inches east of the reference point (center of the bridge near point of impact). This set of double skid marks, measured at 15 feet one inch, was followed by short skid marks ("skip" marks) measured at 49 feet two inches; 38 feet, and 27 feet east of the reference point; followed by a 20 inch gouge mark at 13 feet nine inches east; a 16 inch gouge mark at eleven feet one inch and a short skip mark ten feet 11 inches west of the reference point. *See police accident reconstruction report* (Exh. 2). The police also found no evidence that the tractor-trailer's emergency brakes had been applied, as claimed by the defendant. *Id*. Mr. Spencer also testified inconsistently to needing four to five car lengths to safely stop (*Spencer depo. at 42-43*) or three to four truck lengths to stop (*Spencer depo. at 75*) (see Exh. 3).

Regardless of when he first tried to apply his brakes, the fact remains that it is simply impossible for the defendant's brakes to have completely failed at the time of the collision and then have been found to be in proper working order by the investigating police officers shortly after the collision. *Testimony of plaintiff's trucking expert Lew Grill (to be provided); police accident reconstruction report (concluding that brakes were in proper working order and that skid marks observed at the scene were evidence of some braking); Spencer depo. at 48-49 (he had no problem stopping that day prior to the collision), 78 (police tested the brakes after the collision and found nothing wrong), 73 (Penske checked the brakes after the accident and found nothing wrong), 101 (an insurance representative also checked the brakes and found nothing wrong), and 112 (the brakes worked fine on the return trip home from the scene).* Brakes cannot completely fail for no apparent reason and then function properly again minutes later without extensive repair work done in the interim. If the defendant's foot "went to the floor" as he claims, he either stepped on the clutch or the accelerator, not the brake pedal. *Testimony of plaintiff's trucking expert Lew Grill (to be provided).*

In this case, there are numerous genuine issues of material fact sufficient to defeat summary judgment, including: whether the defendant should have been driving with his

jake brake engaged;[2] whether the defendant should have seen the plaintiff's stopped vehicle prior to the point he claims he first saw it; the point at which he first applied his brakes prior to the collision; whether the defendant applied the truck's maxi-brakes, as he claims; whether the tractor trailer's brakes failed as described by the defendant; the defendant's speed at the time of the collision; whether the defendant was on the phone or otherwise distracted at the time of the accident; whether the defendant left sufficient stopping distance to avoid the collision; whether the defendant could have driven around the plaintiff's vehicle to the right or left; whether the defendant should have driven off the road to the right prior to the point of impact, since there was a commercial parking lot running almost 300 feet prior to the point of impact, after which there was a shallow marsh; and whether the defendant's conscious decision to drive into the rear of the plaintiff's vehicle, rather than drive off to the right or otherwise try to avoid colliding with her vehicle, rises above mere negligence and constitutes recklessness. *See plaintiff's Rule 56(a)(2) Statement of Disputed Facts.*

[2] The jake brake is a mechanism that slows the truck's engine as the driver lifts off the accelerator. The defendant testified that he typically drives with it off and puts it on when he comes to a stop, which is utterly pointless since the purpose of the jake brake is to slow the engine while the vehicle is operating.

II. ARGUMENT

A. STANDARD

Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 247-48, 106 S. Ct. 2505 (1986). The moving party has the burden of demonstrating the absence of a genuine issue of material fact. *Id.*

B. RECKLESSNESS IS A QUESTION OF FACT FOR THE TRIER

It is well established that recklessness presents a genuine issue of material fact. *Bowen v. Hartford Accident & Indemnity Co*., 112 Conn. 621 (1937) (recklessness "will ordinarily be a question of fact for the jury"); *Kuharski v. Somers Motor Lines*, 132 Conn. 269, 274-75, 43 A.2d 777, 779 (1945) (whether the facts and inferences drawn therefrom support a finding of negligence or recklessness "was a question of fact for the trial court."); *Franc. v. Bethel Holding Co*., 73 Conn. App. 114, 138, *cert. denied on other grounds*, 262 Conn. 923 (2002) (recklessness is a question of fact); *Frillici v. Westport*, 264 Conn. 266, 277 (2003) (same). See also *Thornberg v. Moody*, 2011 WL 1888413 (Conn. Super.), No. CV085004995S, J.D. of Ansonia-Milford, (May 3, 2011, Radcliffe, J.) (whether conduct represents reckless and unreasonable conduct is a genuine issue of material fact precluding summary judgment); *Mackey v. Renz*, 2005 WL 1089837 (Conn. Super.), No. CV030407469S, J.D. of Fairfield, (Apr. 4, 2005, Gilardi, J.) at *2

(recklessness is a question of fact for the jury); *Limitone v. Reilly*, 2003 WL 21805892 (Conn. Super.), No. CV020459818, J.D. of New Haven, (Jul. 24, 2003, Gilardi, J.) (recklessness is a question of fact unsuitable for summary judgment) (Superior Court cases attached as Exh. 4).

Recklessness involves actions that tend to take on highly unreasonable conduct, involving an extreme departure from ordinary care, where a high degree of danger is present. *Dubay v. Irish*, 207 Conn. 518, 533 (1986); *Coble v. Maloney*, 34 Conn. App. 655, 661 (1994). "Reckless is a state of consciousness with reference to the consequences of one's acts…." *Craig v. Driscoll*, 262 Conn. 312, 342-43 (2003); *Dubay*, 207 Conn. at 532. "Recklessness requires a conscious choice of course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves risk substantially greater … than that which is necessary to make his conduct negligent." *Matthiessen v. Vanech*, 266 Conn. 822, 832 (2003).

The defendant's conduct at issue easily meets this standard for common law recklessness. The defendant Spencer had been a tractor-trailer driver since the 1980s. He understood the importance of maintaining a reasonable speed, safe following distance, and sufficient time and space to stop safely. Spencer depo. at 29-30. He understood that serious injury or death could result if his tractor-trailer rear-ended a vehicle such as the

plaintiff's. *Id*. at 28, 30. He understood that a fully-loaded tractor trailer takes longer to stop and knew that his vehicle was fully-loaded with steel, weighing over 76,000 lbs. *Id*. at 40-41. The defendant understood that he should always be able to bring his tractor-trailer to a safe stop behind other vehicles on the road; that driving a tractor-trailer can be dangerous if he was unable to stop in time; and conceded that he had plenty of time to stop safely behind the plaintiff when he first saw her vehicle stopped waiting to turn left. *Id*. at 28, 30, 63-64.

Despite knowing and understanding all of these facts, including that the plaintiff could be seriously injured or killed if he collided with her car, Mr. Spencer consciously chose to drive his tractor-trailer into the back of the plaintiff's VW Beetle rather than try to go around it or drive off the road prior to hitting her. *Id*. at 146-47, 155-58. He even conceded that hitting or going through the guardrail would have been preferable to hitting the plaintiff, *id*. at 157-58, but testified that he considered and rejected that option and instead chose to simply collide with the back of her car. *Id*. at 146-47, 155-58. This decision by the defendant was a "conscious choice of course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man." *Matthiessen, supra*. If this egregious conduct under these circumstances does not amount to recklessness, it is hard to imagine

what would, but it is a question of fact for a jury. *Id.; Bowen, supra; Kuharski, supra; Thornberg, supra.*

Whether the defendant is liable for statutory recklessness under Conn. Gen. Stat. § 14-295 is similarly a question of fact. To establish liability for statutory recklessness, the plaintiff need only plead and prove a violation of one of the "trigger statutes" enumerated in § 14-295, which provides that:

> In any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, 14-219, 14-222, 14-227a, 14-230, 14-234, 14-237 or 14-240a, and that such violation was a substantial factor in causing such injury, death or damage to property.

Conn. Gen. Stat. § 14-295. The plaintiff's Complaint specifically tracks this required language of the statute in the Third Count, Paragraph 14, which alleges that the defendant operated his vehicle at an unreasonable rate of speed, in violation of Conn. Gen. Stat. § 14-218a, and drove his vehicle in a reckless manner in violation of Conn. Gen. Stat. § 14-222, and that such violations were substantial factors in causing the collision and the plaintiff's resulting injuries. Whether the defendant operated unreasonably or recklessly is a question of fact for the trier of fact. *Matthiessen, supra; Kuharski, supra; Franc, supra; Thornberg, supra.*

For these reasons, the Court should deny the defendants' Motion for Partial Summary Judgment and sustain plaintiff's Objection.

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CERTIFICATION

This is to certify that a copy of the foregoing was sent by first class postage prepaid mail to the following counsel this 6th day of October, 2011:

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