Rear-End Collision Presumption to be Further Defined by Florida Supreme Court

June 11, 2011 by Robert C. Weill

In the blog posting dated March 25, 2011, the author discussed the Florida Supreme Court's review of *Cevallos v. Rideout*, No. SC09-2238, where the Court will determine how, or if, the rebuttable presumption that a rear-driver was the sole, proximate cause of a rear-end collision applies when the rear-driver was the plaintiff. No decision has been released yet. However, the Florida Supreme Court may further clarify the scope of the presumption in *Birge v.* Charron, No. SC10-1755 (*review granted* May 13, 2011),which was the basis for the supreme court's conflict review of *Cevallos. See Charron v. Birge*, 37 So. 3d 292 (Fla. 5th DCA2010). *Birge* presents the additional issue of whether the rear-end collision presumption applies where a *passenger* in the following vehicle sues the lead driver for negligence. The supreme court will not hold oral argument on this new case.

The *Charron* court held that the presumption does not apply when a rear-vehicle *passenger* sues the lead driver for his negligence. The district court's succinct reasoning was grounded on principles of contributory negligence; specifically, even under Florida's now defunct contributory negligence rule, a passenger in the rear vehicle was entitled to pursue all potential tortfeasors, including the forward drivers, in a rear-end collision.

The *Charron* decision on this point, though, appears to conflict with other district court decisions. For example, the Fourth District in *Marcellus v. Cronan*, 963 So. 2d 364 (Fla. 4th DCA 2007), held that the passenger in a lead vehicle who sued the driver of a rear vehicle could not avail herself of the presumption because the lead vehicle may have been improperly parked or stopped on shoulder of roadway at time of accident. To the same effect is the decision in *Keyser v. Brunette*, 188 So. 2d 840 (Fla. 2d DCA 1966), where the Second District held that the plaintiff, who was passenger in a vehicle struck by the defendant, could not rely on the presumption because the circumstances of the accident "clearly dissipated" it.*Id.*at 841.On the other hand, in *Kimenker v. Greater Miami Car Rental, Inc.*, 115 So. 2d 191(Fla. 3d DCA 1959), the Third District held that plaintiffs, who were passengers in a vehicle struck from behind by defendant, were entitled to a directed verdict on liability based on the presumption which the defendant had not rebutted with "substantial evidence."*Id.* at 192.

C*harron* seems to be at odds with *Marcellus*, *Keyser* and *Kimenker*. If a rear-vehicle *passenger* is immune from the presumption when a plaintiff (*i.e.*, he or she should not be penalized by the driver's negligence), then it would seem unfair to prevent a lead-vehicle passenger from asserting the presumption by virtue of the lead driver's negligence.

The Appellate Strategist is currently tracking the status of this case and provides periodic updates on the link to the pending Florida Supreme Court cases. Once a decision is released, it will be linked there.