

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

PATRICIA H. MELLINGER and)	
JASON F. MELLINGER, her husband,)	
)	
Plaintiffs,)	
v.)	C.A. No. N11C-04-092-PLA
)	
GREGORY J. POPLOS and CRETE)	
CARRIERS, INC., jointly and)	
severally,)	
Defendants.)	

Submitted: September 27, 2011
Decided: October 11, 2011

**UPON PLAINTIFFS MOTION FOR SUMMARY JUDGMENT
DENIED**

This 11th day of October, 2011, it appears to the Court that:

1. In this automobile accident case, Plaintiffs Patricia Mellinger and her husband Jason Mellinger have moved for partial summary judgment on the question of liability, alleging that Defendant Gregory Poplos (“Poplos”), an employee of Defendant Crete Carriers, Inc. (“Crete”), admitted fault in the accident and therefore no dispute concerning the material facts in this case exists. In response, Poplos and Crete (collectively, “Defendants”) contend that a genuine issue of material fact exists as to whether Poplos proximately caused the accident. Specifically, they argue

that this was an unavoidable accident because of the hazards presented by other drivers on the road at the time of the collision, and therefore the Defendants cannot be held liable for Plaintiffs' injuries.

2. Plaintiffs' summary judgment motion arises out of an automobile accident that occurred on Elkton Road in Newark, Delaware. Poplos was driving an empty dump truck from Newark Concrete to Elk Mills Quarry in Maryland for his employer Crete. While traveling in the left lane of Elkton Road, Poplos noticed a Jeep in the right lane carrying two extension ladders and a bundle of drywall.¹ Poplos testified at his deposition that the vehicle in front of him repeatedly braked suddenly, so he decided to move to the left lane and travel behind the Jeep at twenty miles per hour.² When Poplos attempted to change lanes, he collided with a vehicle driven by Mellinger in the right lane.³ Poplos testified that he did not see Mellinger's vehicle until the collision.⁴ Poplos also stated that he had his turn signal on and that he looked in his mirrors before he attempted to change lanes.⁵

3. Summary judgment is appropriate where the record presents no genuine issue of material fact and the moving party is entitled to judgment as

¹ Gregory J. Poplos Dep. Tr., 7: 4-7; 8: 19.

² *Id.* at 7: 16-20.

³ *Id.* at 7: 21-24; 8: 1-2.

⁴ *Id.* at 9: 14-16.

⁵ *Id.* at 14: 19-21; 15: 8-15.

a matter of law.⁶ The Court must view all evidence in the record in the light most favorable to the non-moving party.⁷ Summary judgment motions are disfavored in negligence cases because the fact patterns presented are usually susceptible to more than one interpretation.⁸

4. Plaintiffs have argued that the record establishes Poplos' negligence caused the accident. Defendants respond that the Jeep carrying an oversized load and the vehicle traveling in front of Poplos in the left lane created an unavoidable situation such that Defendants cannot be held liable for the resulting accident. An unavoidable accident is one which could not have been foreseen or avoided by the parties through the exercise of proper care.⁹

5. The Court cannot find as a matter of law that Poplos' negligence proximately caused the accident that injured Mellinger. The record presented to the Court, viewed in the light most favorable to the Defendants, would permit a reasonable factfinder to conclude either that Poplos acted negligently when he changed lanes or that the accident was unavoidable because of the hazard presented by the other vehicles on the road. Thus, a genuine issue of material fact exists and summary judgment

⁶ Super. Ct. Civ. R. 56(c).

⁷ *E.g., Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 100 (Del. 1992).

⁸ *Hadley v. Forgiione*, 1985 WL 189339, *1 (Del. Super. Dec. 24, 1985).

⁹ *Fritz v. Stayton*, 1982 WL 591782, *1 (Del. Super. Nov. 4, 1982).

on the issue of liability is not appropriate in this case. Therefore, Plaintiffs' Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary