PUBLICATION

Birge v. Charron Clarifies Application of Florida's Comparative Negligence Standard to Rear-End Collisions

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On November 21, 2012, the Florida Supreme Court issued an opinion ostensibly intended to clarify the presumption of liability in rear-end collisions in Florida. Its real effect, however, may be to muddy the waters in this area and allow cases to go forward that previously would have been dismissed at the summary judgment stage. In *Birge v. Charron*, 37 Fla. L. Weekly S753 (Case No. SC10-1755, November 21, 2012), the Florida Supreme Court sided with the Florida Fifth District Court of Appeal in holding that a pure comparative negligence standard should be applied to determine liability in a rear-end collision case so long as there is evidence of negligence by anyone (either a party or non-party) other than the rear driver proximately causing, or contributing to cause, the rear-end collision. Prior to Florida adopting the comparative negligence standard in 1973, Florida courts applied a contributory negligence standard to these cases and generally held that the rear driver was almost always 100 percent at fault. Even after 1973, however, courts continued to employ a presumption of liability for the rear driver. While this presumption was theoretically rebuttable, in practice the presumption was almost always applied.

In *Birge*, the Florida Supreme Court "disapproved" a decision by the Fourth District Court of Appeal that employed this "heightened" rebuttable presumption standard. The Florida Supreme Court - while acknowledging that a rebuttable presumption purportedly still exists - sided with the Fifth District in holding that this presumption is not a substantive rule of law but an evidentiary tool to facilitate resolution of rear-end collision cases. Accordingly, the Supreme Court instructed that principles of comparative fault should always be applied and if evidence is produced showing that the actions of any party or non-party other than the rear driver contributed to cause the accident, the presumption is overcome and the case is to go to the jury to determine the apportionment of fault. Furthermore, the Court held that this standard should be applied whether the case has been brought by a driver or passenger in the front or rear vehicle.

Although comparative negligence has been the standard in Florida since 1973, Florida courts continued to employ the rear-end collision presumption, likely because this provided certainty through a bright-line test. Although the Florida Supreme Court has not completely eliminated the presumption, it is difficult to imagine many rear-end collision scenarios where the party operating the rear vehicle cannot produce *some* admissible evidence of proximate negligence on the part of the front driver or some other party or non-party. To the extent there was a bright-line test effectively applied in the trial courts, it no longer exists. Motor carriers operating in the state of Florida should be aware of this clarified standard and the effects it may have on any particular rear-end collision. Certainly, in many cases the front driver or passenger will have risks in taking a claim to trial that did not exist previously.

Baker Donelson's Transportation lawyers, including those in our new Orlando, Florida office, will continue to monitor cases based upon the clarified standard as they develop.