

**Submitted: May 7, 2001**

**Decided: May 8, 2001**

**David Roeberg, Esquire  
Roeberg, Moore & Associates, P.A.  
910 Gilpin Ave.  
Wilmington, DE 19806**

**James J. Haley, Jr., Esquire  
Ferrara, Haley, Bevis & Solomon, P.A.  
824 Market Street Mall, Suite 800  
Wilmington, DE 19899**

**Robert J. Leoni, Esquire  
Morgan, Shelsby & Leoni  
131 Continental Drive, Suite 206  
Newark, DE 19713**

**Stephen P. Casarino, Esquire  
Casarino, Christman & Shalk  
222 Delaware Ave., P.O. Box 1276  
Wilmington, DE 19899**

**Re: *Michael S. Ruderman, individually and as next friend of Paige Ruderman,  
a minor child, v. State Farm Fire and Casualty Company, James D. Heeren,  
and Lisa M. Ruderman - Civil Action No. 00C-05-148 SCD***

**Dear Counsel:**

**This claim arises out of an accident which occurred on October 10, 1998, on Chestnut Hill Road, approximately fifty feet East of the intersection with S. College Avenue in Newark, Delaware. It was a Saturday morning. The accident is reported in the police report to have occurred at 10:24 a.m. with the officer**

responding at 10:28 a.m.

The plaintiff, Michael S. Ruderman, was a minor occupying a vehicle operated by his mother, Lisa Ruderman. Lisa Ruderman is a defendant, as is the operator of the other vehicle involved in the accident, James Heeren. Defendant Ruderman has filed a motion for summary judgment. She argues that she had the right of way and that the accident occurred solely because Heeren made an improper left turn in front of her. A review of the photographs shows that the area of the Heeren vehicle that was struck by the Ruderman vehicle was the left front. The police officer who investigated the accident minutes after it occurred testified that Heeren told him that he had a partially obstructed view as he attempted to make a turn into the Ground Round parking lot. Defendant Ruderman said that the Heeren vehicle turned in front of her. She had no time to react. She also testified as follows:

**Q. Did you apply your brakes at any time prior to Impact?**

**A. No.**

**Q. And do you remember what the kids were doing immediately prior to impact?**

**A. Fighting.**

**Q. Were you having to tell them to stop fighting?**

**A. Yes.**

**Q. Do you remember having to turn around at all to talk to them?**

**A. Yes.**

**Q. Were you doing that immediately prior to impact?**

**A. Probably.**

**\* \* \* \* \***

**Q. If you can tell me the -- when did you first notice the trailer [the trailer was behind a third vehicle that passed in front of the Ruderman vehicle and obscured Heeren's view of oncoming traffic] partially sticking out as you've described it in that**

**Civil Action No. 00C-05-148 SCD**

**May 8, 2001**

**Page 3**

**lane?**

**A. After the accident.**

**Q. Did you have to take evasive action to get around that trailer?**

**A. I had to go around him, yes.**

**Although the police officer was not questioned about it at his deposition, his report notes that defendant Ruderman told him that "her 5 yr. old daughter had taken seat belt off just prior to accident."**

**Ordinarily a motorist who has the right of way, as defendant Ruderman did, has no duty to anticipate the negligence of another motorist. The issue presented here is whether or not defendant Ruderman was paying full time and attention to the operation of her motor vehicle at the time of the accident in question, or whether there may be some small portion of responsibility attributable to her conduct, based on her own testimony. Ruderman's conduct presents an issue of material fact.**

**The defendant's motion for summary judgment is DENIED.**

**IT IS SO ORDERED.**

**Very truly yours,**

**Susan C. Del Pesco**

**SCD/msg**

**Original to Prothonotary**

---

<sup>1</sup>*Levine v. Lam*, Del. Supr., 226 A.2d 925 (1967).

<sup>2</sup>Superior Court Civ. Rule 56.