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MILDRED A. GREEN, :  
 :  
 Plaintiff - Appellant, : SUPERIOR COURT OF NEW JERSEY  
 : APPELLATE DIVISION  
 : DOCKET NO.: **A - 001928 - 23 T1**  
 :  
 v. :  
 :  
 RICARDO A. ALBOREDA GUAPACHA, :  
 ALBA VIDAL, AND JOHN DOE :  
 1-4 (BEING FICITIOUS AND : Docket No. Below: ESX-L-8001-20  
 UNKNOWN) :  
 :  
 Defendants - Respondents. : Sat Below:  
 : Hon. Louise Grace Spencer, J.S.C.  
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**BRIEF OF PLAINTIFF - APPELLANT**

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David Maran, Esq., 009161985  
MARAN & MARAN, PC  
9-25 Alling Street  
Newark, New Jersey 07102  
(973) 622-5303  
[dmaran@njmalpractice.com](mailto:dmaran@njmalpractice.com)  
Attorneys for Plaintiff - Appellant  
*Mildred A. Green*

**TABLE OF CONTENTS**

TABLE OF CONTENTS	i
TABLE OF JUDGMENTS, ORDERS, AND RULINGS	i
TABLE OF CONTENTS FOR PLAINTIFF'S APPENDIX	ii
TABLE OF AUTHORITIES	iii
INDEX OF EXHIBITS SUBMITTED ON THE MOTION BELOW	iv
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	3
PROCEDURAL HISTORY	4
ARGUMENT	
POINT I	5
<b>THE COURT ERRED IN GRANTING SUMMARY JUDGEMENT WHEN GENUINE ISSUES OF MATERIAL FACT ARE PRESENT REQUIRING A JURY TO DETERMINE WHETHER THE DEFENDANT WAS NEGLIGENT IN THE OPERATION OF HIS VEHICLE AND TO DETERMINE THE COMPARATIVE NEGLIGENCE OF EACH OF THE PARTIES</b>	
<b>(RAISED BELOW: Pa1; 1T16)</b>	
CONCLUSION	17

**TABLE OF JUDGEMENTS, ORDERS, AND RULINGS**

01/22/2024	Order Granting Summary Judgment	Pa1
------------	---------------------------------	-----

**TRANSCRIPT KEY**

01/22/2024	Transcript of Motion	1T
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**TABLE OF CONTENTS FOR PLAINTIFF'S APPENDIX**

01/22/2024	Order Granting Summary Judgment	Pa1
02/29/2024	Notice of Appeal	Pa2
03/04/2024	Certification of Transcript Completion and Delivery	Pa6
11/20/2020	Complaint and Jury Demand	Pa7
12/08/2020	Answer	Pa13
09/29/2021	Deposition of plaintiff Mildred A. Green	Pa17
08/10/2022	Substitution of Attorney and Designation of Trial Counsel	Pa110
05/12/2023	Deposition of defendant Ricardo Alboreda Guapacha	Pa112
12/07/2018	Police Report	Pa151
11/07/2023	Marked Satellite image	Pa153
11/07/2023	Plaintiff's Affidavit	Pa154
10/09/2023	Notice of Motion for Summary Judgment	Pa156
<u>Troiani v. Dicker, Unpublished Case</u> Docket No. A-5176-16T1 (App Div. 2018)		Pa158
06/07/2024	Index of Exhibits Submitted to the Court on the Motion Below	Pa161
10/09/2023	Motion for Summary Judgment: Statement of Facts	Pa163
08/10/2021	Motion for Summary Judgment Plaintiff's Answers to Form A Interrogatories	Pa165
10/09/2023	Motion for Summary Judgment Defendant's Google Image of the Intersection	Pa176
<u>Rybkin v. Twp. Of North Bergen: Unpublished Case</u> Docket No. A-3773-09T4 (App. Div. 2012)		Pa177

**TABLE OF AUTHORITIES**

**Cases**

<u>Brill v. Guardian Life Ins. Co.</u> , 142 N.J. 520, 540 (1995)	5, 14
<u>Prudential v. Boylan</u> , 307 N.J. Super. 162, 167	5
<u>Philips v. Scrimente</u> , 66 N.J. Super, 157, 163 (App. Div. 1961)	9, 10
<u>Mattero v. Silverman</u> , 71 N.J. Super. 1, 9 (App. Div. 1961)	10
<u>Beck v. Washington</u> , 149 N.J. Super. 569, 572(1977)	11
<u>Michaels v. Brookchester, Inc.</u> , 26 N.J. 379, 386 (1958)	10
<u>Ever v. Davis</u> , 86 N.J.L. 196 (E.A. 1914)	10
<u>Picone v. Stiles</u> 329 N.J. Super. 191, 297 (App. Div. 2000)	14, 15
<u>Troiani v. Dicker</u> , Docket No. A-5176-16T1 (App Div. 2018)	12, Pa158

**Statutes**

N.J.S.A. §39:4-123	7, 8, 10
N.J.S.A. §39:4-98	12
N.J.S.A. §2A:15-5.1	16

**Rules**

<u>N.J. Ct. R. 4:46-2</u>	1, 5
---------------------------	------

**Other Authorities**

Model Civil Jury Charge 5.30D	10
Model Civil Jury Charge 5.30G	11
Model Civil Jury Charge 7.30	16
Model Civil Jury Charge 7.31	16

INDEX OF EXHIBITS SUBMITTED TO THE COURT  
ON THE MOTION BELOW

1. Statement of Facts	Pa163
2. Complaint, ESX-1-8001-20, Ex A below	Pa7
3. Police Report, Ex B below	Pa151
4. Plaintiff's Answer to Form A Interrogatories: Ex C below.	Pa165
5. Deposition of plaintiff Mildred A. Green: Ex. D below	Pa17
6. Deposition of defendant Ricardo A. Guapacha: Ex E below	Pa112
7. Defendant's Google Image of the Intersection: Ex F below	Pa176
8. Affidavit of plaintiff Mildred A. Green: Ex-1 below	Pa154
9. Marked Satellite Image: Ex Pa-2 below.	Pa153
10. Rybkin v. Twp. Of North Bergen Docket No., A-3773-09T4 (App. Div. 2012): within Reply; Ex.1 below	Pa177

**PRELIMINARY STATEMENT**

The case arises out of a traffic accident which occurred on a late Friday afternoon in December 2018 in Newark at the intersection where First Street meets Route 280. On that afternoon, traffic was as usual, traffic was heavy, and both parties were on First Street, sitting at the red light waiting to make a left onto Route 280 West. Essentially plaintiff-appellant, Green, argues that the defendant-respondent, Arboleda, failed to hold his turn and went wide into the right lane of 280 where the plaintiff was already and struck her vehicle on the driver's door and left side. And yes, the plaintiff was making a left turn despite there being a large painted white "straight arrow" on her lane of the roadway.

This complaint was filed by Mildred A. Green on 11/20/2020 against the driver and owner of the vehicle which struck her. After discovery, the defendants filed, pursuant to N.J. Ct. R. 4:46-2, a Motion for Summary Judgment asserting that there exists no issue in facts and requested that summary judgment be granted to them as a matter of law. After filing opposition to the motion and participating in Oral Argument on 01/22/2024, the Trial Court granted the defendant's Motion and Dismissed the plaintiff's case. The Appellant is now seeking to reverse the Order of the Trial Court have the matter remanded to the Law Division for Jury Trial.

In its simplest form, the Trial Court erred by failing to consider the evidence presented by the plaintiff and whether

the evidence could prove that the defendant was negligent in the operation of his vehicle, and which was a proximate cause of the accident. It is these factual disputes which were presented below through exhibits, affidavits, depositions, and was argued in the opposition brief and during oral argument.

The plaintiff argues that the defendant was negligent in the operation of his vehicle by failing to maintain his turn within the radius which would bring his vehicle into the left lane of Route 280 West. When he failed to negotiate the turn, whether through inappropriate acceleration through a packed intersection, or from his lack of observation of the plaintiff's vehicle up until the moment his front bumper hit plaintiff's driver's side. So, there is evidence to support a lack of observations, speed, and control. In addition, there are traffic statutes which the defendant failed to obey which provides evidence of negligence.

The Trial Court in its decision stated, "That the Plaintiff has not cited to any material facts, which raise a genuine issue. For those reasons, the application for Summary Judgment as to the Defendant is granted." **1T16:15-18.**

The plaintiff must be allowed to present her case to a Jury to determine whether the defendant was negligent in the operation of his vehicle, which was the proximate cause of the accident, to determine the comparative negligence of each of the drivers, and finally award damages.

**STATEMENT OF FACTS**

On Friday, December 7, 2018, just past 4:00 pm, when the plaintiff-appellant, Mildred A. Green, and the defendant-respondent, Ricardo A. Arboleda Guapacha, were driving in heavy traffic on First Street Newark intending to get out of Newark and onto Route 280 Westbound. **Pa151**. While stopped at the red light at the intersection with Route 280, the plaintiff and the defendant were sitting side by side waiting to make left turns onto Route 280 when the accident occurred. The defendant was aware of the plaintiff at the stoplight. **Pa125:17-22**. Plaintiff testified that two lanes habitually turned left from First Street onto Route 280. **Pa50:8-10**. Plaintiff was in the middle lane that was designed to go straight, but was going to turn left. **Pa153**.

The plaintiff's vehicle was struck on the left-hand driver's side with the front right bumper of the vehicle operated by the defendant, Ricardo A. Arboleda Guapacha, and owned by the defendant, Alba Vidal. **Pa50:24-25, Pa51:1-2**.

The defendant failed to see the vehicle operated by the plaintiff while making the turn. **Pa121:24-25, Pa122:1-3**. The defendant did not hold his turn and correctly travel into the left lane of Route 280, but instead went wide into the right lane where the plaintiff already was and struck the plaintiff's vehicle. After the accident the defendant said to the plaintiff, "I know I should have stopped." **Pa55:22-25, Pa56:1-3**.



**PROCEDURAL HISTORY**

On 11/20/2020 the plaintiff-appellant filed a Complaint and Jury Demand for a 12/07/2018 accident against two defendants, Ricardo A. Arboleda Guapacha, the driver of vehicle, and Alba Vidal, the owner of the vehicle. **Pa7**. An Answer was filed by the Law Office of Styliades & Jackson on behalf of the defendant-respondents on 12/08/2020. **Pa13**.

On 08/10/2022 a Substitution of Attorney and Designation of Trial Counsel was filed naming Hillary C. Kruger, Esq. as trial counsel. **Pa110**.

On 10/09/2023 a Motion for Summary Judgment was filed on behalf of the defendants by The Law Office of Frank A. Viscomi with an initial return date of 11/17/2023. **Pa156**.

On 11/07/2023 Opposition to the Motion was filed by the plaintiff.

On 11/14/2023 the Reply Brief was filed by the defendant.

On 01/22/2024 the Trial Court held Oral Argument on the Motion for Summary Judgment. **1T**.

On 01/22/2024 the Trial Court entered an Order Dismissing the plaintiff's Complaint with Prejudice. **Pa1**.

On 02/29/2024 a Notice of Appeal was filed with Clerk of Appellate Division. **Pa2**.

ARGUMENT

POINT I

THE COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN GENUINE ISSUES OF MATERIAL FACT ARE PRESENT REQUIRING A JURY TO DETERMINE WHETHER THE DEFENDANT WAS NEGLIGENT IN THE OPERATION OF HIS VEHICLE AND THEN TO DETERMINE THE COMPARATIVE NEGLIGENCE OF EACH OF THE PARTIES (RAISED BELOW: Pa1; 1T16)

The Trial Court erred in granting Summary Judgment to defendants. N.J. Ct. R. 4:46-2 states that a Motion for Summary Judgment shall set forth...a statement of each material fact as to which the movant contends there is no genuine issue. R. 4:46-2(a). The Trial Court's Summary Judgment Order must be reviewed *de novo* using the standard by which the Trial Judge must decide whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party[.]" Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). In other words, we must consider "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 536. In this Appeal, this Appellate Court will use the same standard as the Trial Court when reviewing a Trial Court's Decision to grant Summary Judgment. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App.

Div.), certif. denied, 154 N.J. 608 (1998)."

At Trial, the plaintiff intends to prove that the defendant was negligent in the operation of his vehicle in four ways. First, the defendant owed a duty to maintain control over his vehicle. Second, the defendant is required to follow the traffic statute regarding left turns, which requires him to turn into the left lane of Route 280. Third, the defendant failed to follow the speed statute; more precisely, that the defendant did not travel at an appropriate reduced speed when entering and crossing the intersection. Fourth, the defendant failed to make proper observations, because he was completely unaware of the plaintiff's car on the roadway, despite his awareness that she was on his right while they were both stopped at the red light. It was because he did not see her as he was driving, that he crashed into her with his front right bumper after he failed to hold the turn and went wide into the right lane of Route 280. In the following paragraphs each of the instances of negligence are discussed.

First the plaintiff asserts that the defendant negligently failed to maintain control of his vehicle when the defendant failed to hold his turn and keep to the left and go into the left lane of Route 280 W. The defendant went wide, he crossed over into the right-hand lane, where the plaintiff already was, striking her with the right front bumper of his vehicle. The point of impact on the plaintiff's car was "on

my left-hand side, on my driver's side, from the tire to my front door of the left side or the driver's side." **Pa50:24-25, Pa51:1-3.** Plaintiff asserts that the defendant's failure to control his vehicle by taking the turn wide, coming into her lane, and striking her vehicle is evidence of the defendant's negligent failure to control his vehicle.

Second, the plaintiff has shown that the defendant violated N.J.S.A. §39:4-123 Right and Left Hand Turns, which provides the duties that a driver must meet while making a left-hand turn on a road other than two-way roadways, "... after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered." N.J.S.A. §39:4-123(c).

At deposition, Mr. Arboleda testified as to the happening of the accident:

Q. So why don't you tell me what you did beginning with being stopped at the red light. I imagine, when it changes green. What do you do?

A. So I stopped at the traffic light and the light was red. On my side, on the right, on my right side was this lady, her car, Mrs. Green, and so she was in the lane that's supposed to go straight because her lane was closed; and so when the traffic light changed, I started to go slowly; and so when I started to make my left turn - I started to make my left turn, and I don't know if she forgot or if she realized that she was in, like, the wrong lane or what; but that's when she tried to go into my lane and that's when she hit me. **Pa125:17-25, Pa126:1-5.**

"Q. Mr. Alboreda, The X mark that I added to this photograph, PA-2, is that the location where the first contact between vehicles occurred?

A. Around there, something like that, yes.”  
**Pa143:6-10, Pa153.**

After making the left-hand turn, instead of the defendant, keeping to the left as N.J.S.A. §39:4-123(c) Right and Left Hand Turn requires, he entered the right lane where the plaintiff's vehicle already was thereby causing the collision.

The plaintiff asserts that the defendant did not obey the traffic act and stay left and go into the left lane of Route 280 after crossing the intersection. Instead, the defendant negligently failed to hold his turn and he went wide and crossed over into the right lane of Route 280 where the plaintiff already was traveling. By entering the right lane, he ended up colliding with the plaintiff's vehicle.

The defendant was aware that there was room for two lanes to travel, both fast and slow, left and right, both going into Route 280 West. **Pa153, Pa129:13-17.** Had the defendant stayed on his path into the left lane this accident never would have happened.

The defendant fixed the point of impact entirely differently than the Police Officer recorded it on the official Police Report and plaintiff asserts that it is obvious that Mr. Arboleda had fixed the point of impact much too close to the concrete median. **Pa153.** The plaintiff testified that the point of impact was within the right lane where she was intending to go. **Pa48:12-19.** These different

recollections of the location of the point of impact are yet another example of a disputed material fact. As in many auto cases the point of impact is crucial, and certainly in this matter, it is neither immaterial, nor insubstantial, as the point of impact will tell us whether the defendant did take a wide turn and struck the plaintiff's vehicle within the right lane of travel or if you follow the mark on the satellite exhibit, the plaintiff had to have been driving into the left lane where the defendant was. **Pa151, Pa153.**

The point of impact as recorded in the police report implies the defendant left his left lane and entered right lane and supports the plaintiff's position. While the precise location of the point of impact is disputed, it is a fact that the Jury is preciously suited to determine. **Pa152.**

Philips v. Scrimente, 66 N.J. Super, 157 (App. Div. 1961) is an intersection accident involving a collision between a taxicab and an automobile, where the plaintiffs lost at trial and appealed the verdict. Plaintiff was a passenger in the taxi which made a sharp left turn in front of the other defendant, the Trial Court directed a verdict in favor of the other defendant. During jury deliberations the Jury asked questions whereupon the Trial Judge repeated his initial charge and added a statement which included the following: "A mere violation of the traffic act is not of and by itself sufficient to charge any defendant with negligence or failure

to meet the standards of care required. A violation of the traffic act is not of and by itself negligence."

When trial counsel objected the court replied, in the presence of the jury:

Not of and by itself it isn't negligence. It is evidence which the jury may consider in its entire aspect of all the other evidence because otherwise \* \* \* all someone would have to do is prove a violation of the traffic act and sit down. That isn't the case.

The Appellate Court concluded that this was prejudicial error, and held that:

The jury had the right to infer negligence from the facts constituting the violation of N.J.S.A. 39:4-123(b), especially since Mrs. Phillips was a fare paying passenger. It is true that, in determining whether the violator was negligent, the jury should take into consideration not only (a) the standard of conduct established by the statute (Michaels v. Brookchester, Inc., 26 N.J. 379, 386 (1958); Evers v. Davis, supra\*) and (b) the facts that constitute the violation, but also (c) all other testimony which, in their judgment, bears upon the issue. However, if in fact, or in the opinion of the jury, there is no such other testimony, the jury may find negligence upon proof of (a) and (b) alone. Citations omitted. Philips v. Scrimente, 66 N.J. Super, 157, 163 (App. Div. 1961).

The Philips Court focused on the same statute, which is at issue in the instant case, N.J.S.A. §39:4-123(b), and held that a violation of the statute is evidence of negligence.

See also Mattero v. Silverman, 71 N.J. Super. 1, 9 (App. Div. 1961), certif. den. 36 N.J. 305 (1962), Model Civil Jury Charge: 5.30D Violation of Traffic Act.

**\*Evers v. Davis**, 86 N.J.L. 196 (E.A. 1914)

The third instance of the defendant's negligence in his failure to make complete observations. The facts are that he was completely unaware of the plaintiff's car once he began his turn, and this is despite his awareness that she was on his right while they were both stopped at the red light. This is another factual reason in dispute. It is because he did not see her as he was driving, and that is why he crashed into her with his front right bumper after he failed to hold the turn and went wide into the right lane of Route 280. Had the defendant been aware of the plaintiff he would have easily avoided this accident.

Plaintiff will ask the Trial Court to charge Model Civil Jury Charge 5.30G Duty of Automobile Driver to Make Observations:

"The law imposes upon the driver of an automobile the duty of exercising such care as is reasonable under all the circumstances confronting the driver at the particular time. This duty requires motorists to use our streets and highways with reciprocal regard for the rights of others who may also be using them. Thus, a motorist is required to make such observations for traffic and vehicles which are in or may come into the motorist's path of travel, as a reasonably prudent person would make." "Indisputably, the defendant had a duty to make proper observations as she approached and entered the intersection. See Beck v. Washington, 149 N.J. Super. 569, 572



(App. Div. 1977)" Troiani-Schwartz v. Dicker, Unpublished, DOC. NO. A-5176-16T1, 6 (App. Div. 2018). **Pa158.**

Plaintiff will prove at trial that the defendant by his own admission did not see the plaintiff until the impact occurred. This negligent lack of awareness of other vehicles within the intersection was a cause of and contributed to this accident. **Pa121:23-25, Pa122:1-3.**

On the day of the accident, the intersection was packed with traffic with drivers all waiting to get onto the highway to go home from work on this late Friday afternoon. **Pa154.**

The deposition testimony indicates that the defendant did not see the plaintiff prior to impact. Just prior to the collision the defendant was stopped at the red light, and despite his statement to the police that "he was in the left hand lane when driver 2 attempted to drive around him to make the left turn before he did," the truth is that the defendant admitted not seeing the plaintiff prior to impact. **Pa152.**

Finally, the plaintiff asserts that the defendant negligently failed to travel and an appropriate reduced speed in light of the heavy traffic and difficult intersection, and further that the defendant did not hold his turn and go into the left lane of Route 280 but went wide and allowed his vehicle to go into the right lane causing the accident.

N.J.S.A. §39:4-98 sets forth the correct conduct of a driver as to speed, "The driver of every vehicle shall ... drive

at an appropriate reduced speed when approaching and crossing an intersection ....”

In essence, the defendant took the left turn too wide. Whether it was that from excessive speed under the circumstances or the lack of control of his vehicle or just plain lack of observation which caused the accident, it is for a Jury to determine whether this conduct was negligent and whether his conduct should then be compared with that of the plaintiff.

The plaintiff has ample evidence of examples of the defendant's negligence, each of which would require submission to Jury. In summary we have presented four instances of the defendant's negligent conduct on the day of the accident. Plaintiff asserts that each of these examples is evidence of the defendant's negligence. If both drivers are found negligent, it is the Jury which must consider the conduct of both drivers in determining who is responsible. Once again, the plaintiff has evidence of four instances of the defendant's negligent conduct.

The Trial Court did not consider any of the examples of whether the defendant could have been negligent in the operation of his vehicle and focused solely on the admitted presence of the large painted arrow which the plaintiff did not obey, the plaintiff's conduct does not prevent consideration of whether the defendant was also negligent in

the operation of his vehicle. Ultimately the Trial Court determined that,

There is nothing before this Court that suggests that the Defendant did anything that was -- that the Defendant did anything that was -- that the Defendant has done anything other than operate his vehicle in the manner in which he's expected to in the State of New Jersey. There is nothing that suggests that he had a duty to do anything different from what he did. There is nothing in the record that suggests he was negligent and the means and - - in the means in which he was operating the vehicle. **1T15:25, 1T16:1-10.**

At oral argument, the Court could not get past the plaintiff's conduct in her disobeying the roadway arrow. The Court was also stuck on the foreseeability issue regarding whether the defendant should be aware of the plaintiff.

**1T12:20-25.** The Court, while accepting Brill as the appropriate Summary Judgment standard, goes on to say that "the non-moving party cannot defeat a Motion for Summary Judgment by pointing to an immaterial or insubstantial fact in dispute. **1T12:10-19.** The Court even stated that the plaintiff ran a red light when she turned left, but there is no factual evidence of this in the case, but for some reason the Court appears to have relied upon this in the decision. **1T14:10-15.**

In Picone v. Stiles 329 N.J. Super. 191 (App. Div. 2000), which was also an intersection case where one of the drivers had a stop sign. In Picone the plaintiff was travelling Southbound on County Route 646 while the defendant was travelling westbound on County Route 540. According to

plaintiff, he stopped at the stop sign at the intersection, and after making observations of traffic on County Road 540, plaintiff proceeded into the intersection where the Mack truck collided with plaintiff's vehicle. The defendant testified that the plaintiff did not stop at the stop sign. Defendants contended that the jury could not reasonably attribute less than fifty-one percent of fault to plaintiff in this accident, and, therefore, summary judgment was properly granted. The Appellate Court disagreed. "At this juncture, we fail to see how negligence can be so finely quantified between the drivers. We believe that it must be left to the jury to determine who was negligent, and, assuming that comparative fault is found, what appropriate percentage of negligence should be allocated to each of the parties at fault. Id. at **193.**

In the Motion for Summary Judgment in the instant case, the defendant argued that a rational jury could not conclude that this accident was caused by an action or inaction on the part of the defendants, which is similar to the position contended by the defendant in Picone, here also plaintiff asserts that it must be left to the jury to determine who was negligent, and what the appropriate percentages of negligence should be allocated to each of the parties at fault." Id. at **193.**

Among other Model Civil Jury Charge requests, the plaintiff will ask the Model Civil Jury Charge 7.30 Comparative Negligence and Jury Charge 7.31 Ultimate Outcome. The Comparative Negligence Charge is based upon N.J.S.A. §2A:15-5.1 Contributory negligence; elimination as bar to recovery; comparative negligence to determine damages. This Charge will instruct the Jury that once it has found both drivers negligent in the operation of their vehicle, it will apportion negligence between the drivers, and after determining the total damages sustained by the plaintiff, the Trial Court will mold the Verdict.

There is ample evidence of negligence of the defendant in the operation of his vehicle, and the Trial Court erred by not considering each of the allegations of the defendant's negligence and after accepting that there are issues of fact regarding the defendant's operation of his vehicle which are material and in dispute, the matter must be submitted to a Jury.

CONCLUSION

For all of the above reasons the Plaintiff - Appellant, Mildred A. Green, requests that the Decision of the Trial Court be reversed, and the matter be sent back to the Law Division for Jury Trial.

Respectfully Submitted,

*David Maran*

David Maran, Esq., 009161985  
MARAN & MARAN, PC  
9-25 Alling Street  
Newark, New Jersey 07102  
(973) 622-5303  
[dmaran@njmalpractice.com](mailto:dmaran@njmalpractice.com)  
Attorneys for Plaintiff -  
Appellant, Mildred A. Green

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**Superior Court of New Jersey**  
**Appellate Division**

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Docket No. A-001928-23

MILDRED A. GREEN,	:	CIVIL ACTION
	:	
	:	ON APPEAL FROM A
<i>Plaintiff-Appellant,</i>	:	FINAL ORDER OF THE
	:	SUPERIOR COURT
	:	OF NEW JERSEY,
vs.	:	LAW DIVISION,
	:	ESSEX COUNTY
	:	
RICARDO A. ALBOREDA	:	DOCKET NO. ESX-L-8001-20
GUAPACHA, ALBA VIDAL and	:	
JOHN DOE 1-4 (being fictitious and	:	Sat Below:
unknown),	:	
	:	HON. LOUISE GRACE SPENCER,
	:	J.S.C.
<i>Defendants-Respondents.</i>	:	

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**BRIEF AND APPENDIX FOR DEFENDANTS-RESPONDENTS**  
**RICARDO A. ARBOLEDA GUAPACHA AND ALBA VIDAL**

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*On the Brief:*

HILLARY C. KRUGER, ESQ.  
Attorney ID# 022442006

LAW OFFICE OF FRANK A. VISCOMI  
*Attorneys for Defendants-Respondents*  
*Ricardo A. Arboleda Guapacha*  
*and Alba Vidal*  
701A Route 73 South, Suite 420  
Marlton, New Jersey 08053  
(973) 461-7357  
hillary.kruger@libertymutual.com

Date Submitted: August 2, 2024

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## TABLE OF CONTENTS

	<b>Page</b>
APPENDIX TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iii
PRELIMINARY STATEMENT .....	1
PROCEDURAL HISTORY.....	2
STATEMENT OF FACTS .....	2
LEGAL ARGUMENT.....	4
STANDARD OF REVIEW.....	4
I.    SUMMARY JUDGMENT SHOULD BE AFFIRMED AS THERE IS NO EVIDENCE OF NEGLIGENCE ON THE PART OF THE DEFENDANTS .....	5
A.    PLAINTIFF ADMITS THAT SHE WAS IN VIOLATION OF N.J.S.A. 39:4-124 .....	7
B.    DEFENDANT DID NOT HAVE A DUTY TO ANTICIPATE PLAINTIFF’S WILLFUL VIOLATION OF N.J.S.A. 39:4-124 .....	8
C.    PLAINTIFF FAILED TO PROPERLY ARGUE THAT THE DEFENDANT VIOLATED N.J.S.A. 39:4-123 AT THE TRIAL LEVEL .....	10
D.    PLAINTIFF HAS NOT OFFERED ANY EVIDENCE THAT THE DEFENDANT FAILED TO COMPLY WITH THE POSTED SPEED LIMIT.....	12
CONCLUSION.....	13



**APPENDIX TABLE OF CONTENTS**

	<b>Page</b>
Plaintiff’s Letter Brief in Opposition to Defendants’ Motion for Summary Judgment, dated November 7, 2023 <sup>1</sup> .....	Da1
E-mail from David Maran to Nneoma Ibe and Hillary Kruger, dated January 16, 2024 .....	Da8

---

<sup>1</sup> The brief is included in the appendix because it falls within the exception to the Rule 2:6-1(a)(2).

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases:**

Biruk v. Wilson,  
50 N.J. 253 (1967) .....8

Branch v. Cream-O-Land Dairy,  
244 N.J. 567, 243 A.3d 633 (2021) .....4

Dziedzic v. St. John’s Cleaners and Shirt Launderers, Inc.,  
53 N.J. 157 (1969) .....5

Estate of Desir v. Vertus,  
214 N.J. 303, 69 A.3d 1247 (2013) .....9

Friedman v. Martinez,  
242 N.J. 449, 231 A.3d 719 (2020) .....5

Mijon v. Acquaie,  
51 N.J.Super. 426 (App. Div. 1958).....8

Piccone v. Stiles,  
329 N.J. Super. 191, 747 A.2d 296 (App. Div. 2000).....9

Rybkin v. Twp. of N. Bergen,  
No. A-3773-09T4, 2012 WL 1722575 (N.J. Super. Ct. App. Div.  
May 17, 2012).....8, 9

Schwartz v. Menas,  
251 N.J. 556, 279 A.3d 436 (2022) .....4

Tichenor v. Santillo,  
218 N.J. Super. 165 (App. Div. 1987).....8

Tischler v. Steinholtz,  
99 N.J.L. 149 (E. & A. 1923) .....8

Toole v. Twentieth Century Operating Co.,  
121 N.J.L. 244 (E. & A. 1938) .....8

**Statutes & Other Authorities:**

N.J.S.A. 39:4-123..... 4, 7, 10, 12

N.J.S.A. 39:4-124.....7, 8

**PRELIMINARY STATEMENT**

This negligence matter seeking damages for personal injuries arises out of a motor vehicle accident, the date, time, and location of which are agreed upon between the parties.

Respondent/Defendant (hereinafter “Defendant” or “Mr. Arboleda”) and Appellant/Plaintiff (hereinafter, “Plaintiff” or “Ms. Green”) agree that Mr. Arboleda was in the left turn only lane waiting to make a turn onto Route 280 westbound from the intersection of the on-ramp to West 280 and First Street in Newark as both drivers were stopped at a red light. The parties also agree that at the same time, Plaintiff was in the lane immediately to Mr. Arboleda’s right, which was a designated “straight only” lane. Plaintiff admits that despite this being a designated “straight only” lane, she attempted to make a left-hand turn to enter westbound 280 and the collision ensued.

Defendant did not breach his duty of reasonable care as a motorist and there is no genuine issue of material fact as to how the accident occurred sufficient for liability to be imputed to him. The arguments put forth by the Plaintiff are filled with facts that are either immaterial to the case or are unsubstantiated by the record before the court; therefore, summary judgment

dismissing Plaintiff's Complaint was properly granted by Judge Spencer in the Law Division and should be affirmed.

### **PROCEDURAL HISTORY**

Defendant adopts herein the procedural history contained in Plaintiff's brief.

### **STATEMENT OF FACTS**

While the defendant agrees with the plaintiff regarding the date, time, and location of the accident. Both parties were stopped at the light on First Street at the intersection with the on-ramp to Westbound 280: the defendant in the left turn lane, and the plaintiff in the middle lane, which was designated for traffic going straight only. **Pb 3.** The accident occurred when both cars attempted to make left hand turns onto the on-ramp to Westbound 280. While Defendant's testimony certainly speaks for itself in regard to what he observed prior to the accident, it is important to note that the Plaintiff was also aware of the defendant at the stoplight. **Pa 49: 12-17.** The Plaintiff states in her brief that people "habitually" made a left turn from the center lane at the time that this accident occurred. However, she did not offer this explanation in her answers to interrogatories. **Pa 165-166.** In addition, plaintiff did not testify at her deposition that the two lanes "habitually" turned left from First Street onto Route 280. Rather, the plaintiff testified that the middle lane was a designated

left turn lane. **Pa 49: 25-Pa 50: 3 and Pa 50:8-10.** This, of course, turned out to be incorrect, and the plaintiff admits as much throughout the record both at the trial level and in this appeal. The allegation that people “habitually” made that illegal turn at the time of the accident was not argued by the plaintiff until the self-serving affidavit, dated November 6, 2023, and filed with the court on November 7, 2023, and was only served in response to the subject motion for summary judgment. **Pa 154-155.**

Importantly, the plaintiff admits that when she was stopped at the light she was in the middle lane of First Street, which was designated to go straight and that she attempted a left turn from that lane. After the parties entered the intersection, the plaintiff did not take note of the defendant’s location (**Pa 52:6-8**) and that is when the Plaintiff struck the vehicle Mr. Arboleda was driving. (**Pa 125:17-Pa126:10**).

During her deposition, the plaintiff offered more than one answer in response to questions about conversations she had with Mr. Arboleda at the scene of the accident. **Pa 55: 12-21.** In her Answers to Interrogatories, there are entirely different answers as Plaintiff indicates, first in Question 19 that no statements of admission were made at the time the accident happened. **Pa 170.** Further, the Plaintiff answers to interrogatories indicate in Question 20 that the

only statement made to plaintiff at the scene was “I am going to stay here”. **Pa 170.**

The plaintiff did not argue that Mr. Arboleda violated N.J.S.A. 39:4-123 in her Opposition to the subject Motion for Summary Judgment, but rather this argument was added, without briefing, at the 11<sup>th</sup> hour, only 10 minutes before the oral argument was scheduled.<sup>1</sup> **Da 1-7 and Da 8.**

## LEGAL ARGUMENT

### STANDARD OF REVIEW

The granting or denial of summary judgment is reviewed *de novo*, subject to the Rule 4:46-2 standard that governs a ruling on a summary judgment motion. Schwartz v. Menas, 251 N.J. 556, 570, 279 A.3d 436 (2022). That standard requires the appellate court to “determine whether ‘the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.’ ” Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582, 243 A.3d 633 (2021) (quoting R. 4:46-2(c)). All legitimate

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<sup>1</sup> Plaintiff’s opposition to the Defendant’s Motion for Summary Judgment is included as part of the Defendant’s appendix in this matter to demonstrate that the

inferences from the facts will be drawn in favor of the non-moving party.

Friedman v. Martinez, 242 N.J. 449, 472, 231 A.3d 719 (2020).

**I. SUMMARY JUDGMENT SHOULD BE AFFIRMED AS THERE IS NO EVIDENCE OF NEGLIGENCE ON THE PART OF THE DEFENDANTS**

It is well-settled that plaintiff bears the burden of proving negligence and that defendant's negligence was the proximate cause of her injury. Dziedzic v. St. John's Cleaners and Shirt Launderers, Inc., 53 N.J. 157, 161-162 (1969).

Plaintiff herein has not proven a breach or made the necessary causal connection between any breach of duty on Mr. Arboleda's part and her injury. Her attempts to change her testimony and the facts of this matter upon this appeal do not change that, nor do they change the fact there is no question that Plaintiff's improper left turn from the center lane caused the collision between the vehicles.

Plaintiff and Mr. Arboleda both testified at their depositions that they were stopped at the red light at the intersection of First Street and Route 280 in Newark with Defendant in the left lane of traffic which was marked for left hand turns, and Plaintiff stopped in the center lane of traffic which was designated for traffic traveling straight through the intersection. This is

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plaintiff did not make this argument at the trial level in conformance with the rules. Such inclusion is a permissible exception under N.J.C.R. 2:6-1(a)(2).

undisputed. It is also undisputed, based upon the testimony, that Plaintiff was stopped at the red light at that intersection in the lane marked for traffic traveling straight through the intersection, but proceeded to make a left turn in derogation of the plain markings when the accident occurred. Plaintiff, also by her answers to interrogatories, admits she was stopped for a red light in the middle lane of First Street at its intersection with Route 280 West in Newark, that Mr. Arboleda was stopped in the left lane waiting to make a left turn onto Route 280 West, and that when the light changed, Plaintiff turned left into Route 280 West. **Pa 165-166.** A photograph of the road reflects pavement markings which designate the left lane for vehicles turning left onto Route 280 and designate the middle and right-hand lanes for vehicles proceeding straight through the intersection and continuing on First Street. **Pa 153.** Indeed, in her opposition to Mr. Arboleda's motion, the Plaintiff described this marking as "the Giant Arrow painted on the pavement, in the center of her lane." **Da 1.** (capitalization in original).

During her deposition, Plaintiff admitted to being in the middle lane, that Mr. Arboleda was in the left lane, and that she saw him "for a while" on her left side. **Pa 49: 12-17.** Nevertheless, Plaintiff claims that Defendant was negligent in failing to make proper observations and take proper actions to



avoid the accident caused by Plaintiff's improper turn by asserting that traffic in the middle lane she was in "always makes that left."

**A. PLAINTIFF ADMITS THAT SHE WAS IN VIOLATION OF N.J.S.A. 39:4-124**

The New Jersey Traffic Act is clear on the duties of drivers in designated traffic lanes. "The State Highway Commissioner and local authorities, with reference to highways under their respective jurisdictions, may modify the method provided in section 39:4-123 of this Title, of turning at intersections by clearly indicating by buttons, markers or other direction signs, within an intersection, the course to be followed by vehicles turning therein. *No driver shall fail to turn in the manner so directed when such direction signs are installed by said authorities.*" N.J.S.A. 39:4-124 (emphasis add). There is no dispute that the Plaintiff made a left turn from the center lane which was designated by the "Giant Arrow" for travel to go straight through the intersection, not to make a left-hand turn. As such, Plaintiff's action was unequivocally in direct violation of N.J.S.A. 39:4-124. Mr. Arboleda was executing his left turn from the designated left turn lane in accordance with pavement markings and the rules of the road. If one party was at fault here for this accident, it wasn't Mr. Arboleda, it was Plaintiff, Ms. Green.

**B. DEFENDANT DID NOT HAVE A DUTY TO ANTICIPATE PLAINTIFF’S WILLFUL VIOLATION OF N.J.S.A. 39:4-124**

It is a well-settled proposition of long standing that the duty to exercise reasonable care between drivers on a public highway is mutual and that they are justified in assuming that others will observe the proper standard of conduct. Tichenor v. Santillo, 218 N.J. Super. 165, 170 (App. Div. 1987) citing Tischler v. Steinholtz, 99 *N.J.L.* 149, 151 (E. & A. 1923). A driver is justified in assuming, until he discovers to the contrary, that all other users of the highway will exercise reasonable care. Tichenor, 218 N.J. Super. at 170, citing Toole v. Twentieth Century Operating Co., 121 *N.J.L.* 244, 248 (E. & A. 1938). Significantly, “[t]he duty of a driver to exercise due care does not require him to anticipate that persons not in his path of travel will suddenly place themselves there.” Biruk v. Wilson, 50 *N.J.* 253, 262 (1967); see also Mijon v. Acquire, 51 N.J. Super. 426, 443 (App. Div. 1958), cert. den. 28 N.J. 146 (1958); Rybkin v. Twp. of N. Bergen, No. A-3773-09T4, 2012 WL 1722575 (N.J. Super. Ct. App. Div. May 17, 2012). (Pa 177-184).

In Rybkin, summary judgment in favor of defendant driver Lorasanchez was upheld as the defendant “was not required to anticipate plaintiff’s sudden, unexpected intrusion into his lane.” Id., 2012 WL 1722575 at \*7. As the court continued, “Nor, do we accept plaintiff’s argument that the failure of Lorasanchez to take *any* evasive action—applying his brakes or turning the

steering wheel—required the judge to deny Lorasanchez's motion [for summary judgment].” Id.

There was no legal duty for Mr. Arboleda to anticipate that Plaintiff would ignore pavement markings and make an improper left turn from a lane expressly marked for forward-proceeding traffic only. Mr. Arboleda was justified in assuming that Plaintiff would follow the rules of the road and use reasonable care in operating her vehicle. Contrary to Plaintiff’s assertion, that legal duty, its existence and scope is a legal question for the Court and not a question of fact sufficient to defeat Defendants’ motion (Estate of Desir v. Vertus, 214 N.J. 303, 322, 69 A.3d 1247 (2013)), nor is the argument below for which Plaintiff submitted no evidence that “Everybody does it so why can’t she?”

The case which Plaintiff cites in this regard, Picccone v. Stiles, 329 N.J. Super. 191, 747 A.2d 296 (App. Div. 2000), is entirely distinguishable. It was not plaintiff’s proofs that changed in that case, but defendant Stiles’ deposition testimony. The appellate court determined that a jury should have the opportunity to assess defendant Stiles’ credibility, especially in the face of the 150 feet of skid marks reflecting left by Stiles’ vehicle, which reflected that Stiles was not paying sufficient attention to the approaching intersection and the stop sign. There was every reason for Stiles to expect approaching cross

traffic. Here, there was no reason for Mr. Arboleda to expect Plaintiff to turn left from an improper lane appear where she did, and Plaintiff's attempt here to feign an issue of fact to defeat summary judgment is insufficient to defeat Defendant's motion and should not be condoned or rewarded.

**C. PLAINTIFF FAILED TO PROPERLY ARGUE THAT THE DEFENDANT VIOLATED N.J.S.A. 39:4-123 AT THE TRIAL LEVEL**

There is also no support in the record for Plaintiff's argument that Mr. Arboleda negligently failed to maintain control of his vehicle in turning left onto Westbound Route 280. Ten minutes before the oral argument of the motion below Plaintiff raised, via email to Judge Spencer, the argument that Mr. Arboleda violated N.J.S.A. 39:4-123. This argument was not addressed in his opposition to the defense motion for summary judgment, but was brought to the court's and defendant's attention at the last minute, in violation of N.J.C.R. 4:46-1. **(Da 8; Da 1-7).**

However, if the court is inclined to entertain this argument, the photo of the subject intersection at **Pa 153** demonstrates unequivocally that the only person who failed to follow the rules for left turns was Plaintiff. The lanes of travel from where the parties executed their turns are shown on the left side of the photo. It is clear from this overhead view of the intersection that the left lane is designated for left turns only and that the center lane is designated for

those traveling straight only. There are no curved lane markings going through the intersection to reflect that both lanes of travel are allowed, or even expected, to make the left turn from the northbound lanes of First Street. Looking at the intersection as a whole and the markings on the pavement, there is no question that the only lane of travel that is permitted to make the turn onto the ramp for Westbound Route 280 is the designated left turn lane, the lane from which Mr. Arboleda was making his left turn. Furthermore, both lanes of the on-ramp are designated for those making that left turn from the **designated** left turn lane.

There is no question that Route 280 is a major artery in northern North Jersey which can carry heavy traffic. The double on-ramp, onto which a single lane of travel is permitted to make the left turn, prevents traffic from Route 280 from backing up and allows other traffic to travel unimpeded through the intersection. It is not for drivers who have failed to observe lane markings to make an improper turn onto the ramp.

Plaintiff also relies on the diagram on the police accident report to indicate where the accident occurred even though it contradicts her deposition testimony that the accident occurred in the right lane of the on-ramp and her argument in this appeal. **Pa 151-152**. This diagram reflects that the accident occurred within the intersection and depicts the Plaintiff turning into the

defendant before the defendant had reached the entrance to Westbound Route 280. Again, there is no indication in the police report that there is any sort of pavement marking in this intersection such as a dotted line to reflect that left turns were allowed from two lanes, just as Plaintiff also testified at her deposition that there were no dotted lines in the intersection delineating separate lanes. **Pa 51: 4-13.** Her arguing now that she somehow was permitted to make the left turn onto the Route 280 on-ramp from the lane designated for straight travel through the intersection, and that there was some failing on the part of the defendant in relation to N.J.S.A. 39:4-123, is insufficient to raise the smallest question in that regard.

**D. PLAINTIFF HAS NOT OFFERED ANY EVIDENCE THAT THE DEFENDANT FAILED TO COMPLY WITH THE POSTED SPEED LIMIT**

Plaintiff's argument that Defendant failed to heed the posted speed is also unavailing here. There is no citation to the evidence in this case or any basis in fact that there was any such violation. Nothing in Plaintiff's testimony or answers to interrogatories suggest that speed was ever an issue in the case. In fact, Plaintiff testified that once she began moving after being stopped at the red light, she did not see Mr. Arboleda's vehicle prior to the impact. **Pa 50:21-25.** Therefore, other than being at a full stop, she has no first-hand knowledge of Mr. Arboleda's speed and that argument should be disregarded.

The Court below was correct in deciding that there was no evidence that “Defendant has done anything other than operate his vehicle in the manner in which he’s expected to in the State of New Jersey. There is nothing that suggests that he had a duty to do anything different from what he did. There is nothing in the record that suggests he was negligent . . . in the means in which he was operating the vehicle.” **1T15:25, 1T16:1-10.**

**CONCLUSION**

A rational jury could not conclude that this accident was caused by any action or inaction on the part of Mr. Arboleda; in fact, a jury can only conclude that this collision was caused by the Plaintiff’s improperly and wholly intentionally turning left from a lane that was specifically marked for traffic heading straight through the intersection. Therefore, based on the facts and law set forth herein, it is respectfully submitted that the decision of the lower court granting summary judgment to Defendants, Ricardo A. Arboleda-Guapacha and Alba Vidal, should be affirmed.

Respectfully submitted,



Hillary C. Kruger, Esq.

M A R A N  
&  
M A R A N  
PC / ATTORNEYS AT LAW

August 21, 2024

***Via eCourts Only***

Appellate Clerks Office  
P.O. Box 006  
Trenton NJ 08625-0006

**Attn: Susan M Brown, Case Manager**

**Re.: Mildred A. Green v. Ricardo A. Arboleda, et. al.**  
**Appellate Division Docket No.: A - 001928 - 23 T1**  
**Law Division Docket No.: ESX - L - 8001 - 20**

Dear Ms. Brown:

On behalf of Plaintiff-Appellant, Mildred A. Green, kindly accept this Letter Brief in Reply for filling in the above referenced manner. This Letter Reply Brief is in rebuttal to the Opposition Brief and Appendix filed in this matter by the Defendant-Respondent, Ricardo A. Arboleda.

**TABLE OF CONTENTS**

ADOPTED FROM THE APPELLANT'S MERITS BRIEF FILED ON 06/12/2024

**TABLE OF JUDGMENTS, ORDERS AND RULINGS**

ADOPTED FROM THE APPELLANT'S MERITS BRIEF FILED ON 06/12/2024

DAVID MARAN  
Joe Maran, 1960-2004  
dmaran@njmalpractice.com  
www.njmalpractice.com

9-25 Alling Street  
Newark NJ 07102  
T 973-622-5303  
F 973-622-4352



Page 2

Green v. Arboleda

Appellate Division Docket No.: A - 001928 - 23T1

**TRANSCRIPT KEY**

01/22/2024      Transcript of Motion      1T

**STATEMENT OF FACTS**

ADOPTED FROM THE APPELLANT'S MERITS BRIEF FILED ON 06/12/2024

**PROCEDURAL HISTORY**

ADOPTED FROM THE APPELLANT'S MERITS BRIEF FILED ON 06/12/2024

**ARGUMENT**

Point I      3

THE PLAINTIFF ARGUED N.J.S.A. §39:4-123 BELOW

Point II      4-5

THE INITIAL POINT OF IMPACT IS IN DISPUTE  
AND A JURY DETERMINATION OF THAT LOCATION  
WOULD LIKELY ALSO DETERMINE WHETHER THE DEFENDANT WAS NEGLIGENT  
IN THE OPERATION OF HIS VEHICLE

Point III      5

THE COURT ERRED IN NOT CONSIDERING THE EVIDENCE OF  
DEFENDANT'S LACK OF OBSERVATION WHICH IS ALSO A DISPUTED MATERIAL FACT

**Page 3**

Green v. Arboleda

Appellate Division Docket No.: A - 001928 - 23T1

The Defendant-Respondent asserts that Plaintiff-Appellant failed to provide sufficient time for consideration of the motor vehicle statute, N.J.S.A. §39:4-123. The Respondent is correct in that the Statute was emailed to the Motion Judge on January 16, 2024; however, the Motion was not actually argued until January 22, 2024, six days later. **Da 8.**

Plaintiff-Appellant respectfully submits that six days constitutes ample time for both Respondent to familiarize themselves with the motor vehicle statute at issue, N.J.S.A. §39:4-123. Right and left hand turns. The Plaintiff-Appellant did make this argument at the trial level both before and during Oral Argument and she is therefore not raising this on appeal for the first time.

This Statute includes the requirements regarding completing a left turn after leaving the intersection, stating that "the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered." **N.J.S.A. §39:4-123.**

**Page 4**

Green v. Arboleda

Appellate Division Docket No.: A - 001928 - 23T1

The statute's instruction to go into the leftmost lane would have Mr. Arboleda going into the left lane of the on-ramp to Route 280 West. The Respondent argues without evidence that the two on-ramp lanes are used interchangeably from the left lane turning lane to alleviate backed up traffic on Route 280 Westbound, and equally without evidence, I would suggest that the pinch point at that intersection is getting off First Street and onto that on-ramp, and not the backed-up traffic on Route 280 as Respondent suggests. **D11.**

This discussion of the correct way of turning only highlights the most important material issue of fact in this case, namely, where was the initial point of impact? Any argument that the "initial point of impact" is not a materially important fact is without merit, because it will allow the Jury to place the vehicles in their locations just prior to the impact.

Their locations will allow the Jury to determine if the drivers were where they were supposed to be when the collision occurred.

**Page 5**

Green v. Arboleda

Appellate Division Docket No.: A - 001928 - 23T1

Here, in the instant case, Mr. Arboleda placed himself in the fast lane at the point of initial impact, and Ms. Green testified that she was hit in the slow lane when her vehicle was struck on the left-hand side of her vehicle near the driver's door. **Pa153, Pa50:21-25, Pa51:1-3.**

If the initial impact was in the left lane, as Mr. Arboleda marked it on the satellite image, then Mr. Arboleda complied with the statute and did not cross over into the slow lane where Ms. Green was completing her turn. **Pa153.**

If the initial point of impact was in the slow lane, then Mr. Arboleda failed to stay left during his turn and crossed over into the slow lane striking Ms. Green's vehicle and then the Jury could determine that Mr. Arboleda was also a cause of the accident.

It is the initial point of impact which will allow the Jury to determine whether Mr. Arboleda not only failed to keep left during his turn, but that he also failed to observe Ms. Green's car in the lane next to him in the right lane. This alleged failure to make proper observations is also a decision for the Jury as it also is in dispute as Respondent denies all negligence.

**Page 6**

Green v. Arboleda

Appellate Division Docket No.: A - 001928 - 23T1

For the foregoing reasons, this Appeal should be granted, the Order below should be reversed, and the matter returned to the Law Division for a Jury Trial.

Respectfully submitted,

*David Maran*

David Maran, Esq., 009161985

MARAN & MARAN, PC

9-25 Alling Street

Newark, New Jersey 07102

[dmaran@njmalpractice.com](mailto:dmaran@njmalpractice.com)

(973) 622-5303

*Attorneys for Plaintiff-Appellant*