IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MICHAEL E. BALLARD and KAREN BALLARD, husband and wife	:	
Plaintiffs,	:	
V.	•	C.A. No.: 02C-03-276 SCD
DAVID L. EUMMAR and STATE FARM FIRE & CASUALTY CO.,	•	
Defendants.	:	

ORDER

This 26th day of January, 2005, the plaintiffs' motion for a new trial having been duly considered, it appears that:

1. The plaintiff claims personal injuries as the result of an automobile accident which occurred on I-95 southbound. He was struck from the rear by defendant Eummar when he stopped in the left hand lane of the interstate because he claims another car, referred to as the red car, had stopped in front of him due to a ladder falling on the roadway off a phantom vehicle.

2. The jury heard the evidence provided by the plaintiff and by the defendant. The circumstances of the accident were contested. There was an issue of fact as to how the accident occurred, whether there was a car stopped in front of the plaintiff, and whether he was compelled to bring his vehicle to a stop. In sum, there was conflicting testimony which the jury was asked to reconcile, if they could, to make a harmonious story of it all.

3. The jury decided that the responsibility for the accident rested in part with the red car, and in part with the plaintiff. In other words, the jury concluded, consistent with the

testimony of the defendant, that if the plaintiff had not stopped, he would not have been struck in the rear.

4. A new trial is warranted only if the jury's verdict is "clearly the result of passion, prejudice, partiality, or corruption," or the evidence "preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result."¹

5. The fact finder had evidence from which it could conclude that the responsibility for the accident was 70% attributable to the conduct of Ballard, and 30% attributable to the conduct of the red car, the conduct of which was described differently by each party.

WHEREFORE, the motion for a new trial is denied.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary xc: Vincent A. Bifferato, Jr., Esquire James J. Haley, Jr., Esquire Robert C. McDonald, Esquire

¹ Storey v. Camper, 401 A.2d 458, 465 (Del. 1979).