

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

WILLIAM WINDSOR,

CASE NO. 2018-CA-010270-O

Plaintiff,

vs.

ROBERT KEITH LONGEST, an individual, and BOISE CASCADE BUILDING MATERIALS  
DISTRIBUTION, L.L.C., a Foreign Limited Liability Company,

Defendants.

---

**PLAINTIFF'S VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, William M. Windsor ("WINDSOR" or "PLAINTIFF"), pursuant to Florida Rule of Civil Procedure 1.510(a), moves the Court for an order granting partial summary judgment against Defendants, ROBERT KEITH LONGEST ("LONGEST"), an individual, and BOISE CASCADE BUILDING MATERIALS DISTRIBUTION, L.L.C., a Foreign Limited Liability Company ("BOISE CASCADE"), (jointly "DEFENDANTS.") As shown herein, there is no genuine dispute as to any material fact, and PLAINTIFF is entitled to judgment as a matter of law. For the following reasons, the PLAINTIFF respectfully requests that the Court enter partial summary judgment in his favor on the issue of liability by LONGEST and on the issue of liability by BOISE CASCADE.

**UNDISPUTED FACTS**

1. WINDSOR is a 74-year-old man who has held a valid driver's license for 58 years. [EXHIBIT 3000 to AFFIDAVIT OF WILLIAM M. WINDSOR DATED 1/30/2023 ("AFFIDAVIT"), which is EXHIBIT 3012.]

2. WINDSOR has not received a valid traffic citation or parking ticket in 28 years. [EXHIBIT 3001 to AFFIDAVIT.]

3. WINDSOR does not require corrective lenses due to lens implants from cataract surgery in 2010. [EXHIBIT 195 to AFFIDAVIT.] He did not require corrective lenses on 5/5/2017 or today. [EXHIBIT 3002 to AFFIDAVIT.]

4. WINDSOR was not eating, drinking, talking on the phone, or listening to the radio or music on 5/5/2017. WINDSOR was driving alone in his manual transmission 2006 Pontiac Solstice (“SOLSTICE”) using his GPS to navigate. [EXHIBITS 157, 158, 159, 160 to AFFIDAVIT.] WINDSOR was wearing his seat belt. He had been at home all day, and he had been driving only 39 minutes when a collision took place on 5/5/2017. The airbags in the SOLSTICE did not deploy. When WINDSOR arrived at home that night, he received a letter from Pontiac announcing an airbag recall. [EXHIBIT 212 to AFFIDAVIT.] WINDSOR does not drink or smoke and has never used illegal drugs. He had never been in a traffic accident in 54 years of driving. [EXHIBIT 3012.]

5. EXHIBITS 292, 293, and 294 to EXHIBIT 3012 show the progression from two lanes to four lanes to six lanes on WINDSOR’s route on the Florida Turnpike.

6. A collision took place near Exit 265 on the Florida Turnpike at 2:35 p.m. on 5/5/2017. [EXHIBIT 136 to EXHIBIT 3012.] EXHIBIT 295 to EXHIBIT 3012 shows the scene of the accident. The collision involved WINDSOR in a 2006 Pontiac SOLSTICE convertible [EXHIBITS 3005] and LONGEST in a BOISE CASCADE 2018 Kenworth T880 truck (“TRUCK”). [EXHIBITS 3004, 298, 132, and 133 to EXHIBIT 3012.]

7. The TRUCK was owned by BOISE CASCADE. [EXHIBIT 136 to EXHIBIT 3012.] LONGEST drove the TRUCK with the knowledge and consent of BOISE CASCADE. [EXHIBIT 114 to EXHIBIT 3012 - LONGEST Answers to Interrogatories - Page 9, ¶¶ 21-22.]

8. The scene of the accident was Florida Turnpike Southbound midway between Mile Marker 267 and 268 at 267.5. There are six Southbound Lanes. [EXHIBIT 294 to EXHIBIT 3012.]

9. WINDSOR was driving in the middle of his lane and did not change lanes or cross into another lane or do anything carelessly. [EXHIBIT 3012.]

10. WINDSOR'S SOLSTICE was totaled. [EXHIBIT 145 to EXHIBIT 3012.]

11. The wheels of WINDSOR'S SOLSTICE were lifted off the ground. [to EXHIBIT 3012.] He did as many as eight 60-mile-per-hour spins back and forth across the Florida Turnpike just before Exit 265. [EXHIBIT 3012.]

12. There are only two eyewitnesses to the collision on 5/5/2017 on the Florida Turnpike. They are WINDSOR, the driver of the car that was totaled, and Jerome Wilt, a 911 caller who observed the collision. Each has given sworn statements and sworn depositions. On 3/7/2018, Jerome Wilt said under oath: "The semi-truck caused the accident." [EXHIBIT 142, Page 8, Lines 13-16.] In his deposition on 1/5/2023, Jerome Wilt said again under oath: "The semi-truck caused the accident." [EXHIBIT 3006, P. 46 - Lines 16-25, P. 47 - Lines 1-7.] On 5/5/2017, WINDSOR told the Florida Highway Patrol that LONGEST caused the accident. [EXHIBIT 3012, Page 39 - Lines 2-25, Page 40 - Lines 1-15.] On 4/8/2019, WINDSOR gave a deposition and swore that LONGEST caused the accident. [EXHIBIT 3012, P. 35 - Lines 9 - 25, zp.36 - Lines 1 - 23.]

13. The only person with BOISE CASCADE in the TRUCK and involved in the collision was LONGEST. No one else was present from BOISE CASCADE. [EXHIBIT 317, Page 24, Lines 24-25, Page 25, Lines 1-3.]

14. The DEFENDANTS did not witness the collision or see WINDSOR. [EXHIBIT 3009 -- Page 59 - Lines 22-25, Page 60 – Line 1.]

15. It was clear and sunny on 5/5/2017, and a photograph of the scene of the accident shows it to be a normal section of a highway with no unusual obstacles or distractions. [EXHIBIT 295.]

16. LONGEST told Florida Highway Patrol Trooper Gregory Scott Linzmayer (“LINZMAYER”) that he never saw the SOLSTICE. [EXHIBIT 317, Page 21 - Lines 23-25; Page 22 - Lines 1-2.]

17. LONGEST has testified repeatedly that he never saw WINDSOR’S vehicle. [EXHIBIT 3009 -- Page 59 - Lines 22-25, Page 60 – Line 1.] [EXHIBIT 317, Page 21 - Lines 23-25; Page 22 - Lines 1-2 to EXHIBIT 3012.] Photographs taken on 1/24/2023 of the BOISE CASCADE TRUCK driven by LONGEST on 5/5/2017 show that a tiny object can be clearly seen in either of the TRUCK’S rearview mirrors at 1-foot, 5-feet, 10-feet, 15-feet, 20-feet, and 25-feet. [EXHIBITS 3013, 3014, 30154, 23016, 3017, 3018, and 3019 to EXHIBIT 3012.] [EXHIBITS 3020, 3021, 3022, 30223, 3024, 3025 to EXHIBIT 3012.] These photographs taken from the driver’s seat in the TRUCK show that objects are clearly visible out the driver’s window, the windshield, and the passenger’s window. [EXHIBIT 3012.] There is also a special “blind spot” mirror above the Passenger Door that provides a view of what is right next to the TRUCK. [EXHIBIT 3026 to EXHIBIT 3012.] And there re two smaller windows on the inner

part of the windshield that give rear views left and right. [EXHIBITS 3027 and 3028 to EXHIBIT 3012.]

18. A Sworn Affidavit of WINDSOR is attached as EXHIBIT 3012. The Deposition Transcripts of WINDSOR, LONGEST, WILT, and LINZMAYER are filed and are referenced and incorporated herein.

### **ARGUMENTS**

#### **COUNT I – ACTION BY PLAINTIFF FOR NEGLIGENCE AGAINST DEFENDANT, ROBERT KEITH LONGEST**

19. LONGEST was negligent and careless in the operation of his TRUCK so as to collide with the SOLSTICE driven by WINDSOR.

20. The definition of negligence is failing to exercise the degree of reasonable care expected of someone in order to minimize the risk of harm to another person.

21. The basic question in every negligence case is whether the defendant acted as a reasonable person would have in similar circumstances. A reasonable person looks before changing lanes and makes sure there is no vehicle in the way. A reasonable person does not lift a vehicle off its tires and spin it 180-degrees while driving down a highway at 60 to 70 miles-per-hour. A reasonable person does not give erroneous information to law enforcement or to courts.

22. LONGEST did not act as a reasonable person would act.

23. LONGEST was driving the TRUCK carelessly by changing lanes without looking to see if another vehicle was in the lane, and he crashed into the SOLSTICE.

24. LONGEST was not obeying traffic laws, and he does not have an excuse for violating those laws.

25. Florida Statute 316.085 provides Limitations on overtaking, passing, changing lanes and changing course: “(2) No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction.”

26. Florida Statute 316.089 addresses Driving on roadways laned for traffic. It says: “Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply: (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.”

27. Florida Statute 837.05 covers False reports to law enforcement authorities. “(1)(a) Except as provided in paragraph (b) or subsection (2), a person who knowingly gives false information to a law enforcement officer concerning the alleged commission of any crime, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.”

28. LONGEST acted negligently, and a collision such as the one on 5/5/2017 did not happen in the absence of negligence. LONGEST had exclusive control of the instrument that caused injury. LONGEST gave erroneous information to laws enforcement.

29. LONGEST committed Intentional Misconduct. LONGEST had actual knowledge of the wrongfulness of his conduct and the high probability that injury or damage to WINDSOR would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury and damage.

30. LONGEST committed gross negligence. LONGEST's conduct was so reckless and wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of WINDSOR and others on the Florida Turnpike.

31. Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm. *See* Restatement (Third) of Torts: Liability for Physical Harm § 3 (P.F.D. No. 1, 2005). Negligent conduct may consist of either an act, or an omission to act when there is a duty to do so. *See* Restatement (Second) of Torts § 282 (1965).

32. The burden of taking precautions required by law is less than the probability of injury multiplied by the gravity of the resulting injury, so LONGEST has liability.

33. LONGEST engaged in the creation of the risk which resulted in WINDSOR's harm.

34. LONGEST knew/should have known that his conduct would harm WINDSOR.

**COUNT III – ACTION BY PLAINTIFF FOR NEGLIGENCE AGAINST DEFENDANT,  
BOISE CASCADE BUILDING MATERIALS DISTRIBUTION, L.L.C.**

35. BOISE CASCADE is vicariously liable for the negligence of LONGEST, pursuant to Florida's Dangerous Instrumentality Doctrine.

36. The Dangerous Instrumentality Doctrine is often invoked in auto accident cases in which the driver who negligently caused the accident is not the owner of the vehicle, and not named on the vehicle's liability insurance policy. In such a case, the owner of the vehicle can be

liable for allowing the driver to use his or her vehicle. (See *Southern Cotton Oil Co. v. Anderson*, 86 So. 629, 631.)

37. Vicarious liability for the negligence of a professional driver is determined by Florida's dangerous instrumentality doctrine, which provides that the owner of an inherently dangerous tool is liable for any injuries caused by that tool's operation. In the seminal case of *Southern Cotton Oil Co. v. Anderson*, ID), the Florida Supreme Court first extended the doctrine to motor vehicles, holding that owners may be held accountable for any damages suffered by third parties as the result of the negligent operation of their vehicles, when they are driven by others with their knowledge and consent.

38. Both the dangerous instrumentality doctrine and the theory of respondeat superior have historically depended upon the ownership of the vehicle. The Florida Supreme Court recognized in the landmark case of *Mercury Motors Express, Inc. v. Smith*, 393 So. 2d 545 (Fla. 1981), that vicarious liability awards compensation for injuries without regard to fault. "The rationale for imposing vicarious liability is the employer's ultimate control over the servant and the instrumentality causing injury and the state's interest in compensating the victim." *Crowell v. Clay Hyder Trucking Lines, Inc.*, 700 So. 2d 120, 123 (Fla. 2d DCA 1987), addressed the specific relevance of *Mercury Motors* to the professional driver:

"The application of Florida law reflects the needs of the interstate system. Vicarious liability is unique in its application of liability for wrongs attributable to an agent. Because of this unique feature, *the interstate system is served by applying this principle with certainty, predictability and uniformity of result.* Further, the basic policies underlying vicarious liability law demand that a master be found liable for the negligent acts of his agent. Failure to apply the vicarious liability law would allow masters to send their agents out into the stream of interstate commerce without fear that liability would find its way back to the master."



## RELEVANT LAW

39. A motion for summary judgment should be granted if the “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” *Laurore v. Publix Super Mkts.*, 3D21-2331 (Fla. App. Nov 02, 2022);

40. A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fla. R. Civ. P. 1.510(a) (2021). A genuine dispute of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *In re Amends.* to Fla. R. Civ. P. 1.510, 317 So.3d 72, 75 (Fla. 2021) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

41. Once a movant for summary judgment meets his burden of demonstrating conclusively that no genuine dispute of material fact exist, the burden shifts to the opposing party to come forward with evidence sufficient to reveal that an issue of fact exists. See *Slachter v. Abundio Inv. Co.*, 566 So. 2d 348, 349 (Fla. 3d DCA 1990) (citing *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966)). It is not enough for an opposing party to merely assert that an issue of material fact does exist. *Id.* (citing *Reflex, N.V. v. Umet Trust*, 336 So. 2d 473 (Fla. 3d DCA 1976)). “A material fact is one essential to the result that is placed in controversy by the pleadings and affidavits. Thus, to preclude the entry of summary judgment there must be some fact essential to a resolution of the legal questions raised by the case which is genuinely controverted.” *Wells v. Wilkerson*, 391 So. 2d 266, 267 (Fla. 4th DCA 1980). A trial judge has the power to decide a question of law on summary judgment where the material facts are clear and undisputed. See *Fredericks v. Sch. Bd. of Monroe County*, 307 So. 2d 463, 465 (Fla. 3d DCA 1975) (citation omitted).

42. The Florida Supreme Court has emphasized that one “of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.” *In re Amends. to Fla. R. of Civ. P. 1.510*, 309 So.3d 192, 194 (Fla. 2020) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Under the new summary judgment rule, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007). As such, when contesting a motion for summary judgment, an opposing party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *In re Amends. to Fla. R. of Civ. P. 1.510*, 309 So.3d at 193 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). (*Ibarra v. Ross Dress for Less, Inc.*, 3D21-1968 (Fla. App. Nov 10, 2022).)

43. Effective May 1, 2021, the state of Florida adopted the Federal summary judgment standard. Prior to May 1, 2021, 1.510 Florida Rules of Civil Procedure stated that a motion for judgment would be granted if there was no genuine issue of material fact. However, the new summary judgment standard now says a motion such as this will be granted if the movant shows that there is no genuine dispute as to any material fact. Rule 1.510 of the Florida Rules of Civil Procedure now provides that summary judgment should be granted if there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law.

44. Essentially, the summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1976); and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) [(the ‘*Celotex* trilogy’)].” *In re Amends. to Fla. Rule of Civ. Pro. 1.510*, 309 So. 3d at 196.

45. In the Florida Supreme Court's April 29, 2021, Order, it stated "In the broadest sense, those cases stand for the proposition that "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part" of rules aimed at "the just, speedy and inexpensive determination of every action."

46. A large reason why the Florida Supreme Court adopted the Federal standard was because the Florida courts have historically adopted an expansive understanding of what constitutes a genuine (i.e., triable) issue of material fact. While the Florida caselaw is not entirely uniform, a leading treatise characterizes the Florida standard this way: "[T]he existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* §1.510:5 (2020 ed.).

47. By contrast, the Supreme Court has described the federal test as whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (citations omitted). A party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts." As can be seen, the Federal Summary Judgement standard is in the best interest of the state because it will promote and secure the just, speedy, and inexpensive determination of every action.

## **GROUND ON WHICH THE MOTION FOR SUMMARY JUDGMENT IS BASED**

### **A. THE DEFENDANTS HAD A DUTY OF CARE**

48. The first element of any negligence claim is to establish the existence of a duty.

49. Any time you drive, you have a duty to keep other members of the public safe to the best of your abilities. Your duty extends to other drivers, pedestrians, motorcyclists, bikers, and any other person you might encounter in the course of driving.

50. LONGEST had a duty of care, and it was established by Florida Statutes.

#### **B. THE DEFENDANTS BREACHED THEIR DUTY OF CARE**

51. The duty of care in most car accidents comes down to the “reasonable man” standard. Individuals are expected to act as a reasonable person might in a given situation.

52. A reasonable person follows the law unless there is some compelling, overarching reason not to do so. The reasonable person does not swerve into another lane without looking or drive recklessly. LONGEST broke the law, so the actions of the DEFENDANTS were negligent and “unreasonable.”

#### **C. THE PLAINTIFF WAS ACTING TOTALLY REASONABLY AND HAD NO NEGLIGENCE.**

53. Florida is governed by the pure negligence standard, meaning multiple parties can be held liable in an accident. But WINDSOR was behaving totally reasonably and LONGEST was not, so the DEFENDANTS must be found to be 100% at fault, allowing WINDSOR full recovery.

#### **D. PROXIMATE CAUSE WILL BE ADDRESSED AT TRIAL.**

#### **E. DAMAGES WILL BE ADDRESSED AT TRIAL.**

### CONCLUSION

63. For the foregoing reasons, the Plaintiff respectfully requests that the Court enter partial summary judgment in his favor on the issue of liability by LONGEST and on the issue of liability by BOISE CASCADE and state on the record its reasons for granting summary judgment. This requires more than a conclusory statement that there is or is not a genuine dispute as to material fact. The court must state the reasons for its decision with enough specificity to provide useful guidance to the parties and, if necessary, to allow for appellate review. The Plaintiff respectfully requests such other and further relief as the Court deems just and proper.

Dated in Leesburg, Florida this \_\_\_\_\_ day of January, 2023,

---

**William M. Windsor**  
5013 South Louise Ave #1134  
Sioux Falls, South Dakota 57108  
352-661-8472  
windsorinsouthdakota@yahoo.com

### CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing by email as follows:

**Blake Mansker -- Scott Warburton**  
Adams | Coogler, P.A.  
1555 Palm Beach Lakes Blvd. Suite 1600, West Palm Beach, FL 33401-2329  
Telephone: 561-478-4500, Facsimile: 561-478-7847  
bmansker@adamscoogler.com, rurban@adamscoogler.com,  
swarburton@adamscoogler.com, and ajohnson@adamscoogler.com

This \_\_\_\_\_ day of January, 2023,

---

**William M. Windsor**  
5013 South Louise Ave #1134  
Sioux Falls, South Dakota 57108  
352-661-8472  
windsorinsouthdakota@yahoo.com

**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This \_\_\_\_ day of January, 2023,

---

**William M. Windsor**  
5013 South Louise Ave #1134  
Sioux Falls, South Dakota 57108  
352-661-8472  
windsorinsouthdakota@yahoo.com

**STATEMENT OF REVIEW**

I am a member in good standing of the Florida Bar, and I have reviewed this document and the Affidavit, and I approved them for filing.

This 31<sup>st</sup> day of January, 2023.

---

**JEFFREY S. BADGLEY**  
Florida Bar No.: 0599417  
Badgley Law Group  
801 N. Magnolia Ave., Suite 107  
Orlando, FL 32803  
Tel: 407-781-0420  
Fax: 407-781-0706  
jbadgley@Badgleylawgroup.com