

1 THE COURT: Okay.

2 MR. FORD: Can we approach?

3 THE COURT: Yes.

4 (Counsel approaches the bench.)

5 MR. FORD: I keep forgetting about that mike.  
6 Sure I gotta turn it off, Your Honor?

7 THE COURT: Well, we had one attorney who went  
8 to the restroom with it -- with it on.

9 MR. BRATT: Must have been funny.

10 THE COURT: Oh, it was; yeah.

11 Okay.

12 MR. FORD: At this time, Your Honor, I would  
13 move for judgment on behalf of the Defendant, Cindy  
14 Young, on the grounds that a prima facia case of  
15 negligence has not been made out against her.

16 The evidence viewed in a light most favorable  
17 to the Plaintiff would indicate that Mr. Ervin was  
18 proceeding in his lane when according to him he was --  
19 caused to jump out of his lane and move into the lane in  
20 which my client was proceeding because, as he claims, a  
21 truck -- Baltimore Tank Lines trac -- tanker truck came  
22 into his lane very abruptly causing him to just as  
23 abruptly shift over into the lane in which my client was  
24 proceeding; and immediately being hit.

25 There is no testimony of any antecedent

1 negligence on the part of my client. The testimony --  
2 indicates that this was a sudden, abrupt movement by Mr.  
3 Ervin for whatever reason without any signal of any kind  
4 and the accident ensued.

5 I think the evidence is such that the issue of  
6 my client's negligence has not been made out and the  
7 Court should direct a verdict in her favor.

8 THE COURT: Response.

9 MR. BRATT: Your Honor, this is essentially the  
10 same Motion that was made at Summary Judgment.

11 THE COURT: Um hum.

12 MR. BRATT: The -- the argument is, is that  
13 based on -- looking at the evidence in the most light --  
14 light most favorable to Mr. Ervin there are certainly  
15 permissible inferences that can be drawn. For example,  
16 Ms. Young says she was looking straight ahead but she  
17 never saw the Ervin vehicle or the tractor trailer.

18 There was ten feet in-between the vehicles but  
19 she wasn't able to slow to avoid it.

20 THE COURT: It's interesting. You know how  
21 long -- if you're doing 35, how many feet per second that  
22 is?

23 MR. STEPHENSON: So (inaudible, 2 words). Give  
24 me the question again, Your Honor.

25 THE COURT: She said she was doing 35 to 40.

1 MR. STEPHENSON: Yeah.

2 THE COURT: Use 35 miles per hour it's 51.3  
3 feet per second.

4 MR. STEPHENSON: Right.

5 (Unintelligible), I was gonna say 45.

6 Yeah.

7 THE COURT: Yeah.

8 But, go ahead.

9 MR. BRATT: But at -- at -- at a minimum it --  
10 it generates a permissible inference. Its -- it is  
11 possible for the jury to make that determination so it's  
12 enough to defeat a Motion for Judgment, Your Honor.

13 THE COURT: Well, once again I have to draw all  
14 inferences in favor of the Plaintiff so at this point,  
15 I'm gonna have to deny it.

16 I'm also very happy I'm not the tryer of fact  
17 in this one!

18 MR. BRATT: That's why we're here.

19 THE COURT: Do you have a Motion?

20 Okay.

21 Okay.

22 Are you gonna call your client back or?

23 MR. FORD: Okay.

24 THE COURT: Okay.

25 MR. BRATT: Thank you.