

IN THE _____ COURT OF _____ COUNTY
STATE OF _____

_____)	
)	
)	
Petitioner/Plaintiff,)	
)	
Vs.)	NO. _____
)	
_____)	
Respondent/Defendant)	
)	

**DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY**

COMES NOW, Defendant, _____, by and through his attorneys of record herein, and files this his Response to Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability, and would show unto the Court the following:

1. _____ admits that a hearing was held on the date alleged in the Municipal Court of _____ concerning a traffic citation issued to _____. _____ denies the Plaintiffs' characterization in paragraph two of _____ as the "defendant driver" and further denies the Plaintiffs' characterization of _____ as a defendant in the present civil suit. Clearly he is not.

2. _____ denies that the finding at the hearing in Municipal Court is entitled to the application of the doctrine of collateral estoppel in the case at bar. _____ further denies that he is estopped from "relitigating" in this action the issue of liability, especially since _____ has never "litigated" this issue in the first place.

3. In _____ v. _____, _____ (____. ____), the _____ Supreme Court held that the first basic requirement essential for the operation of collateral estoppel in the State of _____ is that the parties to the original action must be the same parties to the subsequent action. This rule, known as the "mutuality of parties rule" is rigidly and strictly applied in the State of _____. See _____ v. _____, _____ (____. ____). See also, _____ v. _____, _____ (____. ____). Turning to the case at bar, _____ was not a party to the earlier traffic court proceeding in which _____ was charged and found guilty of a misdemeanor traffic violation. That action was not an action by the Plaintiffs' against _____, nor for that matter, was it an action between the Plaintiffs' and _____. The prior action was an action by the City of _____ against _____. The Plaintiffs' were not a party and thus the doctrine of collateral estoppel has no application.

4. _____ denies the allegations contained in paragraph four of the Plaintiffs' motion and would submit to the Court that issues of material fact exist concerning the elements of causation, damages and obviously liability. _____ further submits that these are clearly questions of fact which require jury resolution.

5. _____ denies that the exhibits itemized in paragraph five on page two of the Plaintiffs' motion support a grant of summary judgment in this case.

6. _____ denies that the Plaintiffs' are entitled to partial summary judgment on the issue of liability based on the doctrine of negligence per se. There is ample evidence in the deposition of Plaintiff, _____, that his negligence was the cause of the accident. See excerpts of _____'s deposition attached hereto and incorporated herein by reference as Exhibit "A". Additionally, the fact that a person may be guilty of negligence per Se does not, under _____ State law, establish a party's liability

For example in _____ v. _____, _____ (____. ____), the Court held that negligence per se constitutes evidence of a breach of duty, but does not constitute proximate cause or damages, nor does it establish the Defendant's liability. Id.

7. _____ submits that the doctrine of collateral estoppel clearly has no application in the case at bar. _____ further submits that there are genuine issues of material fact for a jury to decide which prohibits the entry of summary judgment at this time. _____, therefore, respectfully requests the Court to deny the Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability.

WHEREFORE, PREMISES CONSIDERED, Defendant, _____, respectfully requests the Court to enter an Order denying the Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability.

Respectfully submitted,

Dated: _____

Name: _____

Title: _____

Address: _____

Address: _____

City, State, Zip: _____

Phone: _____

Fax: _____

E-Mail: _____

Attorney No.: _____

CERTIFICATE OF SERVICE

I, _____, do hereby certify that I have this day mailed,
U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to
_____, at the following address;

THIS the ____ day of _____, 20____.
