

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

09-469 consolidated with 09-470

FREDERICK DEMARTRA, JR.

VERSUS

LOUISIANA FARM BUREAU CASUALTY INS. CO., ET AL.

consolidated with

FELICIA DESSELLE, ET AL.

VERSUS

LOUISIANA FARM BUREAU CASUALTY INS. CO., ET AL.

GENOVESE, J., dissents and assigns the following reasons.

I disagree with the majority's affirmation in this case. In my view, the facts in this case warrant an assessment of comparative fault. Additionally, the trial court misapplied the law.

In its reasons for judgment, the trial court stated, "Ms. Tynes also had an obligation to adhere to a higher standard of care due to the adverse weather conditions and control her vehicle in a manner and speed she could handle." (emphasis added). This is not the law. Both drivers, Plaintiff, Ms. Desselle, and Defendant, Ms. Tynes, had the equal duty to adhere to a higher standard of care due to the adverse conditions. Furthermore, Ms. Desselle pulled out from the median crossover onto the favored street in front of Ms. Tynes, thereby causing a rear-end collision. Most noteworthy is the investigating officer's testimony as to the point of impact, as evidenced by the debris in the roadway, which was just past the end of the crossover. The point of impact is crucial. It is physical evidence which is not subject to a credibility call. This accident was not a routine rear-end collision. The facts in the record clearly indicate that Ms. Desselle pulled out in front of Ms. Tynes, who

was traveling on the favored street under adverse conditions. Both drivers were at fault in this accident. At the very least, I would allocate fifty percent of the fault to Ms. Desselle and fifty percent of the fault to Ms. Tynes.

Therefore, I respectfully dissent and would reverse the trial court's allocation of fault.