

Loree v. James, 2003 ABQB 685

Date: 20030819
Action Nos. 9803 06729 & 9903 09279

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

Action No. 9803 06729

ELDEN DOUG LOREE

Plaintiff

- and -

TREVOR JAMES

Defendant

AND BETWEEN:

Action No. 9903 09279

TREVOR JAMES

Plaintiff

- and -

ELDEN DOUGLAS LOREE and GLADYS MARJORIE BLAIR

Defendants

REASONS FOR JUDGMENT
of the
HONOURABLE MR. JUSTICE E. S. LEFSRUD

APPEARANCES:

Craig D. MacKay
for Elden Douglas Loree as a Plaintiff

Joe D. Spelliscy
for Elden Douglas Loree and Gladys Marjorie Blair as Defendants

David A. Huculak
for Trevor James as a Plaintiff

Bruce A. James
for the Administrator of the Motor Vehicle Accident Claims Act
on behalf of Trevor James as a Defendant

INTRODUCTION:

[1] These actions involve a motor vehicle accident which occurred at about 7:25 p.m. on October 26, 1997 on a relatively level, slightly curving portion of Highway 43 approximately two kilometres north of the Hamlet of Gunn in the Province of Alberta. The accident involved a near the centre line partial head-on collision such that at impact the vehicles were positioned or oriented to each other at very nearly 180 degrees, while basically overlapping headlight to headlight on the driver's side of each vehicle. Both drivers sustained serious injuries as a result of the accident, and they are suing each other for damages.

[2] By way of a Consent Order granted by Clackson J. on March 28, 2002, it was directed, *inter alia*, that these two actions be tried together in accordance with the following directions:

1. Actions 9903 09279 and 9803 06729 will be tried concurrently on the following issues:
 - a) Whether at the point of collision, all or any part of the motor vehicle operated by Elden Douglas Loree had crossed the centre line of Highway 43; and if so is Elden Douglas Loree 100% liable for the accident;
 - b) Whether at the point of collision, all or any part of the motor vehicle operated by Trevor James had crossed the centre line of Highway 43; and if so is Trevor James 100% liable for the accident;
 - c) In the event neither Trevor James nor Elden Douglas Loree are found to be 100% liable for the accident, then what is the proper

apportionment of liability for the accident as between Elden Douglas Loree and Trevor James.

[3] Unfortunately, as will be discussed later, because of the limiting directions contained in the Consent Order, I have not been privy to any medical reports which might have assisted me in determining, or at least understanding, whether or not the injuries sustained by either Loree or James may have contributed to their evident lack of memory and inconsistent responses following the accident, in the examinations for discovery and while testifying.

[4] The parties also introduced an Agreed Statement of Facts dated February 18, 2003 which confirmed that:

- a) the only occupants of either vehicle were the drivers Loree and James,
- b) there are no known witnesses who observed the collision and
- c) the headlights on each vehicle were operating.

[5] Finally, when the Loree Statement of Claim was issued, it named Kathleen Campbell as a Defendant, the allegation being that she was the registered owner of the Ford pickup. However, along the way it was established that James was in fact the beneficial owner of the vehicle. Accordingly, I directed that the pleadings be amended by striking out any reference to Ms. Campbell.

DIRECTIONAL DISCREPANCIES:

[6] At the accident scene, Highway 43 is a two-lane paved roadway with a double solid yellow centre line and paved shoulders delineated by white edges and generally speaking, it meanders in somewhat of a northwest/southeast direction. However, in that regard, it should be noted that a directional discrepancy exists, both in the testimony of Constable Gordon Oliver Buck (Buck) and in the report of Sintra Engineering Inc. (Sintra) presented by Michael Peck and Mark C. Hughes.

[7] It is clear from their testimony as well as the report that they assumed that the Loree vehicle was travelling northward, while the James vehicle was travelling in a southerly direction. However, it is settled that at the point of the collision, Elden Doug Loree (Loree) was operating in a westerly direction (with the consent of the registered owner, Gladys Marjorie Blair) a 1988 Plymouth Sundance automobile, while Trevor James (James) was driving his 1994 F150 Ford pickup truck in an easterly direction. Accordingly, when considering the testimony of Constable Buck and the Sintra report, reference to the direction “north” should be changed to “west” and reference to the direction “south” should be changed to “east”.

[8] A particularly serious problem exists in the Sintra report in the last sentence of paragraph 1 on page 1 and in the last sentence of paragraph 1 on page 9. Those two sentences

are identical and state: “This suggests that the point of impact occurred approximately 0.5 m north of the centre line in the northbound lane.”

[9] In that sentence the reference to “0.5 m north of the centre line” is correct; however, the words “northbound lane” should read “westbound lane”.

ALCOHOL AS A CONTRIBUTING FACTOR:

[10] Notwithstanding the parameters hereinbefore set forth, at the outset the parties addressed the question of whether or not and, if so, at what point of time Loree and/or James had been drinking before the accident and, if so, whether or not that consumption might in some way have contributed to the accident. For those purposes, counsel for James called the following witnesses:

- a) Gordon Oliver Buck, a 23-year R.C.M.P. officer,
- b) James in his capacity as both a Plaintiff and Defendant,
- c) Mel James, the father of James,
- d) Margaret Rose James, the mother of James,
- e) Kory Umstatter, a veteran of 12.5 years as a member of the Onoway Fire Department,
- f) Darlene Umstatter, a veteran of 11 years as a member of the Onoway Fire Department,
- g) Barbara Gail Marsh, a veteran of 8 years as a member of the Onoway Fire Department,
- h) Brad Galliford, a member of the Onoway Fire Department, and
- i) Dave Cooper, a long-time mechanic-tow truck operator and member of the Onoway Fire Department.

[11] Counsel for Loree then presented:

- a) Scott Macphee, a pipe fitter from Fox Creek, Alberta who came upon the accident and recognized Loree as a person with whom he had worked at an earlier time,
- b) Les Whitely, a nurse at the Royal Alexandra Hospital,
- c) Susan Wright, a County of Parkland paramedic,
- d) Darcy Barton, a three-year emergency paramedic,
- e) Edith Anne Cooper, a recovery room nurse at the Royal Alexandra Hospital, Edmonton, Alberta with 28 years of experience,
- f) Loree, as both a Plaintiff and Defendant,
- g) Wendy Johnson, the mother of one of Loree’s co-workers, and
- h) Louise Bambrick, a 5.5 years emergency medical technician in the County of Parkland.

[12] In addition, counsel for Loree introduced Bruce David Miller (Miller) to give expert evidence in the area of the pharmacology of alcohol, and by way of rebuttal, counsel for James called Jerry L. Malicky (Malicky), an expert who testified concerning absorption, distribution and elimination of alcohol in the human body and the effects of alcohol upon the human body.

[13] Unfortunately, the evidence presented by said witnesses has not assisted me to make a determination addressing the issues outlined in the Consent Order.

[14] Much of the evidence presented was inconsistent as to the time when and the amount of beer that James had consumed prior to the accident. It was also inconsistent as to whether or not the smell of alcohol could be detected on him following the accident. In this regard, some of the witnesses detected the smell of alcohol while others did not. However, when emergency paramedic Darcy Barton spoke with James, he detected a strong smell of alcohol and at that point James volunteered that he had consumed four beers at his parents' residence.

[15] As to Loree, no one alleged that he had been drinking. However, one of the witnesses detected a faint smell of alcohol in Loree's vehicle and noted the presence of beer containers in and around it.

[16] Of perplexing concern is the evidence of Constable Buck (the R.C.M.P. officer at the scene) in contrast to that of the recovery room nurse, Edith Anne Cooper (Cooper), who encountered James some six hours later. Constable Buck testified that at the accident scene he had dealt with James more than once at close range and did not smell alcohol. However, some six hours later, as James arrived at the Royal Alexandra Hospital, nurse Cooper stated that he was obnoxious, reeked of alcohol and was intoxicated.

[17] The point which I am making is that although it is clear that prior to the accident James had been drinking, no one was able with certainty to establish the amount which he consumed or the time at which said consumption took place. More particularly, I find it very difficult to rationalize the contradiction between the evidence given by Constable Buck and recovery room nurse Cooper. If James did not smell of alcohol around 7:00 p.m., how could he, with presumably no opportunity to consume alcohol in between, reek of alcohol some six hours later?

[18] With those concerns in mind, I then gave consideration to the opinions provided by Miller and Malicky.

[19] Miller was retained by counsel for Loree who provided him with a schedule of facts and a number of documents. Based on that material, Miller addressed various assumptions and thereafter delivered his expert witness statement. It was then provided to Malicky who submitted a rebuttal.

[20] In his report, Miller concluded:

It is my opinion that at the time of the subject motor vehicle collision, Mr. James's critical judgment, divided attention reaction time, attention to and control over his driving, and his overall ability to operate his motor vehicle were in all probability impaired. Quite possibly, his muscular co-ordination was also impaired.

[21] Malicky's rebuttal provided:

In summation, Mr. Miller's opinions are only as reliable as the assumptions he employs. Some of his assumptions are inconsistent with the scientific literature and he failed to incorporate all the facts when arriving at his assumptions. He concludes that Mr. James was in the stage of excitement based solely on reports of the odour of alcohol on his breath by nursing staff. Yet his own calculations place Mr. James' blood alcohol concentration at the time of the accident at 80 mg.%. This would place Mr. James in the stage of euphoria and not over the legal limit to drive a motor vehicle in Canada. Considering all of the facts stated in Mr. Miller's report, my mathematical interpretation of these facts using assumptions consistent with the scientific literature indicates that Mr. James could have been in the stage of sobriety and that his driving skills may not have been impaired by the ingestion of alcohol.

[22] I respect the reputations and qualifications of Messrs. Miller and Malicky and certainly have no doubt that the statistics which they provided are accurate. However, having regard to the terms of reference which require me, if possible, to determine the point of impact and following therefrom to establish liability, nothing before me has provided assistance in my attempt to specifically identify the point of impact or, for that matter, to establish that the consumption of alcohol contributed, in any way, to the cause of the accident.

INCONCLUSIVE TESTIMONY:

[23] At 7:25 p.m. on October 26, 1997 at the accident site, it was dark, the highway was wet and it was raining. Constable Buck, a 23-year member of the Royal Canadian Mounted Police, attended at the scene, took control of the situation and prepared a Continuation Report. He identified James and Loree as the operators of the vehicles involved in the collision and spoke briefly with each of them. He also took photographs of the scene and although no measurements were taken, he estimated that the vehicles had come to rest approximately 100 to 150 metres apart, with the Loree vehicle coming to rest on the shoulder of the westbound lane and the James vehicle in the ditch adjoining the eastbound lane.

[24] As Constable Buck inspected the accident scene, he noted a gouge mark in the eastbound lane which appeared to him to have been caused by the James vehicle. Constable Buck also pointed out that the majority of the accident debris appeared to be in the eastbound lane. However, he confirmed that at the time no direct evidence existed to place the Loree vehicle across the centre line. In his view, the debris pattern supported such a theory but in

reviewing all of his evidence I realized that as Constable Buck inspected the scene he was not aware or failed to take notice of the fact that after impact the James pickup rolled over on the surface of the highway, dumping the contents of the truck box and littering the surface of the highway with whatever the box had contained, including tools, a tool box and other materials.

[25] At the scene, both James and Loree responded to questions advanced by Constable Buck and others. James confirmed that he was an uninsured suspended driver and, in asking what had happened, questioned whether or not his vehicle had crossed the centre line. He stated that he had no recollection of what had taken place during the day prior to the accident. Later he began to recall some portions of the trip and in particular seemed to recall lights coming towards him and a vehicle swerving into his lane. However, at one point he was not even certain that he had been at his parents' home but later was able to recall drinking a couple of beers and having dinner with them. In speaking with representatives of the volunteer firefighters, he stated that he had been heading for Breton, Alberta but had in fact been travelling in the wrong direction.

[26] Loree was in an ambulance when he spoke with Constable Buck and was wondering whether or not he had fallen asleep. At that time, Constable Buck recognized that Loree had sustained head and facial injuries and noted that anything Loree offered should be questioned.

[27] At about the same time, Loree told volunteer firefighter Susan Wright that he had no recollection of what happened from a mile before the accident. Later he said that he met three vehicles and thereafter noted the bright lights of a further oncoming vehicle travelling near the centre line. After that, whatever occurred is basically a blank as far as Loree is concerned; however, when pressed in cross-examination and, for that matter, in discoveries, he indicated that even though the oncoming vehicle was as close as some three car lengths from him, he could not say that the vehicle had crossed the centre line. Basically, his evidence was that as he noted the approaching vehicle and felt that it was close to the centre line, he moved his vehicle towards the white line marking the shoulder of the highway.

[28] Later on, at the Royal Alexandra Hospital, Constable Buck was informed that Loree was in the Emergency facilities with head and facial injuries and was about to be transferred to the neurological unit at the University of Alberta Hospital for possible surgery for a brain injury and for reconstructive surgery to his left cheekbone.

[29] In my view, the various questions asked by James and Loree and their responses to questions addressed to them, both at the accident scene and later, demonstrate loss of memory and inconsistency to such an extent that their evidence cannot be safely relied upon.

[30] I also have serious concerns in connection with the evidence provided by Constable Buck. In this regard, I am not particularly troubled about his failure to smell alcohol on the breath of James; however, I am obviously troubled with his Continuation Report in which he indicated that because the bulk of the debris from the accident was on the James side of the highway, he presumed that the Loree vehicle had crossed the centre line. In this regard, it is

recalled that Constable Buck was not aware of the fact that after impact the James pickup truck rolled over on the highway as it travelled to its final resting spot.

[31] On November 25, 1998, Constable Buck responded to an insurance adjuster by way of a letter in which he explained the situation, mentioned his discussions with Loree and James and provided an opinion as to the point of impact. The letter states, *inter alia*:

In response to your request dated 98-09-23, please find attached a copy of the accident form and photographs taken at the scene. There were no independent witnesses to this accident, nor were there any identifiable skid marks or gouges caused by the vehicles involved. The weather condition at the time was heavy rain that made any identification of road evidence impossible and as such no traffic analysis was requested to attend.

At the scene each driver made the following statements;

Loree said that he may have fallen asleep but could not recall anything of the accident, no alcohol was observed on Loree.

James made no admission, however questioned if he had crossed the centre line, but could not recall anything else of the accident, no alcohol was observed on James.

It is the opinion of this investigator that the Loree vehicle crossed the centre line and struck the James vehicle. My rationale for this opinion is from the distribution of debris on the roadway and the final resting position of the vehicles.

[32] It is noted that in the first paragraph of the letter Constable Buck stated that there were no identifiable skid marks or gouges caused by the vehicles involved. Yet in his continuation report he indicated that he noted a gouge mark in the southbound lane. (This is another situation where the word "southbound" should be replaced by "eastbound".) Some months later, he met with representatives of Sintra and the results of those discussions will be referred to later.

EXPERTS:

[33] Each side engaged experts in the field of accident reconstruction engineering. Loree retained Sintra, represented by Mark C. Hughes, P.Eng. (Hughes) and Michael Peck, P.Eng. (Peck). James retained David J. Daren, P.Eng. (Daren) of Daren Forensic Engineering. Sintra prepared a report dated November 19, 2001. Daren issued a report dated August 28, 2002 and, in addition, after having reviewed the Sintra report, issued a rebuttal report dated November 28, 2002.

[34] The Sintra report was prepared by Messrs. Hughes and Peck following a review and analysis of the following:

- Examination of the Loree Plymouth by Messrs. Mike Peck and Robert Sabulka of Sintra Engineering on November 21, 1997.
- Examination of the James Ford by Messrs. Peck and Sabulka on November 21, 1997.
- Examination of the two vehicles by Mr. Mark Hughes, P.Eng. of Sintra Engineering on May 20th, 1998. This examination was held in the presence of:

David Daren, P. Eng.	Daren Consulting
Ian MacLeod	Ian MacLeod (On behalf of Daren Consulting)
Don Christal	Christal Consulting (On behalf of Daren Consulting)
Cliff Anderson, P.Eng.	Anderson Associates
Mark Sawa, P.Eng.	Anderson Associates
Constable Buck	RCMP

- Examination of the accident site by Messrs. Peck and Sabulka on November 21, 1997.
- Examination of the accident site by Mr. Peck of Sintra Engineering on March 27, 1998.
- The 2-page Alberta Collision Report Form, completed by Constable Buck of the Stony Plain RCMP (Police file 97-07946).
- A conversation between Mr. Sabulka of Sintra Engineering and Cst. Buck of the Stony Plain RCMP on December 4, 1997.
- Review of 7 photographs taken by the RCMP on the evening of the accident.
- A copy of a letter addressed to Mr. David Kinloch from Cst. G.O. Buck of the Stony Plain Traffic Services, November 25, 1998.

- A discussion between Mr. Mike Peck of Sintra Engineering and Cst. Buck, April 5, 2000.

[35] In order to prepare his expert witness statement and report, Daren reviewed the following information:

1. A portion of the transcript of the Examination for Discovery of Trevor James, pages 10 through 30,
2. Transcript of the Examination for Discovery of Elden Douglas Loree, January 7, 2000,
3. Seven RCMP photographs taken at the scene,
4. Eight Onoway Fire Department photographs taken at the scene, and
5. Vehicle data.

[36] In addition Daren performed the following investigations in 1998:

1. Examination of the Ford pickup at Randee's Auto Service near Spruce Grove, February 7 and May 19, and at Ramco Storage in Edmonton on June 18,
2. Examination, photographing and measuring of the incident location, April 12,
3. Examination of the Plymouth Sundance at Ramco Storage, May 7, May 15 and May 25, and
4. Examination of the Ford pickup in conjunction with examination of the Plymouth Sundance at Ramco, May 20.

[37] Finally, in order to prepare his rebuttal opinion, Daren reviewed and critiqued the Sintra report.

[38] At the trial, each side produced and referred to scale drawings of the accident scene showing the final resting place of each vehicle and referring to various gouges and marks on the surface of the highway. In the end result, Sintra found that the James vehicle crossed the centre line and came into collision with the Loree vehicle. Daren found that the Loree vehicle had crossed the centre line and collided with the James vehicle.

[39] In his original report, Daren summarized his conclusions as follows:

1. It is not possible for the Ford pickup to have been left of center in the moments before impact, considering the orientation of the Ford and Plymouth at impact and given the Examination for Discovery evidence of Elden Loree regarding the movements and lane positioning of the Ford in the moments before the collision.
2. The Plymouth Sundance crossed the centerline in a manner consistent with that of the driver failing to properly negotiate the start of the right curve in the roadway for westbound traffic.
3. The driver of the Ford pickup had insufficient opportunity to perceive, react to, and avoid the Plymouth.

[40] After reviewing the Sintra report, Daren issued his rebuttal in which he concluded:

1. Sintra Engineering's analysis confirmed that there was at least one other unrelated incident that created roadway markings in the immediate area of the incident in questions.
2. It is not possible for the Ford pickup to have been left of center in the moments before impact, considering the orientation of the Ford and Plymouth at impact, the Examination for Discovery evidence of Mr. Elden Loree regarding the movements and lane positioning of the Ford in the moments before the collision, and the various roadway markings located by Sintra Engineering five months after the incident.

[41] It is recalled that I have expressed concern about the testimony of Constable Buck, Loree and James. I note that during the trial it was difficult to dismiss Constable Buck's original impression that the Loree vehicle had crossed the centre line because the bulk of the debris found on the surface of the highway was on James' side of the centre line. Obviously, the force of Constable Buck's first impression was weakened, both in the Continuation Report and in his letter to David Kinloch on November 25, 1998. In addition, representatives of Sintra met with Constable Buck on more than one occasion and those meetings were documented in the Sintra report. In this regard, it is noted that Daren did not at any time communicate with or meet Constable Buck, nor did he consider or comment upon Constable Buck's comments in the Continuation Report, in his letter to David Kinloch, or in his discussions with representatives of Sintra in which he acknowledged that the gouge in the highway on the Loree side of the centre line could well have been the point of impact.

[42] In the end result, neither the original Daren report nor his rebuttal have provided me any particular help in my attempt to determine the issues.

[43] On the other hand, I am impressed with the effort put forth by representatives of Sintra and accept their description of the collision site as well as the explanation of their findings as shown on the drawn to scale sketch of the accident scene. Its report states:

The collision scene was initially visited on November 21, 1997 by Messrs. Peck and Sabulka, however, due to environmental conditions (snow) and a lack of specific location details, the area of impact and areas of rest of the two vehicles was not identified. The scene was subsequently examined by Mr. Peck on March 27, 1998. Selected photographs taken during the examination can be found in Appendix A. A sketch of the accident scene is attached in Appendix B. The following observations were made:

- Discussions with the attending RCMP Officer, Constable Buck, indicated that the point of impact (POI) was not identified by the RCMP subsequent to the collision. Therefore, measurements of the scene were not recorded by the RCMP, however, photographs were taken of the vehicles' final resting positions. Photographs 1 through 7 show the final resting points of the vehicles on the evening of the incident.
- Photographs 8 and 9 show views of the roadway facing the area of impact from the northbound and southbound lanes respectively. The roadway in the northbound direction changed from being straight to a gradual right-hand curve. The area of impact was located near the beginning of the curve. There were no obstructions to the line of sight in either direction. (northbound should be westbound and southbound should be eastbound)
- Photograph 10 shows the area where the Loree Plymouth had come to rest. The front end of the vehicle had extended just off the road edge and dark oil spots remained in the soil. The rear tires of the vehicle had come to rest on the paved shoulder. It was noted from the vehicle examination and from RCMP photographs that three of the four wheels on the Loree Plymouth were relatively undamaged and free to rotate. The RCMP photographs were used to identify the locations of rest of the two vehicles on the site examination of March 27, 1998.
- Photographs 11 through 13 show the area of final rest of the James Ford and the location where it left the roadway. This area was located approximately 100 metres from the location of rest of the Loree Plymouth. Grooves in the paved shoulder lined up the furrows that extended down the slope of the bank. Debris from the James Ford was still present during the examination of the scene. RCMP photographs showed that the vehicle had come to rest in an upright position, even

though the vehicle had rolled at least once completely. Photograph 13 shows how steep the bank was where the James Ford came to rest.

- The roadway between the vehicle resting locations was examined for markings or gouges that would indicate the area of impact. Several markings and gouges were noted but not all appeared to be a result of this incident. These markings are labelled in the photographs and the scene sketch. Photographs 14 through 18 show markings A through G, and the following comments can be made about each one.

Mark A: Shown in Photograph 14, this gouge was a short and relatively deep chip out of the asphalt located approximately 0.5 m north of the centerline in the northbound lane. The deepest portion of the chip was closest to the centerline and became shallow northwest of the deepest portion. (my emphasis) (northbound should read westbound)

Mark B: Shown in Photograph 14, this groove in the asphalt was located approximately 0.6 m south of the centerline in the southbound lane. The groove was several centimetres wide, was relatively shallow, and arced toward the centerline. (southbound should read eastbound)

Mark C: Shown in Photograph 14, this groove in the asphalt surface was located approximately 0.9 m north of the centerline in the northbound lane. This groove was approximately 1.3 m long, several centimetres wide, and was not parallel with the axis of the road. (northbound should read eastbound)

Mark D: Shown in Photograph 15, this groove in the asphalt was located approximately 0.7 m north of the centerline in the northbound lane. This groove was very narrow, shallow, and was less than 1 metre in length. The groove was aligned with the centerline of the road. (northbound should read westbound)

Mark E: Shown in Photographs 16 and 17, this chip in the asphalt was located approximately 1.1 m south of the centerline in the southbound lane. This chip was very short and was aligned approximately with the centerline of the roadway. This chip was deepest on the western end. (southbound should read eastbound)

Mark F: Shown in Photograph 18, this groove in the asphalt was located on the centerline. The groove was not completely aligned with the centerline; it was oriented at a shallow angle to the east-southeast.

Mark G: Shown in Photograph 18, this was a series of long shallow grooves in the road that crossed the centerline. The location of these grooves with respect to the point where the James vehicle left the roadway can be observed in the photograph.

[44] On April 5, 2000, Constable Buck and Peck had a conversation at the Stony Plain Royal Canadian Mounted Police offices. Peck summarized the discussion as follows:

- Cst. Buck indicated that there were no measurements taken at the scene and the only available information was seven photographs (located in Appendix A) showing the final resting points of both vehicles. Review of these photographs revealed no evidence concerning the location or pattern of debris in the roadway.
- Cst. Buck indicated that the debris was located primarily over the centre of the roadway and over the south (southbound/eastbound) lane. He also indicated that the debris was concentrated over approximately one third (1/3) of the distance separating the two vehicles at their points of rest, and that it was located closest to the James vehicle. There were no measurements of the debris field, and no photographs of the debris field. Cst. Buck could not recall from which vehicle the debris belonged.
- Cst. Buck indicated that he did re-visit the site of the incident when weather was better and in daylight hours. He observed several gouges in the roadway between the locations of final rest of the vehicles, however, he could not attribute any particular gouge to the collision with certainty. Cst. Buck indicated that he did observe a gouge in the road that was located close to the centerline that he felt may have been a result of the collision. He estimated this gouge to be approximately 3 to 4 inches (7 to 10 cm) in length. He did not document any of the gouge marks.

[45] I also accept the comprehensive analysis prepared by Sintra. It states:

- In reference to the observed markings noted in the pavement at the collision site, there were no visible markings west of Mark A. Mark A (gouge) was approximately 10 cm in length and was relatively deep. This type of pavement scar is generally caused by portions of a vehicle undercarriage that are forced downward into the pavement upon impact. It was located approximately 45 metres west of the grooves on the south shoulder of the road where the James Ford entered the ditch. This would have been sufficient space for the James Ford to disengage from the Loree Plymouth, rotate and roll at least once before entering the ditch. Based on the limited data recorded by the RCMP at the scene, the available evidence supports Mark A as the location of the point of

impact. This indicates that the James Ford had crossed over the centerline upon impact.

- Pavement scars B, C, and D were relatively long and shallow. These type of markings are generally consistent with those made from damaged vehicles as they travel on the road surface to their points of rest. They are not typical of markings that would be expected to be observed at the location of impact. Based on the limited data that was recorded by the RCMP at the scene of the incident, markings B, C, and D were consistent with post-collision travel of a damaged vehicle, and therefore, were likely to have been caused by the James Ford.
- Mark E was identified as being relatively short (approx. 2-3 cm long) and deep. This road scar was located approximately 18 metres west of the groove marks that were located on the south shoulder where the James Ford left the road. The observations of the James Ford indicated that it had rolled at least once on the pavement prior to entering the ditch. The long scratches in the body panels of the James Ford also indicate that it had slid along the pavement. Furthermore, the James Ford was upright when it left the groove marks on the south shoulder. If gouge mark E was created at the point of impact, then the James Ford would have had to disengage from the Loree Plymouth, rotate approximately 90 degrees, and roll at least one full revolution in a span of 18 metres. Assuming highway speeds at impact, it is unlikely that the James Ford would have accomplished this in such a short distance. Therefore, it is unlikely that gouge mark E was caused during the impact between the two vehicles. It is either unrelated to the incident, or was caused by a sharp protrusion from the James Ford's undercarriage as it was rolling on the roadway. The observed wearing of the axle tip on the James Ford was consistent with this assessment.
- Markings F and G on the drawing did not line up adequately with the grooves in the pavement that were observed on the south shoulder where the James Ford had left the road. Therefore, they were assessed as not being related to the incident in question.
- The vehicles in this incident did not collide fully head-on; the width of engagement between the two vehicles was narrow. As a result, their departure angles were relatively shallow and the analysis to determine vehicle speeds from the available information was sensitive to the small changes in departure angles. Consequently, the range of speeds for each vehicle was relatively large. Using the area of impact at Mark A, the Loree Plymouth was likely travelling between 86 and 109 km/h, and the

James Ford was likely travelling between 95 and 110 km/h at the time of impact.

- Cst. Buck's description of the gouge mark he observed when he re-visited the collision site was consistent with the appearance and location of Mark A.
- Debris from a collision may consist of dirt, liquids, vehicle parts, cargo, or personal belongings. In some cases, the pattern of debris can indicate an approximate location of impact. However, debris fields can also be misleading. In cases where the debris field is scattered over a large area, it is an unreliable source for determining the locations of the vehicles upon impact. The opinion of Cst. Buck as to the location of the point of impact was based on debris distribution and final resting points of the vehicles. The damage evidence from the James Ford indicated it had rolled on the paved surface of the highway. It was likely that much of the debris on the road had come from the rolling James Ford. Therefore, the debris was an unreliable source which led Cst. Buck to his conclusions about the location of impact.

[46] Finally, I am satisfied that the conclusions reached by Sintra are correct and I hereby adopt same. They state:

1. It is likely that Mark A (a gouge mark) had resulted from the collision between the two vehicles and denotes the area of impact. This suggests that the point of impact occurred approximately 0.5 m north of the centerline in the northbound lane. (northbound should read westbound)
2. Markings B, C, D and E were all consistent with post-collision markings, likely created by the James Ford as it travelled to its point of rest.
3. Markings F and G were assessed as not being related to the subject collision.
4. The Blair vehicle was likely travelling between 86 and 109 km/h and the James vehicle was travelling between 95 and 110 km/h at the time of impact.
5. Cst. Buck's description of the gouge mark he observed when he re-visited the collision site was consistent with the appearance and location of Mark A.

6. The scattered pattern of debris on the roadway was an unreliable source which led Cst. Buck to his conclusions about the location of impact.

[47] In the end result, having regard to the provisions of the Consent Order, I find pursuant to para. 2(1)(b) that at the point of collision part of the motor vehicle operated by James had crossed the centre line of Highway 43, as a result of which James is 100% liable for the accident.

[48] Loree is entitled to appropriate costs, which may be spoken to if required.

HEARD on the 22nd day of April 2003.

DATED at Edmonton, Alberta this 19th day of August 2003.

J.C.Q.B.A.