COURT FILE NUMBER: BC-76-2017

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

BETWEEN:

LINDA TREVORS
Plaintiff

- and –

ANNE DOUCET, LÉA ALLARD, ENTERPRISE RENT-A-CAR CANADA COMPANY, a body corporate, and CO-OPERATORS GENERAL INSURANCE COMPANY, a body corporate
Defendants

BEFORE:	The Honourable Ivan Robichaud
LOCATION OF HEARING:	Bathurst, New Brunswick
DATE OF HEARING:	November 14, 2018
DATE OF DECISION:	December 11, 2018
APPEARANCES:	Gaétan Migneault for the plaintiff
	Caitlin Mahoney and Matthew Girard for Anne Doucet.
	Robert Dysart for Léa Allard.
	Michael Cormier for Co-Operators

THE MOTION

[1] A motion for summary judgment was filed by the Defendants Anne Doucet and Enterprise Rent-A-Car (as owner of the Doucet vehicle), asking that:

1. The Defendants, Ann Doucet and Enterprise Rent-a-Car Canada Company as owner of the motor vehicle driven by Ms. Doucet (hereinafter "ERAC-Doucet"), be granted summary judgment against the Plaintiff, Linda Trevors and the Defendants Lea Allard and Enterprise Rent-A-Car as owner of the motor vehicle driver by Ms. Allard (hereinafter "ERAC-Allard") and Co-operators General Insurance pursuant to Rule 22.01 (3) and 22.04 (1) of the Rules of Court, on the ground that the Defendant Ms. Ann Doucet and consequently ERAC-Doucet are not liable for the subject motor vehicle accident and that there is no merit to any of the claims or cross claims against them and therefore no genuine issue requiring a trial;

2. Specifically, that the Court grant summary judgment and dismiss the action and cross claim against Defendants Ann Doucet and ERAC-Doucet, including:

i. the claims against the Defendants Ann Doucet and ERAC-Doucet in paragraphs 2, 3, 14, 15, 16 and 27 of the Statement of Claim of the Plaintiff pursuant to Rules 22.01 (3) and 22.04 (1) of the Rules of Court; and

ii. the claims and crossclaims against the Defendants Ann Doucet and ERAC-Doucet in paragraphs 9, 16, 25 and 26 of the Statement of Defence and Cross-Claim of co-defendant Co-operators General Insurance pursuant to Rules 22.01 (3) and 22.04 (1) and 22.08 of the Rules of Court.

3. The Court grant costs of this motion in favour of Ann Doucet and ERAC-Doucet against the Plaintiff, Linda Trevors and the co-defendant Co-operators General Insurance.

[2] The Plaintiff, Linda Trevors, submits that the motion should be dismissed with costs as:

a. It is premature, no Examination for Discovery having been held yet;

b. The Statement of Claim, as supported by the evidence filed, shows that the Applicant has contributed to the accident or, alternatively;

c. There is a genuine issue that requires trial.

[3] The defendants Léa Allard and Enterprise Rent-A-Car Canada Company (as owner of the vehicle driven par Léa Allard) support the motion.

[4] The defendant Co-Operators General Insurance Company takes no position on the motion.

[5] There were no requests for a mini-trial.

THE FACTS

[6] There is little if any dispute as to the facts. A terrible head-on collision occurred on May 16, 2015, on Route 11, just south of Miramichi, New Brunswick.

[7] On that day, the plaintiff, the Defendant Ann Doucet and Ms. Doucet's mother were going shopping in Moncton. They had left from Bathurst and were therefore heading south on Route 11.

[8] Ms. Doucet was driving a Nissan Altima owned by Enterprise Rent-a-Car Canada Company. Her mother was sitting in the back seat, on the passenger side while the plaintiff was the front seat passenger.

[9] The Defendant Lea Allard was driving a Dodge Journey in a northerly direction, on Route 11. That vehicle was also owned by the Defendant Enterprise Rent-a-Car Company.

[10] The weather was clear, the road was dry, and the visibility was good.

[11] Both the Nissan Altima and the Dodge Journey were in good working order.

[12] The accident occurred on a long straight stretch of the road. Some vehicles were going northbound, including the Dodge Journey driven by the Defendant Allard.

[13] The speed limit in the area is 90 km per hour. Both vehicles were travelling approximately 15 km per hour over that limit.

[14] The Dodge Journey, driven by Ms. Allard, crossed the centre line of the highway and collided head-on with the Nissan driven by Ms. Doucet.

[15] Pursuant to Rule 22.02 (3) of the Rules of Court, the Court granted leave to accept the affidavit and report of Stephen R. Robinson, an expert in accident reconstruction that had been retained by the Defendant Enterprise Rent-a-Car as owner of the Allard vehicle. The last sentence of section 3.1 of the report

and the second bullet of section 3.4 were struck as containing hearsay and opinion going beyond the expertise of the expert.

[16] Mr. Robinson obtained the crash data from both vehicles. His report shows the following timeline:

TIME (seconds to impact)	ALLARD	DOUCET
5	Starts drifting 3 degrees to the left, 105 km/h	Steering straight ahead, 104 km/h
3		Brakes, steers 15 degrees to the right.
2.8	Now going 4 degrees to the left	
2.5		Steers 10 degrees to the left.
2.0		Steers 35 degrees to the left
1.7	Steers 3 degrees to the right	
1.6	Steers 28 degrees to the right	
1.5	Steers 44 degrees to the right	Steers 12.5 degrees to the left
1.4	Steers 51 degrees to the right	
1.3	Steers 46 degrees to the right	
1.2	Steers 44 degrees to the right	
1.1	Steers 35 degrees to the right	
1	Steers 38 degrees to the right	Steers 17.5 degrees to the right

0.9	Steers 39 degrees to the right	
0.8	Brakes, steers 23 degrees to the right	
0.7	Steers 3 degrees to the left	
0.6	Steers 10 degrees to the left	
0.5	Steers 11 degrees to the left	Steers 77.5 degrees to the right
0.4	Steers 8 degrees to the left	
0.3	Steers 7 degrees to the left	
0.2	Steers 4 degrees to the left	
0	Steers straight ahead.	Steers 47.5 degrees to the right

[17] Mr. Robinson's conclusions and opinions are as follows:

- The Nissan (Trevors) was travelling at a pre-collision speed of 104 KPH, which exceeded the posted speed limit of 90 KPH. The Nissan had braked and slowed down to approximately 35 KPM (sic).

- The Dodge (Doucet) was travelling at a pre-collision speed of 105 KPH, which exceeded the posted speed limit of 90 KPH. The Dodge had braked and slowed down to approximately 80 KPH.

- The Nissan was at all times in the southbound lane, leading up to the collision.

- The northbound Dodge crossed the centreline to collide with the southbound Nissan, in the southbound lane.

- All occupants in the Nissan were wearing their seatbelts at the time of the collision.

- The driver of the Dodge was wearing a seatbelt at the time of the collision.

- A mechanical inspection of the Dodge did not reveal any mechanical issues that would have contributed to a loss of control.

[18] Mr. Robinson examined both vehicles, analyzed the crash data, made a mechanical assessment of the Dodge, visited the collision scene, and contacted the RCMP. In his report, he states:

> "The driver of the Nissan Altima had a steering wheel angle of zero at 5 seconds before the crash, and steered to the right at 3 seconds before the collision, back to the left, and then back to the right again up until impact. Those steering inputs by the driver of the Nissan seem to correlate with the other vehicle drifting across the centreline, and then the Dodge driver realizing it and jerking the wheel back to the right."

[19] Neither the plaintiff nor Ms. Doucet have clear memory of the pre-collision events. Sadly, Ms. Doucet's mother died as a result of the accident.

[20] In her affidavit, Ms. Doucet states, at paragraph 9:

> *"The Dodge travelled north towards me in my lane of travel and did not go back into the northbound lane. Linda Trevors stated something to the affect (sic) 'where are they going'. I replied, 'I don't know but I'm not staying here'. I swerved left towards the centre line, hoping to reach the safety of the other shoulder of the road. Ms. Trevors said something to the effect 'she's going to hit us'. I have no recollection of what happened next or whether I maneuvered the Nissan across the centre line of the highway or elsewhere. The next thing I recall is hearing the impact between the Dodge and the Nissan and my body being compressing downward."*

[21] The Plaintiff states, in her affidavit:

> *8. I noticed a red car coming in our direction in the other lane of the road. I then noticed the car gradually crossing over the yellow line into our lane of travel. It was a good distance away when I first noticed it crossing over the yellow line.*
>
> *9. When I noticed the incoming car crossing over the yellow line, I brought Ann's attention to it. I tapped Ann on her shoulder and mentioned the incoming vehicle. She acknowledged the incoming car and she said something like "hold on".*
>
> *10. From what I recall, I did not observe Ann freeze or panic when the red car was coming towards us in our lane. I remember her turning towards the other side of the road, when in my mind I thought that she should be pulling to the right shoulder.*
>
> *11. I have read the affidavit of Ann Doucet sworn to on March 23, 2018, in support of her motion for summary judgment. From my recollection, I agree with a sequence of events similar in nature to what is related in paragraph 9 of her affidavit. I remember seeing the other car crossing into the lane we were travelling in and making statements to that effect.*
>
> *12. Although she was aware of the incoming car, Ann did not try to move to the right shoulder of the road to clear the path for the incoming car.*

[22] However, the plaintiff, interviewed by a claims adjuster one month after the accident said: *"... And we were on the road and uh, we both noticed a, a red, what I thought was a van coming towards us and it was coming down the centre line and it was just swerving a bit. So the driver went to, swerved over to the right to try to avoid it and it came across the line more and it was going to get us. So made a sharp turn to the left of the road and somehow it still got us head on on the left side of the road".*

[23] Although some witnesses, including the Defendant Doucet do not remember Ms. Doucet first going to the right, before turning to the left and then back to the right, the expert report and the data it contains clearly show, and I do find, that

- Ms. Allard crossed the centre line into the southbound lane.
- Ms. Doucet first tried to avoid the collision by steering to her right, towards the right shoulder of the road.
- Ms. Allard increased her angle of travel towards the left so that the collision still could occur.
- Ms. Doucet then turned to her left.
- Ms. Allard then turned to her right, returning towards the northbound lane;
- Ms. Doucet then reacted by turning to the right again.
- Ms. Doucet never crossed the centreline and was always in her southbound lane.

THE PLEADINGS

[24] The plaintiff filed her Notice of Action with Statement of Claim Attached on May 2, 2017, against all defendants.

[25] The relevant parts of this pleading read:

> 7. The Plaintiff, LINDA TREVORS, states that on May 16, 2015, at approximately 11:30 a.m. she was the passenger in the Doucet vehicle which was travelling in a southerly direction on Highway 11 in or around the City of Miramichi, New Brunswick. At the same time, and place, the Defendant, LÉA ALLARD, operating the Allard vehicle in a northerly direction, crossed the centre line of Highway 11 and collided with the Doucet vehicle.
>
> 15. The Defendant, ANNE DOUCET, was negligent in that:
> a) She drove the Defendants' vehicle on a highway without due care and attention contrary to section 346 (1) (a) of the *Motor Vehicle Act*, RSNB 1973, c. M-17;
>
> b) She drove the Defendants' vehicle on the highway without reasonable consideration for other persons using the highway contrary to section 346 (1) b) of the *Motor Vehicle Act*, supra;
>
> c) She operated the Defendants' vehicle on a highway at speed greater than was reasonable and prudent under the conditions then prevailing and having regard to the actual and potential hazard still existing contrary to section 140 (2) of the *Motor Vehicle Act*, supra;
>
> d) She operated the Defendants' vehicle without brakes adequate and effective to control the movement of and to stop and hold it in a safe and prudent manner contrary to section 233 of the *Motor Vehicle Act*, supra;
>
> e) She failed to stop, slow down, swerve or in any other way to control the Defendants' vehicle as to avoid the said collision when she saw or should have seen the collision was about to occur;
>
> f) She failed to have the Defendants' vehicle in a fit and proper condition suitable for safe operation upon a highway contrary to section 206 (1) of the *Motor Vehicle Act*, supra;
>
> g) She failed to sound her horn when it was necessary to insure the safe operation of the Defendants' vehicle, contrary to section 234 (2) of the *Motor vehicle Act*, supra;

h) She created an emergency and a situation of danger;

i) She failed to take the necessary precautions to avoid the collision when she knew said collision was imminent; and
j) She operated the Defendants' vehicle with such other particulars of negligence as may appear from the evidence.

17. The Defendant LÉA ALLARD was negligent in that:

k) She drove the Allard vehicle on a highway without due care and attention, contrary to section 346 (1) a) of the *Motor Vehicle Act*, supra;

l) She drove the Allard vehicle on a highway without reasonable consideration for other persons using the highway, contrary to section 346 (1) b) of the *Motor Vehicle Act*, supra;

m) She operated the Allard vehicle to the left of the centre line, contrary to section 147 (1) of the *Motor Vehicle Act*, supra;

n) She operated the Allard vehicle to the left of the centre line in order to pass other vehicles, contrary to section 151 of the *Motor Vehicle Act*, supra;

o) She operated the Allard vehicle without brakes adequate and effective to control the movement of and to stop and hold the Allard vehicle in a safe and prudent manner, contrary to section 233 of the *Motor Vehicle Act*, supra;

p) She failed to stop, slow down, swerve or in any other way to control the Defendants' vehicle as to avoid the said collision when she saw or should have seen the collision was about to occur;

q) She did not sound her horn or give any warning of her approach, contrary to section 234 (2) of the *Motor Vehicle Act*, supra;

r) She created an emergency situation of danger;

s) She failed to take the necessary precaution to avoid the collision when she knew the said collision was imminent;

> t) She operated the Allard vehicle at a speed greater than was reasonable and prudent under the conditions then prevailing and having regard to the actual potential hazards then existing, contrary to section 140 (2) of the *Motor Vehicle Act*, supra; and
>
> u) She operated the Allard vehicle with such other particulars of negligence as may appear from the evidence.

[26] Enterprise Rent-a-Car was included as a defendant as the owner of both vehicles. The Defendant Co-Operators General Insurance Company was included as a defendant as the plaintiff's insurer, under the SEF No. 44 Family Protection Endorsement and SEF No. 44 supplements.

[27] By the time the Notice of Action was filed and served, the Defendants Allard and Enterprise Rent-a-Car Canada Company (as owner of the Allard vehicle) had already received the Robinson report. In their Statement of Defence, they therefore admit that the collision was caused by Lea Allard's negligence and that Enterprise Rent-a-Car is liable for her negligence, as owner. They add:

> 7. As to the whole of the claim, the Allard Defendants say that Allard was the operator of the Dodge Journey (the "Allard vehicle"), owned by ERAC-Allard, and that Allard crossed the centreline of the road and struck the Nissan Altima drive (sic) by the co-defendant Ann Doucet in the Nissan's lane of travel (southbound). Allard admits that she was negligent in the operation of the Allard vehicle and she admits that her negligence caused the collision. The Allard Defendants further admits that ERAC-Allard, owner of the Allard vehicle, is liable for Allard's negligence.

[28] The Defendant Anne Doucet and the Defendant Enterprise Rent-a-Car filed their Statement of Defence shortly afterwards. They deny any act of negligence on the part of Ms. Doucet and add:

> 7. As to the allegations of paragraph 15 and the whole of the Statement of Claim the Doucet Defendants state that Ms. Doucet was travelling in the southbound lane of highway 11 near MacDonald Street in Napan, NB and operating the Doucet Vehicle in a safe and prudent manner while keeping an appropriate look out and travelling at an appropriate and reasonable speed for the prevailing conditions when suddenly and without warning the Allard Vehicle which was travelling in the northbound lane of highway 11 crossed the centreline of the highway into Ms. Doucet's lane of travel and struck the Doucet Vehicle (hereinafter the "Collision"). The Defendants further state that the defendant Lea Allard created an agony of collision situation and an emergency situation of danger for which the Doucet Defendants are not liable for at law.

[29] The Defendant Co-Operators filed a Statement of Defence and Cross-Claim, contesting the plaintiff's entitlement under the SEF 44 Family Protection Endorsement and cross-claims against the defendants Doucet and Allard for contribution and indemnity.

RULE 22—SUMMARY JUDGMENT

[30] Rules 22.01 (3) and 22.04 read:

> 22.01 (3) After the defendant has served a Statement of Defence, the defendant may move with supporting affidavit or other evidence for summary judgment dismissing all or part of the claim in the Statement of Claim.

22.04 (1) The court shall grant summary judgment if:

a) the court is satisfied there is no genuine issue requiring a trial with respect to a claim or defence, or

[31] In *O'Toole v. Peterson*, 2018, NBCA 8, our Court of Appeal summarized the modified Rule 22 as such:

> [67] In *Hryniak v. Mauldin*, the Supreme Court of Canada explained the Ontario summary judgment rule (upon which our new Rule 22 is modelled to a large extent) represents a **"culture shift" that has moved "the emphasis away from the conventional trial"** (para. 2). Rule 22, in its current formulation, "demonstrates that a [full] trial is not the default procedure" (para. 43) and "[embodies] the evolution of summary judgment rules from highly restricted tools used to weed out clearly unmeritorious claims or defences **to their current status as a legitimate alternative means for adjudicating and resolving legal disputes"** (para. 36). The hearing and determination of a motion for summary judgment must now be viewed as an "**alternative model of adjudication**" (para. 45). This understanding percolates, *inter alia*, from the wording of our current Rule 22.04 (1), which obligates the court to grant summary judgment if it is satisfied there is no genuine issue requiring a trial. Thus, the motion judge's discretion under the former rule to deny summary judgment even where there was no merit to the responding party's case has been discarded. The judicial obligation to grant summary judgment where the Rule's condition precedent is satisfied is aligned with the view that the process represents a legitimate alternative model of adjudication.
>
> [68] The "no merit" test is nowhere to be found in our new Rule 22. **The test for summary judgment is simply whether there is a genuine issue requiring a trial**: Rule 22.04 (1) (a) and *22 King Street Inc. et al. v. The Bank of Nova Scotia*, 2018 NBCA 16 (CanLII), at para. 15. As is well known, adjudication in civil litigation involves the application of the balance-of-probabilities standard. Since the moving party is the one making the allegation that there is no genuine issue requiring a trial, he or she bears the burden of persuading the court it has been established on a balance of probabilities. That is the

> extent of the moving party's evidential and persuasive burden. Both sides must "put their best foot forward" (*Cannon v. Lange*, at para. 23), the responding party having to "lead trump or risk losing": *1061590 Ontario Ltd. v. Ontario Jockey Club*, 1995 CanLII 1686 (ON CA), [1995] O.J. No. 132 (C.A.)(QL), at para. 35. As Justice Clendening astutely noted in *Gillis v. Law Society of New Brunswick et al.*, 2017 NBQB 212 (CanLII), [2017] N.B.J. No. 283 (QL), the process-liberalizing instructions provided by *Cannon v. Lange* "retain all of their relevance notwithstanding the legislative and jurisprudential changes" (para. 26).

The emphasis is mine except for the word "obligates" in paragraph 67.

[32] I will deal first with the allegation that the motion is premature, the examination for discovery not having been held although requested by the plaintiff.

[33] Rule 22 clearly does not require examination for discovery to be held prior to filing or hearing the motion. A motion can be filed as soon as the pleadings are closed. It is not improper to try to avoid the costs associated with an examination for discovery if there is no genuine issue requiring a trial.

[34] This does not mean that a party can put the other in a disadvantage by withholding important documents or information and by filing a motion for summary judgment. In the proper circumstances, the court would allow cross-examination of a witness or grant an adjournment for the discovery of documents, for the preparation of expert evidence or for the examination for discovery or will hold a mini-trial. There has been no request for any of those

measures by the plaintiff. The allegation is simply that since both vehicles are owned by the same company (although separately represented), there is reason to suspect that the admission of liability is made for the purpose of avoiding two claims or that the refusal to proceed with an examination for discovery is due to the plaintiff's fear of making damaging admissions.

[35] Affidavits of documents have been exchanged in June. The affidavit of documents of the Defendant Léa Allard contained the transcript of a verbal statement made by the plaintiff, by the Defendant Léa Allard and by Barbara Cook. The plaintiff has not presented any evidence that would alter the facts as sworn by the people who were involved in the accident. It is not sufficient to say that factual issues remain unresolved. See *Mason v. Kierstead* 2013 NBQB 71.

[36] There is no evidence of improper conduct by the owner of both vehicles. There is also no evidence to suggest any factual situation different than what is presently before the Court. As a matter of fact, as stated above, there is very little dispute as to the facts and any dispute as to facts can be decided with the evidence at hand.

[37] I therefore do not consider the present motion to be premature.

[38] Have the applicants shown, on a balance of probabilities that there is no genuine issue requiring a trial as to her liability? I conclude that they have, for the following reasons.

[39] Although I do not see the admission of liability in the Statement of Defence on behalf of the Defendant Allard as conclusive in the sense that the Court could still find some liability on the part of the Defendant Doucet (see *Thériault v. Comeau*, 2015 NBQB 45), the evidence is clear that the Defendant Allard vehicle crossed the centreline into Ms. Doucet's lane and that the Defendant Doucet's vehicle never crossed the centreline into Ms. Allard's lane. The accident happened entirely in the southbound lane, where Ms. Doucet had the right of way.

[40] As our Court of Appeal said in *Day & Ross Inc. v. Randall and Estate of Jean-Claude Gagnon*, 2001 NBCA 39 (CanLii) at paragraph 21:

> When it is established that a driver crossed the centre line of the roadway and collided with another vehicle moving in the opposite direction, the driver on the wrong side must provide an explanation that absolves him of fault for the crossing-over. Absent such an explanation, the driver on the wrong side will be tagged with full liability for the accident, unless it is shown that the consequences of his negligence could have been avoided by the exercise of reasonable care on the part of the other driver. See *Dunbar v. Grady* (1959), 41 M.P.R. 233 (S.C.N.B. (App. Div.)), *Caissie v. Donelle* (1959), 41 M.P.R. 281 (S.C.N.B. (App. Div.)), *Beers et al. v. Lutes et al.* (1959), 42 M.P.R. 149 (S.C.N.B.(App. Div.)), *Goguen and Despres v. Superior Service Leasing Ltd. and Kenney*(1976), 13 N.B.R. (2d) 670

> (C.A.), *Jordan v. Coleman et al.*, 1975 CanLII 136 (SCC), [1976] 1 S.C.R. 126, *Landry et al. v. Doucet* (1989), 95 N.B.R. (2d) 228 (C.A.), *Boutcher and Canada (Attorney General) v. Stewart and Stewart* (1989), 99 N.B.R. (2d) 30 (C.A.), per Ryan J.A. dissenting, *Doyle v. Grant* (1999), 211 N.B.R. (2d) 195 (C.A.) and *Pelletier v. St-Onge*, [2001] N.B.J. No. 78, online: QL (NBJ), at para. 14; 2001 NBCA 22 (CanLII). As a practical matter, the outcome will invariably be the same whether the collision on the wrong side is treated as "evidence of negligence", "*prima facie* negligence" or as an event giving rise to a rebuttable presumption of fault.

[41] Ms. Allard's vehicle was on the wrong side of the road and she has no explanation for the situation. She therefore must be tagged with full liability for the accident, unless it is shown that the consequences of her negligence could have been avoided by the exercise of reasonable care on the part of Ms. Doucet.

[42] Both vehicles were going at a speed above the limit in the area. That fact is not sufficient in itself to tag some liability on the Defendant Doucet. As said in *Day & Ross Inc. v. Randall and Estate of Jean-Claude Gagnon*, above, the speed must be the proximate cause of the accident. Ms. Doucet's speed was not excessive, and the accident was not caused by the speed of her vehicle but by the fact that Ms. Allard crossed the centre line into Ms. Doucet's lane of travel. I am not convinced that if Ms. Doucet's speed had been at or below the speed limit, the accident could have been avoided. See also *Rowan v. Denny* 2016 CanLii 98291 and *Martin et al. v. McNeely*, [1976] N.B.J. No. 37.

[43] The plaintiff has submitted that by calculating the rate of deceleration and the time between the moment Allard's vehicle started to move to her left and the moment of impact, the Defendant Doucet could have stopped her vehicle prior to impact had she not been speeding, or had she applied the brakes at five seconds to impact. There is no expert evidence to support this and the fact that she could have stopped her vehicle does not mean the collision could have been avoided.

[44] Also, the evidence does not suggest that Ms. Doucet, with reasonable care, could have avoided the accident. The entire tragic event happened in five seconds. The expert report says that Ms. Allard's vehicle started to drift to her left at 5 seconds prior to impact. This does not mean that her vehicle crossed the centre line at that very moment. Within two seconds of Allard's vehicle starting to drift to the left, Ms. Doucet put the brakes and steered for the right shoulder. Allard's vehicle increased her angle towards her left so that the collision could occur even on Ms. Doucet's right shoulder. She therefore turned to the left but then Ms. Allard turned towards her own lane, forcing Ms. Doucet to swerve to the right again but it is too late, and the two vehicles collide almost head on. Ms. Doucet never crossed the centre line as was the case in *Comeau v. Doucet* (1980) 32 NBR (2d) 145 (CA).

[45] Ms. Doucet did what an ordinary, reasonable and prudent driver in the same circumstances would have done. I do not believe that, while trying to avoid collision, she had the time to sound her horn or that it would have changed anything. Even if I were to accept that she might have put the brakes a second or two earlier, I am not convinced it would have changed anything and would conclude that she reacted in the agony of collision.

[46] As our Court of Appeal said in *McAdam v. McIlveen*, 2002 NBCA 55: *The law recognizes that a driver, when confronted with a sudden emergency situation not of his or her making "cannot be held to a standard of conduct which one sitting in the calmness of a courtroom might later determine was the best course."*

[47] Having concluded that the Applicants Ann Doucet and Enterprise Rent-A-Car Company have shown, on a balance of probabilities, that there is no genuine issue requiring a trial as to her liability, their motion requesting summary judgment is granted and the claims and cross claims against the said applicants are dismissed, including:

a) The claims against the Defendants Ann Doucet and Enterprise Rent-A-Car Company in paragraphs 2, 3, 14, 15, 16 and 27 of the Statement of Claim of the Plaintiff Linda Trevors; and

b) The claims and cross claims against the Defendants Ann Doucet and Enterprise Rent-A-Car Company in paragraphs 9, 16, 25 and 26 of the Statement of Defence and Cross-claim of co-defendant Co-operators General Insurance.

[48] The applicants are entitled to costs of $2500 against the Plaintiff Linda Trevors. I do not grant costs against the Respondent Co-Operators General Insurance Company since it did not oppose the motion.

Dated this 11th day of December, 2018 in Bathurst, NB.

Ivan Robichaud, J.C.Q.B.